

Munna Alias Rikas vs.state

Munna Alias Rikas vs.state

SooperKanoon Citation : sooperkanoon.com/1209715

Court : Delhi

Decided On : Oct-13-2017

Appellant : Munna Alias Rikas

Respondent : State

Judgement :

§~54 and 55 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.L.P.
20/2016 Judgment reserved on:

13. h September, 2017 Judgment pronounced on:

13. h October, 2017 ..Petitioner STATE (NCT OF DELHI) Through: Mr. Mukesh Kumar, APP for the State Versus MUNNA @ RIKAS &ANR ..Respondent Through: Mr. S. B. Dandapani, Advocate for respondent No.1. Mr. Harsh Prabhakar, with Mr.Anirudh Tanwar, Advocate for respondent No.2. CRL. A. 957/2015 MUNNA @ RIKAS ..Petitioner Through: Mr. S. B. Dandapani, Advocate. Versus STATE ..Respondent Through: Mr. Mukesh Kumar, APP for the State. CORAM: HONBLE MS. JUSTICE SANGITA DHINGRA SEHGAL Vide impugned judgment dated 30.04.2015 passed by the Additional Sessions Judge, Special Fast Track Court, Karkardooma Courts, Delhi, Munna @ Rikas was convicted for the offences punishable under Sections 376(2)(e)/344/506 of the Indian Penal Code (hereinafter referred to as 'IPC') but acquitted for the offences + 1. punishable under Section 366/372/5 IPC whereas Suman Kumar was acquitted of charges under Sections

366/344/506(II)/372/5

IPC.

2. Munna @ Rikas preferred CrI. A. 957/2015 assailing his conviction for the aforesaid offences whereas the State has filed CrI. L.P. 20/2016 and sought leave to appeal against the acquittal of Munna @ Rikas and Suman Kumar.

3. The brief facts of the case are that on 01.04.2011, on receipt of DD No.31A, SI Mukesh Kumar and Constable Ishwar Singh found accused Suman Kumar at the traffic signal of Shastri Park, Delhi who informed them that accused Munna@Rikas had kept the prosecutrix in room C-13, 3rd Floor, DDA flats, Shastri Park, Delhi whereafter he accompanied them to the above said flat. On reaching there, they found the accused/respondent No.1 and the prosecutrix. In her statement recorded by the police officials, the prosecutrix stated that she left her home about five or six months ago and came to Delhi. On reaching Old Delhi Railway Station, she met an old man, Munna@Rikas/ respondent No.1 and Suman Kumar/ respondent No.2 and accompanied them on their assurance that they would arrange a job for her. Thereafter Munna/Rikas took her to Panipat where he confined her in a flat for 2 months and raped her repeatedly and also made her consume intoxicating pills under threat to kill her if she tried to escape. She further stated that accused/Munna@Rikas took her to an unknown city and raped her many times and that after about 1 months, she was taken to a flat rented out from Suman Kumar in Noida from where she was not allowed to go out. On 01.04.2011, both the accused persons brought the prosecutrix to a flat at Shastri Park, Delhi, where she was again raped by accused Munna@Rikas in the absence of the co-accused Suman Kumar. On the next day, a heated altercation took place between Suman Kumar and Munna@Rikas when Suman Kumar objected Munna@Rikas while he was trying to rape the prosecutrix. Thereafter, the police officials came to the room and the prosecutrix claimed that both the accused persons wanted to sell her for the purpose of prostitution.

4. Based on the above statement of the prosecutrix, FIR No.102/2011 under Sections 344/366/376/5

IPC was registered at Police Station Seelampur and thereafter, the accused were

taken into custody. The site plan was prepared at the instance of the prosecutrix, evidence was collected and the prosecutrix was medically examined wherein it was diagnosed that she was pregnant. Further, as per the documentary evidence of the prosecutrix, the date of birth was 15.08.1996 which shows that she was 14-15 years old at the time of the alleged offence but as per the bone and wrist X-ray of the prosecutrix, her age was opined to be between 16-18 years on 05.04.2011. The Trial Court, however, relied upon the judgment in State of NCT of Delhi vs. Shiva & Ors. (Crl. L.P. No.172/2008 decided on 16.03.2012 by a Division Bench of the Honble Delhi High Court) and stated that if there are two possible opinions in a case, the one reclined towards the accused needs to be considered.

