

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

CRAA No.9900002/2008

Date of Order:-31st January, 2019

State of Jammu & Kashmir **Versus** **Ravi Kumar and another**

Coram:

Hon'ble The Chief Justice
Hon'ble Mr. Justice Tashi Rabstan, Judge

Appearance:

For the Appellant(s) : Mr. Raman Sharma, Dy.AG.
For the Respondent(s) : Mr. G.S Thakur, Advocate.

i)	Whether to be reported in Digest/Journal/Media	:	Yes / No
ii)	Whether to be reported in Press/Media	:	Yes / No

1. By way of the instant appeal, the State-appellant has assailed the judgment dated 31st of August, 2007 passed by learned Additional Sessions Judge, Reasi in case titled "*State Vs. Ravi Kumar and another*", arising out of FIR No.102/2004 registered with Police Station, Reasi, on 10th of September, 2004 for the commission of offences punishable under Sections 376/366/302/201 of the Ranbir Penal Code. The case was registered by the police on a written report made by one Salik Ram on 10th of September, 2004 to the police station informing that his daughter (referred to herein as A), who had gone for natural call early in the morning on 9th September, 2004 and did not return back. Upon effecting a search for him, he obtained information that one Ravi Kumar (respondent No.1 herein) had kidnapped the A for illegal purpose and the Ravi Kumar was accompanied by one Mohd. Qayoom.
2. After registration of the case, during investigation, Mohd. Qayoom was arrested, whereupon, it is alleged that he made extra an judicial

confession on 9th of September, 2004. Ravi Kumar was also arrested during the course of investigation, who is also alleged to have made an extra judicial confession in police custody.

It appears that the body of A was found in the Goldera Forests on 10th September, 2004 wherefrom the police recovered a radio, chappal, dupatta and one plastic chappal. The radio is alleged to be the belonging to Som Raj.

3. During the investigation, the police got the post mortem of dead body of A conducted. The police also seized blood stained soil, salwar of A and underwear of Ravi Kumar. On completion of investigation, a charge sheet under Section 173 Cr.P.C was filed for commission of offence by the accused persons under Sections 376/366/302/201 of the Ranbir Penal Code.
4. It appears that Som Raj remained absconding and proceedings under Section 512 were initiated against him, however on 22nd of November, 2005, he was also arrested in the matter.
5. At the time of framing of charge on 31st of January, 2005, the trial court discharged the accused Mohd. Qayoom for commission of any offence. Ravi Kumar was charged for commission of offence under Sections 376/366/ RPC. Accused Som Raj was charged for offences punishable under Sections 376/366/302 RPC.
6. The accused persons pleaded not guilty and claimed trial.
7. The prosecution appears to have cited 41 witnesses out of which 29 witnesses were examined in the Court. The statement of the accused persons was recorded under Section 342 of the Cr.P.C. After a careful consideration of the entirety of evidence, the learned trial Judge found that the prosecution had failed to prove the charges against the

respondents and by the judgment dated 31st August, 2007 acquitted them of the charges for which they had stood trial.

8. The record of the trial court has been produced before us. Mr. Raman Sharma, learned Dy. AG and Mr. G.S Thakur, learned counsel for the respondents have carefully taken us through the record of the trial court.

We have also heard oral submissions in support of their respective cases at length and given our considered thought to the entire matter.

9. The case of the prosecution against Ravi Kumar was that he had kidnapped the A and raped her. He thereafter left A in the jungle where Som Raj is alleged to have again raped and murdered her. It was in this background Ravi Kumar was charged for commission of offence under Sections 366/376 RPC. Som Raj was charged under Sections 366/376/302 of the Ranbir Penal Code.
10. Let us examine the evidence lead by the prosecution in support of the case against the respondents. There is no direct evidence set out against the respondents in the commission of the offence. The prosecution has relied solely on circumstantial evidence.
11. In the instant case, there is no evidence of any person who has seen the deceased in the company of either of the respondents at any time on the fateful day. We have also found that not an iota or bit of any evidence has been led by the prosecution to prove the commission of the offences. To support its case, the prosecution has relied on the oral testimony of Salik Ram, father of the deceased that his daughter has been kidnapped by the respondents. But this witness has testified that he had been informed about this fact by the brother of Ravi Kumar-respondent No.1 herein. This hear say evidence has to be discarded, as such.

Most importantly, the prosecution has failed to even cite brother of Ravi Kumar as a witness let alone examine him.

