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

+ **CRL.L.P.No. 259/2016**

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Date of decision: 19.05.2016

STATE (NCT OF DELHI)

..... Petitioner

Through : Ms. Aashaa Tiwari, APP for State
With Inspector K.L.Meena, PS Vijay Vihar

versus

ANIL

.....Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J. (ORAL)

CRL.MA.7807/2016 (Delay)

1. This is an application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure filed by the State seeking condonation of 21 days delay in filing the present leave to appeal petition.
2. Having regard to the submissions made and in the interest of justice, present application is allowed.
3. Application stands disposed of.

CRL.L.P. 259/2016

4. The State by this Criminal Leave Petition, under Section 378(3) of the Code of Criminal Procedure, seeks leave to appeal against the judgment dated 16.12.2015 passed by Sh. Vinod Yadav, Additional Sessions Judge-01, Rohini Courts, Delhi in Sessions Case No. 232/14

thereby acquitting the respondent under Sections 363, 366, 420, 506, 313, 376 (2) (h) (n) of the Indian Penal Code and under Section 5 (j) (ii) and (l) of POCSO Act, punishable under Section 6 of POCSO Act, 2012.

5. The necessary and relevant facts, as projected by the prosecution are as under:

“On 17.09.2014, at about 7.10 pm, prosecutrix R (hereinafter referred to as prosecutrix) went to police station Vijay Vihar and reported about sexual assault upon her, the same was recorded as DD No. 61-B (Ex. PW-8/A). The said DD was assigned to Ins. Vipnesh for inquiry. She conducted inquiry from prosecutrix, wherein she stated that accused Anil had committed wrong act with her on several occasions under the false promise of marriage. On coming to know this, she got sent the prosecutrix with L/Ct. Hema, to Dr. B.S.A hospital for her medical examination and prosecutrix’s mother also accompanied them. At the time of her medical examination, prosecutrix refused for her internal gynaecological examination. Thereafter, Ins. Vipnesh recorded her statement, wherein she stated that she got acquainted with accused, who was residing in the back side gali of her house, two years prior to the incident and accused expressed his desire to marry her and under the promise of marriage, he committed repeated penetrative sexual assault upon her and whenever, she asked the accused for marriage, he avoided the same on one pretext or the other. She further stated that on 25.08.2014, accused called her in the evening to his house and made physical relations with her and when she asked him to marry her, he flatly refused and threatened to kill her. She further stated that after some days, she went to the house of the accused, where family members of the accused met her, but they did not disclose about

his whereabouts. She requested for legal action against him.

On the basis of the aforesaid statement made by the prosecutrix, the present case FIR was registered. Statement of prosecutrix u/s 164 CrP.C was got recorded. She was got counseled and her statement was recorded u/s 61 CrP.C as well. Ossification test of the prosecutrix was got conducted as she could not produce any documentary evidence regarding her age. The accused was arrested and his medical examination was conducted. Exhibits were deposited in the Mal Khana and after concluding the investigation, charge sheet in the matter was filed.”

6. After completion of the investigation, charges under Sections 363, 366, 420, 506, 313, 376 (2) (h) (n) of the Indian Penal Code and under Section 5 (j) (ii) and (l) of POCSO Act, 2012 punishable under Section 6 of POCSO Act, 2012 were framed against the respondent and the same were read over and explained to the respondent to which he pleaded not guilty and claimed to be tried.
7. To bring home the guilt of the respondent, prosecution examined 8 witnesses in all. The statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the incriminating evidence against him and reiterated his innocence.
8. After going through the evidence brought on record by the prosecution, the learned Trial Court came to the conclusion that the prosecution had miserably failed to prove the charges against the respondent and thereby acquitted him of all the charges.
9. Ms. Aashaa Tiwari learned counsel appearing on behalf of the State submitted that the conclusion of the Trial Court was erroneous both on

law and facts and, therefore, the High Court is justified in interfering with the order of the Trial Court.