5. Charges under Sections 328/376(2)(e)/366/344/506(II)/372/5

of the IPC were framed against Respondent No.1, Munna@ Rikas, and charges under Sections 366/344/506(II)/372/5

of the IPC were framed against Respondent No.2, Suman Kumar, to which they pleaded not guilty and claimed trial. The prosecution examined 19 witnesses and the statements of the accused were recorded under Section 313 of the Code of Criminal Procedure, 1973.

6. The Trial Court, after scrutiny of the evidences on record observed that the prosecution had utterly failed to prove the allegations of kidnapping, wrongful confinement, voluntarily causing grievous hurt, selling minor for prostitution against the accused persons.

7. The learned Trial Court after hearing the parties vide impugned judgment dated 30.04.2015 convicted the accused under Sections 376(2)(e)/344/506 IPC but acquitted him for offences under Sections 328/366/372/5

IPC. Further, the Trial Court acquitted the co-accused Suman Kumar of all offences punishable under Sections 366/506(II)/372/5

IPC.

8. Mr. Mukesh Kumar, learned APP for the State submitted that the judgments passed by the learned Trial Court is based on imagination, presumption, conjectures, surmises and thus not sustainable in the eyes of law and liable to be set aside; that evidence that surfaced during the course of the trial was not

properly appreciated and a proper appreciation of the facts and circumstances would have definitely resulted in conviction of respondents for all offences for which they were charged; that the respondents were given the benefit of minor contradictions/improvements which were not fatal or completely detrimental to the prosecution case; that the learned Trial Court has erroneously given the benefit of doubt to the respondents with respect to the age of the prosecutrix even though the same was corroborated by the testimony of PW-16 and the school records; that respondent No.2 was a party to the offences for which respondent No.1 was charged and having common intention which is clear from the fact that it was only after an altercation that respondent No.2 called the police despite being conscious of the fact that the wrongful continuous act against the prosecutrix being committed by them were called for legal action; that the prosecutrix was allured by the respondents in order to arrange a job for her and the same leads to a categorical conclusion that Section 366 IPC proves against the respondents. Based on the above submissions, learned APP for the State strongly urged for grant of leave to appeal to challenge the impugned judgment of acquittal.

9. Per contra, Mr. S. B. Dandapani, learned counsel for the respondent No.1 contended that the Trial Court erred in convicting the respondent No.1/Munna@Rikas for the offence under Section 376 (2) (e) IPC as the fact of pregnancy was never disclosed by the prosecutrix to the respondent No.1/Munna@Rikas and placed reliance on Om Prakash Vs. State of U.P. reported in (2006) 9 SCC787 wherein the Honble Apex Court observed : is established One of the categories which attracts more stringent punishment is the rape on a woman who is pregnant. In such cases where commission of rape for operation of Section 376(2)(e) the prosecution has to further establish that accused knew the victim to be pregnant. In the instant case there was no such evidence led. The Trial Court came to the conclusion that there was "full possibility" of the accused knowing it. There is a gulf of difference between possibility and certainty. While considering the case covered by Section 376(2)(e) what is needed to be seen is whether evidence establishes knowledge of the accused. Mere possibility of knowledge is not sufficient. When a case relates to one where because of the serious nature of the offence, as statutorily prescribed, more stringent sentence is provided, it must be established and not a language

possibility of Section requires prosecution to establish that the accused knew her to be pregnant. This is clear from the use of the expression "knowing her to be pregnant". This is conceptually different that there is a possibility of his knowledge or that probably he knew it. Positive evidence has to be adduced by the prosecution about the knowledge. In the absence of any material brought on record to show that the accused knew the victim to be pregnant Section 376(2)(e) IPC cannot be pressed into service. inferred. The It to be is 376(2)(e) is clear.

10. Learned counsel for the respondent No.1/Munna@ Rikas further argued that the testimony of prosecutrix is totally unreliable as well as full of material contradictions, concealment, improvements, exaggerations, inconsistencies and thereby does not inspire confidence and creates a genuine doubt about her version. He further added that the Trial Court has rightly relied upon the ossification report after observing the discrepancy in the date of birth recorded in the school register.