12. There is thus no evidence at all to support the prosecution case that Ravi Kumar had kidnapped A. Consequently the findings of trial Judge that charges for commission of offence under Sections 366/376 RPC on the part of Ravi Kumar have not been proved by the prosecution.
13. We now come to the examination of the charge for commission of offence of rape on the part of two respondents. It appears that the investigating agency has got an examination of A to be conducted by Dr. Sushma Dhar, Gynecologist. Given the fact that A was not alive to support the prosecution case, the testimony of Dr Sushma Dhar assumed importance. This doctor was not examined by the prosecution.
14. Yet another important piece of investigation being the report of the Forensic Science Laboratory was attached along with the challan on record as a piece of documentary evidence. Unfortunately, even this report was not proved and Sh. Mool Raj who had issued the FSL report has not been examined by the prosecution. One more tool which ought to have utilized to bring home the accused for commission of offence by the investigating agency was the DNA examination of samples drawn from the deceased and compared with those from the accused persons. In the instant case no DNA test has been conducted to establish the commission of rape upon A before she was murdered.
15. So far as connecting Som Raj to the commission of the offences is concerned, again there is not an iota of evidence to establish even his presence on the spot. The prosecution has relied on the recovery of a radio from the open area in the forest and tried to suggest that such radio was owned by Som Raj. Even this fact has not been authoritatively

16. In the pronouncement of Supreme Court in *Ram Swaroop and others Vs. State of Rajasthan*, (2004) 13 SCC 134, the Supreme Court observed thus:-

(Emphasis supplied)

“11. The decision taken by this Court in the aforementioned case, has been further reiterated in State of Rajasthan v. Raja Ram, (2003) 8 SCC 180, wherein this Court observed thus:

“Generally the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether any of the accused committed any offence or not. (see *Bhagwan Singh v. State of M.P.*) The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.”

(Emphasis supplied)

18. Again in (2009) 12 SCC 629, *Vijay Kumar Vs. State*, the Supreme Court summed up the legal position as follows:-

“12. The principles which have been set out in innumerable cases have been reiterated as under:-

(1) In an appeal against an order of acquittal, the High Court possesses all the powers, and nothing less than the powers, it possesses while hearing an appeal against an order of conviction.

(2) The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and finding in place of the findings recorded by the trial court, if the said findings are against the weight of the evidence on record, or in other words, perverse.

(3) Before reversing the findings of acquittal, the High Court has to consider each ground on which the order of acquittal was based and to record its own reason for not accepting those grounds and not subscribing to the view expressed by the trial court that the accused is entitled to acquittal.

(4) In reversing the finding of acquittal, the High Court has to keep in view the fact that the presumption of innocence is still available in favour of the accused and the same stands fortified and strengthened by the order of acquittal passed in his favour by the trial court.

(5) If the High Court, on a fresh scrutiny and reappraisal of the evidence and other material on record, is of the opinion that there is another view which can be reasonably taken, then the view which favours the accused should be adopted.

(6) The High Court has also to keep in mind that the trial court had the advantage of looking at the demeanour of witnesses and observing their conduct in the Court especially in the witness- box.

(7) The High Court has also to keep in mind that even at that stage, the accused was entitled to benefit of doubt. The doubt should be such as a reasonable person would honestly and conscientiously entertain as to the guilt of the accused.”

19. It is thus well settled law that this Court while hearing an acquittal appeal can re-appreciate the evidence, however, it should not interfere with the order of acquittal if the view is taken by the trial court is also a reasonable view of the evidence on record and the findings recorded by the trial court are not manifestly erroneous, contrary to the evidence on record or perverse.
20. The judgment of the trial court and the present appeal has to be tested on these principles.
21. It is trite that in cases where the evidence is of circumstantial nature, the circumstances from which the conclusion is to be drawn should in the first instance be fully established and circumstances should be of

conclusive nature wherein the possibility of any person other than the accused being the author of the crime becomes impossible.

22. Heinous and serious crimes have been committed in this matter in which a lady has lost her life. But the prosecution has failed to lead any reliable and credible evidence to establish chain of circumstances, let alone unbroken, in which she lost her life or that the accused-respondents are responsible for the commission of the offences. Nothing at all is pointed out to us from the trial court record which would enable us to hold that the findings and the conclusion of the trial court judgment to the effect that the prosecution had failed to bring home the guilt of the respondents for the commission of offences were erroneous, overlooked material evidence, were contrary to the record or perverse on any count. For all these reasons we do not find any reason to interfere with the findings rendered in the judgment of the learned trial Judge. This appeal is, accordingly, dismissed in the above terms.

(Tashi Rabstan)
Judge

(Gita Mittal)
Chief Justice

Jammu
31st of January, 2019
Surinder