10. Counsel for the State urged that the Trial Court has overlooked the trite proposition that in the case of sexual offences the sole testimony of the prosecutrix is sufficient to convict the accused. It was further argued that the Trial Court failed to appreciate that the contradictions, if any, in the testimonies of the prosecution witnesses were minor in nature and therefore need to be ignored.
11. Counsel further submitted that the delay in lodging the FIR was sufficiently explained and the finding of the Trial Court is contrary to law, was perverse and could not be sustained.
12. Counsel appearing on behalf of the State further submitted that the Trial court erred in not appreciating the testimony of PW2 and wrongly concluded that the prosecutrix was not a minor at the time of the commission of the offence.
13. Counsel further submitted that the Trial Court has failed to take into account that the respondent himself admitted in question No. 4 in his statement under Section 313 of the Code of Criminal Procedure that he had committed the offence of rape.
14. Counsel for the State argued that it is a settled proposition of law that while dealing with an order of acquittal, this court being a court of appeal has unbridled power and jurisdiction to re-appreciate the entire evidence and the appellate court can purge the perversity committed by the Trial Court which led to the erroneous acquittal of the respondent.

15. We heard learned counsel for the State, who has taken us through the evidence in the matter. We have also given our thoughtful consideration to the submissions which have been made before us.
16. Before delving into the arguments of this case it is relevant to analyse whether the consent given by woman believing the man's promise to marry her, is a consent which excludes the offence of rape. In ***State of U.P. Vs. Naushad : AIR 2014 SC 384*** it was observed as under:

“Thus, if consent is given by the prosecutrix under a misconception of fact, it is vitiated. In the present case, the accused had sexual intercourse with the prosecutrix by giving false assurance to the prosecutrix that he would marry her. After she got pregnant, he refused to do so. From this, it is evident that he never intended to marry her and procured her consent only for the reason of having sexual relations with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent which was consent obtained under a misconception of fact as defined under Section 90 of the Indian Penal Code. Thus, the alleged consent said to have obtained by the accused was not voluntary-consent and this Court is of the view that the accused indulged in sexual intercourse with the prosecutrix by misconstruing to her his true intentions. It is apparent from the evidence that the accused only wanted to indulge in sexual intercourse with her and was under no intention of actually marrying the prosecutrix. He made a false promise to her and he never aimed to marry her. In the case of Yedla Srinivas Rao v. State of A.P. (2006) 11 SCC 615, with reference to similar facts, this Court in para 10 held as under:

10. It appears that the intention of the accused as per the testimony of PW1 was, right from the beginning, not honest and he kept on promising that he will marry her, till she became pregnant. This kind of consent obtained by the accused cannot be said to be any consent because

she was under a misconception of fact that the accused intends to marry her, therefore, she had submitted to sexual intercourse with him. This fact is also admitted by the accused that he had committed sexual intercourse which is apparent from the testimony of PWs. 1, 2 and 3 and before Panchayat of elders of the village. It is more than clear that the accused made a false promise that he would marry her. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent.

Further, in para 17 of the said judgment, this Court held that:

In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW1 as well as PW6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutor that he would marry her.

Thus, this Court held that the accused in that case was guilty of the offence of rape as he had obtained the consent of the prosecutrix fraudulently, under a misconception of fact.”

17. The aforesaid principles were reiterated in ***Kaini Rajan Vs State of Kerala*** reported in **2014 (1) SCJ 645**. Relevant para is reproduced as under:

“14. This Court examined the scope of Section 375 Indian Penal Code in a case where the facts have some resemblance with the one in hand. Reference may be made to the judgment of this Court in Deelip Singh alias Dilip Kumar v. State of Bihar: (2005) 1 SCC 88. In that case, this Court examined the meaning and content of the expression "without her consent" in Section 375 Indian Penal Code as well as whether the consent given by woman believing the man's promise to marry her, is a consent which excludes the offence of rape. This Court endorsed the principle that a misrepresentation as regards the intention of the person seeking consent, i.e. the accused, could give rise to the misconception of fact. While applying this principle to a case arising under Section 375 Indian Penal Code, this Court held that the consent given pursuant to a false representation that the accused intends to marry, could be regarded as consent given under misconception of fact. But a promise to marry without anything more will not give rise to "misconception of fact" within the meaning of Section 90 Indian Penal Code. This Court further held that if, on facts, it is established that at the very inception of the making of promise the accused did not really entertain the intention of marrying her and the promise to marry held out by him was a mere hoax, the consent ostensibly given by the victim will be of no avail to the accused to exculpate him from the ambit of the second clause of Section 375 Indian Penal Code. In the facts of that case, this Court held, that the predominant reason which weighed with her in agreeing for sexual intimacy with the accused was the hope generated in her of the prospect of marriage with the accused. The Court held that she came to the decision to have a sexual affair only after being convinced that the accused would marry