11. Learned counsel for the respondent No.2/Suman Kumar supported the impugned judgment and submitted that the Trial Court after sound appreciation of the evidence adduced by the prosecution, has rightly acquitted the respondent No.2/Suman Kumar from the charged offences and the same does not warrant any interference and placed reliance on Arulvelu & Anr. Vs. State reported in (2009) 10 SCC206 Learned counsel further contended that the ocular testimony of the prosecutrix is fraught with inconsistencies, improvements and riddled with contradictions on numerous counts which would not be safe to rely on the uncorroborated testimony of a solitary witness, evidence of whom is not of sterling quality and is not wholly reliable; that the respondent No.2/Suman Kumar would not have come forward to rescue the prosecutrix if he himself participated in the alleged offence. Reliance was placed on Kaini Rajan vs. State of Kerala reported in (2013) 9 SCC113 Manoharlal vs. State of M. P. reported in (2014) 15 SCC587 and Lalla alias Raj Kumar Singh vs. State of U.P. reported in 2004 (2) Crimes 101.

12. I have heard the learned counsels for the parties, perused the record and also examined the impugned judgment. Age of the prosecutrix 13. As per the case of

the prosecution, the alleged offence of rape on the prosecutrix continued for 5-6 months till 01.04.2011. The prosecution has produced PW16, Head Master, Prathmik Vidyalaya Basti Rampur, Shiksha Shetra Fatehpur, Mandaw Mau, UP to show that the age of the prosecutrix at the relevant time was about 14 years. PW16 has produced the school record of the prosecutrix which suggests the date of birth of the prosecution to be 15.08.1996. While examining the said witness the Trial Court observed "I was not posted in the abovesaid school at the time of the admission of Sindhu so I cannot say what document regarding her date of birth was produced by her parents. A small paper was found pasted between the word 96. On removal of this paper, it is found that the word 98 has been made as 96". During cross examination, PW16 stated that "The date of birth of a child is recorded in admission register as told by their parents."

14. On the issue of determination of age of the rape victim, reference may be made to the judgement of the Supreme Court in Mahadeo Vs. State of Maharashtra and Anr. Reported in (2013) 4 SCC637 wherein it has been held that only in the absence of alternative methods described under Rules (12)(3)(a)(i) to (iii), the medical opinion can be sought for and in no other case. The said ratio has been followed by the Apex Court in State of Madhya Pradesh v. Anoop Singh reported in (2015) 7 SCC773 wherein it has been observed that : This Court in the case of Mahadeo S/o. Kerba Maske v. State of Maharashtra and Anr. : (2013) 14 SCC637 has held that Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, is applicable in determining the age of the victim of rape. Rule 12(3) reads as under: Rule 12(3): In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of Clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them,

may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year. and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the Clauses (a)(i), (ii), (iii) or in the absence whereof, Clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

15. In the instant case, the prosecution has failed to bring forward any other documents except the school record of the prosecutrix through PW16 to show her correct age, which casts serious doubt on its validity. The Trial Court in the absence of any document as referred under a (i) to (iii) of Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, has rightly placed reliance on the bone age X-Ray report of the prosecutrix which suggest that the age of the prosecutrix was between 16-18 years on 05.04.2011. Testimony of the prosecutrix 16. It is a well settled proposition of law that the testimony of the prosecutrix is generally to be believed by the Courts in the absence of any other corroboration. However the Courts must be conscious and satisfied that the testimony of the prosecutrix inspires confidence, it is trust worthy and credible, as cases where the testimony of the prosecutrix does not lend any credence the accused is liable to be acquitted.

17. In Hem Raj Vs. State of Haryana reported in (2014) 2 SCC395 the Apex Court observed that:-

""In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required the case of an in [State of Maharashtra inspire confidence. Having placed accomplice. v. Chandraprakash Kewalchand Jain: (1990) 1 SCC550. Such weight is given to the prosecutrix's evidence because her evidence is on par with the evidence of an injured witness which seldom fails to the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in

a given case on that lone evidence a man can be sentenced to life imprisonment. The court must, therefore, with its rich experience evaluate and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it."

such evidence with care 18. In Rai Sandeep @ Deepu Vs. State reported in (2012) 8 SCC21 the Apex Court has held that :

"15. In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and strenuous it may be and under no circumstance should give room for the any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the

Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

19. Keeping in mind the aforesaid law laid down by the Apex Court, I find it appropriate to go through the statements of the prosecutrix.

