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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision : 2nd December, 2014

+ CRL.L.P. 466/2012

STATE NCT OF DELHI Petitioner

Through : Mr.Neeraj Kr. Singh, APP.

versus

RAM KIRPAL

..... Respondent

Through : None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (ORAL)

Crl.M.A.No.16347/2012 (Condonation of delay)

1. This is an application moved on behalf of the Petitioner/State praying for condonation of delay in filing the present leave petition.
2. For the reasons given in the application, the delay in filing the leave petition is condoned.
3. Application stands disposed of.

Crl.L.P. No.466/2012

1. By this petition filed under section 378(1) Cr.P.C., the State seeks leave to appeal against judgment dated 24.10.2011 passed by the learned Addl. Sessions Judge (SE-01), Saket, New Delhi in Sessions Case No.28/11 FIR No.154/2009, under Section 376 IPC, P.S. Govind Puri.
2. The Respondent/Accused was sent to face trial for committing

offence punishable under Section 376 IPC for committing rape on the prosecutrix (PW-6), who has been referred to as Miss 'X' by the learned Trial Court, who as per the prosecution was minor at that time.

3. The grounds on which the State is seeking leave to appeal are mainly as under:-

(i) The learned Trial Court has acquitted the Respondent/Accused on the basis of imagined doubts, ignoring the material evidence that surfaced during the trial.

(ii) The learned Trial Court failed to properly appreciate the evidence which would have been otherwise ended into conviction of the Respondent/Accused.

(iii) The learned Trial Court failed to appreciate that family of the accused might be residing with him, but not present in the house 24 hours and if an accused so desires, he always creates an opportunity to commit an offence.

(iv) The learned Trial Court failed to appreciate that the factum of jewellery being handed over to the Respondent/Accused being not disclosed by the Prosecutrix (PW-6) to her father was insignificant.

(v) The learned Trial Court failed to appreciate that not only in her statement under Section 164 Cr.P.C., but also in her deposition before the Court, the Prosecutrix fully supported the case of the prosecution.

4. I have heard learned APP for the State and perused the Trial Court Record.

5. None appeared on behalf of the Respondent. On the last date of hearing also, none had appeared for the Respondent.

6. The learned Trial Court, after considering the legal position and appreciation of testimony of the child witness, also dealt with the aspect of age of the prosecutrix at the time of commission of the offence. The learned

Trial Court has observed that as per bony age report (Ex.PW-9/A), she was between 14.5 to 15.8 years. However, the prosecutrix herself had given her age to be 15 years at the time of preparation of MLC (Ex.PW-4/A). Subsequently, after about 7 months from the date of the incident, she mentioned her age about 12 years, instead of showing increase in her age over 15 years.

7. The learned Trial Court has also referred to the testimony of the father of the prosecutrix, as per which he got married at the age of 17 years and at the time of deposition he was 42 years old. He further stated that the prosecutrix was born after 5-6 years of his marriage. Thus, even on rough calculation, the learned Trial Court was of the view that the prosecutrix must be 18 or 19 years of age at that time. In respect of school certificate wherein date of birth was recorded on the basis of affidavit, learned Trial Court was of the view that the affidavit had neither any date nor attestation.

8. Thereafter, the learned Trial Court has dealt with various improvements made by the prosecutrix over her initial version on all material aspects including her deposition that after confining her, she was put in a refrigerator by the Respondent/Accused and the house was locked and the accused left for the factory. Later on, she was released by the servant of the Respondent/Accused. The learned Trial Court has also considered that PW-10 Vimla, who is a public witness and is Mausi of the prosecutrix, had not supported the case of the prosecution at all, though as per prosecution she narrated the incident to her Mausi after one day. The learned Trial Court has also taken note of the fact that the nature of the act committed by the Respondent/Accused on the prosecutrix was not mentioned by her in her complaint (Ex.PW-6/A) and she had been duly confronted with her testimony in the Court wherein she described the act of rape and apart from

that the learned Trial Court also considered the aspect that it was highly improbable for the Respondent/Accused to commit rape in presence of his entire family consisting of his wife, three sons and two daughters.

9. In the instant case, the Respondent/Accused as well as the prosecutrix were residing in the neighbourhood. It may be noted here that had the prosecutrix been confined in the refrigerator and thereafter the Respondent/Accused locked the house and left for his work place, at the time she being taken out from the refrigerator by the servant, her situation would have required immediate medical attention due to low temperature in the refrigerator as well as lack of oxygen. Otherwise also, who was the servant, how he happened to have access to the key of the house of the Respondent/Accused so as to take the prosecutrix out of the refrigerator, remains unexplained by the prosecutrix. It appears that the prosecutrix has been duly confronted with all improvements made by her during her deposition before the Court on all material aspects which made her testimony not worthy of any credit.

10. Learned APP for the State tried to argue before the Court that 'residing' does not mean present at the time of incident hence it may be possible that the Respondent/Accused was residing with his family consisting of his wife, three sons and two daughters but they might not be present at that time. However, learned APP when requested to show it from the record that the testimony in this regard has been wrongly appreciated by the learned Trial Court or there is any explanation by the prosecutrix (PW-6) that though the accused was residing with his family at the time of rape, no other family member was present at the house, he was unable to point out the same.

11. The law with regard to the grant of leave is well settled. Leave to

appeal can be granted where it is shown that the conclusions arrived at by the trial court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain petition merely because another view is possible or that another view is more plausible. In ***Arulvelu and Anr. Vs. State represented by the Public Prosecutor and Anr.*** 2009 (10) SCC 2006, while referring with approval the earlier judgment in ***Ghurey Lal vs. State of Uttar Pradesh***, (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an appeal against acquittal. The principles are:-

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.*
6. *Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views*

are possible. The trial court judgment cannot be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

12. Since the present petition does not disclose any of the above elements, the impugned judgment passed by the learned Addl. Sessions Judge does not call for any interference by this Court.

13. The leave petition is accordingly dismissed. Trial Court record be sent back forthwith along with a copy of this order.

**PRATIBHA RANI
(JUDGE)**

DECEMBER 02, 2014
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