her and it is quite clear from her evidence, which is in tune with her earlier version given in the first information report. The Court noticed that she was fully aware of the moral quality of the act and the inherent risk involved and that she considered the pros and cons of the act.”

18. Thus from aforesaid settled position of law, if an accused never intended to marry and made promise of marriage only to induce the prosecutrix to give consent, sexual act committed by accused pursuant to such consent would constitute rape. Let us examine whether the present case at hand is such.

Delay in FIR

19. Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. In ***Andhra Pradesh v. M. Madhusudhan Rao*** reported in **2008 (14) SCALE 118**, the Hon'ble Apex Court observed that :

"18. Having gone through the depositions of PW-1 and PW-3, to which out attention was invited by learned Counsel for the State, we are convinced that in the light of the overall evidence, analysed by the High Court, the order of acquittal of the Respondent is well merited and does not call for interference, particularly when the First Information was lodged by the complainant more than one month after the alleged incident of forcible poisoning. Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. Delay in loding the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a

concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained."

20. Undoubtedly, in view of the settled law mere delay in institution of an FIR may not prove fatal to the case of the prosecution if there is some kind of plausible explanation in registration of FIR after such an inordinate delay. In the instant case, as per the prosecutrix she and the respondent indulged in a physical relation last on 25.08.2014 and thereafter the respondent refused to marry her. Had this story been true the prosecutrix would have immediately registered an FIR and not after a gap of 22 days on 17.09.2014. There is no reasonable cause which would even stand true to the probabilities of normal human conduct to justify such inordinate delay in lodging of the FIR.

Age of the prosecutrix

21. The prosecutrix in her statement before the CWC deposed that she was a school drop out, however, her mother deposed that the prosecutrix never attended any school. Neither any school record was produced nor was any birth certificate produced by the prosecution to prove the age of the prosecutrix. Being bereft of any documentary support to determine the age of the prosecutrix, the Trial Court directed to conduct the ossification test of the prosecutrix. The ossification test was conducted on 14.10.2014 and 17.10.2014 by PW7 Dr. Rajiv Ranjan who conducted the radiological, medical and dental examination (Ex.PW7/A) of the prosecutrix and opined that the bone age of the prosecutrix is more than 16 years but less than 18 years as

on the date of the examination. It is to be noted that the date of the alleged rape was 25.08.2014 and the age of the prosecutrix as on 14.10.2014 was 16 to 18 years. As the margin to be taken by the court is 2 years on either side the age of the prosecutrix would be 18 to 20 years. Therefore, it is established that the prosecutrix was not a child on the date of the alleged rape and the charges framed under Section 5(j) (ii) and (l) of POCSO Act, 2012 punishable under Section 6 of POCSO Act, 2012 are not maintainable.

Testimony of PW1, the prosecutrix

22. It was contended by the learned counsel for the State that the testimony of the prosecutrix itself was sufficient to convict the respondent. It is well settled proposition of law that conviction can be based on sole testimony of the prosecutrix provided that it lends assurance of her testimony. In ***Mukesh vs State of Chhattisgarh*** reported in ***(2014) 10 SCC 327*** it was held as under:

“15. Further, as has been repeatedly held by this Court in a catena of cases, the sole testimony of the witness is sufficient to establish the commission of rape even in the absence of corroborative evidence. Reliance has been placed on the decision of this Court in the case of Mohd. Iqbal v. State of Jharkhand (2013) 14 SCC 481, which states as under:

17. There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

18. In Narender Kumar v. State (NCT of Delhi) this Court has observed that even if a woman is of easy virtues or used to sexual intercourse, it cannot be a licence for any person to commit rape and it further held:

30. ... conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the Court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected. ”

23. ***In Mohd Ali vs State of U.P : (2015) 7 SCC 272*** it was held as under:

“22. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon. True it is, the grammar of law permits the testimony of a

prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-Appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.”