20. PW1 (Prosecutrix), in her complaint Ex.PW1/A stated that:-

"Meri Maa ka dehant 10 saal pehle ho gaya tha tatha mere pita ne doosri shaadi kar li thi jo meri sauteli maa Rajkumari ka vyavahar mere prati acha nahi tha jo mein pareshaan hokar arsa karib 5-6 mahine pehle apna ghar chodkar rail se Delhi aa gayi jo Poorani Delhi Railway Station par mujhe ek budha aadmi naam namalum mila jo baad mein do ladke Munna ve Suman mile jo bude vyakti ne mujhe oonke saath jaane ko kaha tatha bataya ki yeh ladke tumhari achi naukari lagva denge Jo mein oonke saath chali gayi. Jo baad me Munna mujhe Panipat me le gaya tatha mujhe ek kamre mein band kar diya tatha mujhe dhamki di ki agar bhagne ki koshish ki oh jaan se maar doonga. Jo vanha par Munna ne mere saath kai baar balatkaar kiya tatha nashe ki goliyan khilai. Jo Munna ne mujhe Panipat mein karib 2 mahine rakha tatha iske baad Munna mujhe kisi namalum shahar me le gaya tatha vanhapar ek kamre me mujhe band karke rakha tatha vanha par bhi mere saath oosne kai baar balatkar kiya. Jo vanha par Munna ne mujhe karib 1 mahine tak rakha. Iske baad Munna ne Noida (UP) me mujhe Suman ke kiraye ke kamre me rakha tatha Suman ko bataya ki mujh par nazar rakhe jo Suman mujh par har samay nazar rakhta tha tatha kamre se bahar nahi jaane deta tha. Jo vanha par Munna kabhi kabhi aata tha jo suman ne mujhe dhamki di thi ki agar maine kisi bahar ke vyakti to kuch bataya to veh mujhe jaan se maar dega. Jo aaj Munna ve Suman oose Shastri Park, Delhi me ek flat me le gaye janha raatri me Munna ne mere saath fir galat kaam kiya Jo oos samay Suman vanha nahi tha. Jo baad me Munna ne fir se mere saath galat kaam karne ki koshish ki to me rone lagi toh vanha par kamre me oos samay Suman bhi aa gaya tha jo Suman ne Munna se kaha ki mujhe pareshaan na kare to iss baat par Munna bhadak gaya tatha Suman se jhagda kiya. Jo Suman kamre se bahar nikal gaya tatha iske baad aap Suman ke saath kamre me aaye. Jo Munna ne mere saath galat kaam kiya tatha Munna ve Suman mujhe bechne ki firaq me the Jo

oosi wajah se mujhe garbh thahar gaya tha."

21. In her statement recorded under Section 161Cr.PC, the prosecutrix stated that :
: xxxx Karib 5-6 months pehle gaon k eek ladke se mujhe pyar ho gaya tha aur mere oos ladke se sharirik sambandh ban gaye the jis karan me garbhwati ho gayi thi aur apne mata pita ve lok laaj ke karan karib 1 mahine pehle mere ghar me meri maa se mera jhagda hone ke karan mein ghar se chali aayi aur rail pakadkar poorani delhi railway station par aa gayi janha mujhe ek buda vyakti mila aur mujhe pareshan dekhkar mujhe apne ghar le gaya. Mein anjaan hone ke karan oos jagah ka pata nahi bata sakti. Uske baad oos bude vyakti ne mujhe Munna ke saath bhej diya aur kaha ki yeh tumhe kanhi kaam dilwa dega aur Munna ke saath Suman bhi tha. Jo Munna mujhe Panipat le gaya aur Suman Delhi me chod diya. Munna ne mujhe Panipat me ek makaan me rakha jo ooski bahan ka makaan tha jo Munna ne mujhe nashe ki goli khilakar mere saath galat kaam kiya oos samay Munna ki bahan ve ooske pati gaon chale gaye the. Jo Munna ne mujhe dhamki di ki agar kisi ko kuch bataya to jaan se maar dunga. Maine dar ke karan kisi ko kuch nahi batlaya. Jo Munna ne aas paas ke logo ko ve apni bahan ve behnoi ko bhi yeh batlaya tha ki mein ooski patni hoon. Jo Munna ne vanha par mere saath jabran kai baar galat kaam kiya. Karib 15-20 din baad, jab Munna ki badi bahan ve bahnoi apne gaon se vaapis aa gaye, toh Munna Mujhe Noida me Suman ke Ghar par le aaya janha Munna ve Suman ne mujhe phir se dhamki di ki agar kisi ko kuch batlayato jaan se maar denge iss dar ke kaaran maine aas paas kisi ko kuch nahi bataya. 5-6 din Munna ne mujhe Suman ke kamre me rakha aur Suman ki gairmaujudgi me Munna mere se jabran galat kaam kiya. Uske baad Munna aur Suman mujhe Delhi le aaye tatha mujhe ek makaan me rakha janha Munna ne Suman ki gairmaujudgi me mere saath galat kaam kiya. Munna aur Suman me is baat par jhagda hua tatha Suman gusse me bahar chala gaya aut thodi der baad police ko lekar aa gaya. Suman aur Munna mujhe Delhi me bechne laaye the. 22. In her statement recorded under Section 164 Cr.PC, the prosecutrix stated that :
Mere ghar me jhagda hua. Gusse se me nikal gayi. Mein station par aayi, ek buda mila. Bude ne mujhe apne ghar 2 din rakha. Ooske baad bude ne mujhe Munna ke saath Panipat bhej diya aur kaha ki vo mujhe kaam laga dega. Yanha par Munna ne nashe ki goliyan khilakar, kapna nikalkar balatkar kiya. Ooske baad mujhe Noida mein laaya Suman ke ghar par. Vanha hume

din rakha. Vanha bhi mere saath sambhog kiya Munna ne. Vanha se hume Delhi laya. Vanha bhi humse balatkar kiya toh Suman aur Munna mein jhagda hua. Dono hume bechna chahte the, voh apne liye aur voh apne liye. Maine bahar nikal kar police waalon ko phone kar diya aur police ne un dono ko pakad liya. Voh dono hume dhamkate the ki ghar chali gaogi to hum tumhe jaan se maar denge.

23. The Prosecutrix stepped into the witness box as PW1 and deposed that : I was going to school when the two accused persons present in Court today met me and asked me as to where I was going near my village. They both told me that my mother was calling me. When I accompanied the accused, they caught hold of me and they did not leave me inspite my shouting. Both the accused persons then brought me to Delhi. The accused persons gave me tablets due to which I used to get intoxicated and then they would rape me. They had also threatened me that if I narrated the incident to anybody they would kill me and they had also threatened me that I should not leave the house of the accused. The accused persons also tried to take me to their house. Both the accused persons wanted to sell me. Accused Suman had made a call to the police. Police arrived and both the accused persons were arrested by them. Accused Munna had taken me to Panipat, the date I do not remember. I was kept in Panipat for two months by accused Munna. Even in Panipat I used to be administered some tablets by accused Munna on taking of which I used to become sort of unconscious and in that state I could not hear what the accused was saying. Accused Munna used to rape me after giving me tablets in Panipat. Accused Munna had taken a room and had detained me in the room during my stay in Panipat. From Panipat accused Munna brought me to Noida in the house of Sumna. I was detained by the accused in the house at Noida for about three months. In Noida also the same incident was repeated by the accused Munna. I do not remember to which place I was taken by the accused persons from Noida. I do not remember my date of birth. 24. During her cross examination, the prosecutrix/PW1 denied that her mother had expired, her father had remarried, she came to Delhi willingly 5-6 months ago and she ever met an old man at the Old Delhi Railway Station, however, she admitted to being taken to Panipat, raped there by accused Munna@Rikas, she was threatened by the accused so as to prevent her from running away, the accused thereafter took her to an unknown place and raped her

after administering to her some intoxicating tablets. PW1 further admitted that in Noida she was kept at the house of co-accused Suman Kumar who used to keep a watch on her and did not allow her to leave; she admitted that when she was brought to the flat at Shastri Nagar, Delhi the accused Munna@Rikas raped her in the absence of co-accused Suman Kumar and when he again tried to rape her in the presence of the co-accused, the prosecutrix started crying and that after some heated arguments, Suman left the room and called the police, who reached and apprehended the accused. During her cross-examination she denied that she was residing with the accused of her own will.