24. The prosecutrix in her statement under Section 164 of the Code of Criminal Procedure deposed as under:

*“Anil se meri dosti pichle do saal se hain. Anil ne mujhe shaadi ka vaada kiya tha. Hum saath ghumte phirte the aur is dauraan humare beech sharirik sambandh bhi bane meri marzi ke bina kyonki main har baar mana karti thi toh voh mujhe pyaar se mana leta tha.
Q. kahan bane sharirik sambandh?*

Kabhi uske ghar par , kabhi mere ghar par. Main beech main pregnant bhi hui par usne jabardasti davai khila di. phichle mahine humne rent par makaan liya saath rehne ke liye par 5-6 din saath rehkar anil wahaan se bhaag gaya ghar ka bahaana karke. Uske gharwale saamaan bhi le gaye uske. Ab anil mera phone nahi utha raha. Bas yehi kehana tha.”

25. PW2, the prosecutrix in her deposition before the Court deposed as under:

“I know accused present in the court today (correctly identified by the witness through the design of wooden partition) as he has been residing in the next gali from the gali where I was residing at the time of incident. Initially accused started following me and he managed to get my phone number from one of my friends who was residing in his gali. He started talking to me on the mobile phone and thereafter, we became friends. He proposed for marriage to me. I also started liking him and started roaming around and I agreed for the marriage with accused. Accused made physical relations with me on the pretext of marriage initially against my consent and later on I also agreed that accused used to pretend that he would definitely marry me. Accused made physical relations with me at my house, his house and at his two plots which are situated at the nearby area. This had been happening with me for about two years and whenever I used to ask for marriage, accused used to avoid that.

On 25-08-2014, accused called me at his house at Vijay Vihar. He was alone at that time where he made physical relations with me on my consent on the pretext of marriage. During this period, once I became pregnant and the said pregnancy was aborted by the accused by giving me medicines. When I insisted for marriage, accused flatly refused for that. Accused even gave beatings to me at that time and under depression, I consumed phenyl because of the conduct of the accused. My brother took me to the hospital where I remained admitted for four days. In the hospital, I wrongly stated the reason of consuming phenyl to be quarrel with my brother just to save the accused. In the hospital, accused used to remain with me as he was apprehending a criminal action at my instance against him and to avoid the same. After my discharge from hospital, I came back to my home. For about one month thereafter, accused again tried to make me understand that he will marry me and he made physical relations with me. Even accused

took a house on rent where I stayed with him for about 5-6 days and thereafter, he left me and refused to marry me. I came back to my parents house.

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*I was taken to the hospital by the police where I was medically examined, **however, I refused for my internal examination vide my statement** encircled at point-X on MLC Ex.PW2/B bearing my thumb impression at point-A... ”*

26. PW2 in her cross examination stated as under:

“It is wrong to suggest that the accused had never proposed to me for marriage. It is wrong to suggest that except for exchanging calls and good wishes on phones there was no other relationship between me and the accused. It is wrong to suggest that on 25-08-2014 I had not gone to the house of accused. It is wrong to suggest that I used to quarrel with my mother and my elder brothers and had threatened them of leaving the home on several occasions. It is wrong to suggest that i was not getting enough money from my home and on this account i had threatened my mother of leaving the house to get my monitory needs satisfied else where. It is wrong to suggest that i had consumed phenyl after having quarreled with my brother. It is wrong to suggest that the accused had not remained in hospital with me during the period I was lying hospitalized or that the accused had no idea about my admission in hospital. It is wrong to suggest that the accused had not taken any room on rent where i had stayed with him . It is wrong to suggest that I had not spoken to the parents of the accused to know about his whereabouts. It is correct that prior to my complaint Ex.PW2/A I had never made any complaint against the accused. It is wrong to suggest that the accused never made physical relations with me and for this reason I did not get myself examined internal

gynecological. Initially my complaint was not registered by the police, however, thereafter when i approached the police station through an NGO, my complaint was registered. It is wrong to suggest that a lady from aforesaid NGO and my mother had talk to the parents of accused regarding their demands but when the said demands were not acceded to by them then this case registered...”