25. After careful analysis of the testimonies of the prosecutrix (PW1), it appears that there are number of inconsistencies and contradictions in her statements recorded at different stages, however, her statement regarding the offences against her was consistent throughout. There are doubts as to how the prosecutrix reached Delhi and it is not clear whether she came to Delhi willingly after discord with her step mother or was abducted from outside her school. Thus, the Trial Court is correct in holding that the prosecution could not prove beyond reasonable doubt that the accused persons had kidnapped the prosecutrix.

26. Further, the MLC report and the FSL report clearly point towards the factum of sexual intercourse between the respondent No.1 and the prosecutrix. However, as per the FSL report, the prosecutrix was subjected to sexual intercourse a few hours before she was discovered by the police which goes to show rape was committed on the prosecutrix. The defence taken by the accused that the prosecutrix had consensual sexual relations with him which is pointed out from her silence about the incident, holds no ground as mere silence cannot be taken as proof of consensual sexual relations as she has also stated that she was being threatened by the accused. Thus, any act of sexual intercourse in the absence of consent would amount to an act of rape.

27. Further, to my mind, the prosecution miserably failed to adduce any iota of evidence to show that the accused persons ever intended to sell the prosecutrix for the purpose of prostitution.

28. The contention of the prosecution that respondent No.2/Suman Kumar called the police only after he had an argument with respondent No.1/Munna@Rikas does not prove that he had common intention with respondent No.1/Muuna@Rikas for the offences that he committed against the prosecutrix.

29. In Tota Singh and Anr. Vs. State of Punjab reported in AIR 1987 SC108 the Honble Supreme Court made the following observation: ..the jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable on an appraisal of the evidence adduced in the case and the court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the court below on its consideration of the evidence is erroneous. 30. In State of Rajasthan Vs. Raja Ram reported in AIR 2003 SC3601 the Honble Supreme Court held as under: is based. Generally, there is no emerge on the appellate court reviewing the evidence upon which an order of acquittal the order of acquittal hall 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 pointing to his innocence, the view which is favourable to the accused should be adopted. The paramount considreation of the court is to ensure that miscarriage of is prevented. A miscarriage of justice which may arise from acquittal of guilty is no less than from the conviction of an innocent. The principle to be followed by the appellate court considering the appeal there are compelling and substantial reasons for doing so. If the impugned judgement is clearly unreasonable, it is a compelling reason to interfere. interfere only when justice is to 31. In Sudarshan Kumar vs. State of H.P. reported in [2014 (14) SCALE276, the Honble Apex Court observed that: in criminal jurisprudence 29. It has been stated and restated that a cardinal principle that presumption of innocence of the accused

is reinforced by an order of acquittal. The appellate court, in such a case would interfere only for very substantial and compelling reasons. There is a plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled *Dhanapal Vs. State by Public Prosecutor, Madras*: (2009) 10 SCC401 is the judgment where most of the earlier decisions laying down the aforesaid principles are referred to. In para 39, propositions laid down in an earlier case are taken out of as under:

39. In *Chandrappa and Ors. v. State of Karnataka* (2007) 4 SCC415 this Court held: (1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded. (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law. (3) Various expressions, such as, "substantial and compelling sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of the reluctance of an appellate court to interfere with to emphasise reasons", "good and language" there the in case of acquittal, acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. (4) An appellate court, however, must bear in mind that is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

41. The following principles emerge from the cases above:

1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused."

32. Keeping in view the above settled law and totality of the facts and circumstances of the case, I do not find any reason to interfere with the impugned judgement passed by the Trial Court. Accordingly, the present leave petition being devoid of merit is dismissed and the appeal preferred by accused Munna@Rikas also stands dismissed.

33. Ordered accordingly. SANGITA DHINGRA SEHGAL, J OCTOBER13 2017 //gr

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com