27. From the perusal of the above testimonies, it has emerged that the prosecutrix alleged:
- (i) physical relations were established by the respondent on the pretext of false promise of marriage;
 - (ii) the prosecutrix stayed with respondent for 5-6 days in the rented accommodation of the respondent where they developed physical relations;
 - (iii) as per the prosecutrix, she got pregnant and the said pregnancy was aborted by the respondent by giving her medicine.
28. The prosecutrix was taken to Dr. B.S.A hospital, Rohini, Delhi where she was medically examined. As per MLC Ex.PW2/B the prosecutrix was examined by Dr. Deepa Kapoor with the alleged history of rape and the prosecutrix refused for her internal medical examination. Ex.PW2/B further shows that her menstrual cycle was regular and her last menstrual period was from 28.08.2014 to 30.08.2014 and further no external injuries were found on the body of the prosecutrix.
29. The MLC report Ex.PW2/B does not support the prosecutrix claim of the alleged physical relationship with the respondent on 25.08.2014 and therefore, an inference can be drawn that the prosecution has

failed to establish that the prosecutrix had any physical relationship with the respondent at any point of time.

30. The prosecutrix further claimed that she stayed for 5-6 days in the rented accommodation with the respondent. This claim was again falsified by the fact that when PW8 Biplesh Investigating Officer made inquiries about the room where she had physical relations with the respondent the prosecutrix failed to identify the said place.
31. The claim of the prosecutrix that she got pregnant after the physical relationship with the respondent is nullified from the fact that in the MLC report it has been clearly opined by the Doctor that her menstrual cycle was regular and her last menstrual period was from 28.08.2014 to 30.08.2014.
32. Further, it has come on record that no proof of the hospitalization as claimed has been tendered by the prosecution. There was no evidence whatsoever to show that the prosecutrix was in a love relationship with the respondent either in the form of text messages or letters or photographs. It is noteworthy to mention the order of the Child Welfare Committee wherein the chairperson has observed that the mother of the prosecutrix has 8 children from Mohd. Yunus (father of the prosecutrix) and Mr. Yunus has 7 children from his previous wife and that the Home environment appears to be the major factor in her going wayward.
33. The evidence of the prosecutrix is liable to be believed save in exceptional circumstances. There is no dispute with this proposition but to hold that a prosecutrix must be believed irrespective of the improbabilities in her story is an argument that can never be accepted.

The test always is as to whether the given story prima facie inspires confidence. We are of the opinion that the present matter is indeed not an exceptional one.

34. PW3 Nazmeen, mother of the prosecutrix in her examination in chief deposed as under:

*“I do not remember the date and month, however, in the last year my daughter R had quarrelled with me and left home without disclosing anything to me. **I thought that she might have gone to the native village to meet her badi mummy (first wife of my husband), so I did not make any effort to search her. She came back of her own after 5-6 days.** When she came, she started weeping and told me that her life had been spoiled. I asked about the reason of her weeping and about the person who had spoiled her life. Then my daughter told me that accused Anil, who was residing in the next gali of my house, had been meeting with her and had made physical relation with my daughter on the pretext of marriage. My daughter was minor at that time. My daughter further informed me that accused had taken a house on rent where he took my daughter for about 5-6 days and thereafter, he fled away from there. Police was informed by my daughter and a case was registered against the accused. **My daughter was medically examined in the hospital, however, we refused for her internal examination** vide my statement encircled at point-X bearing my thumb impression at point-B. My statement was recorded.”*

35. It would be an extremely unnatural conduct on the part of the mother of the prosecutrix to be silent or to have just thought that her daughter might have gone to the native village to meet her badi mummy (first wife of her husband) for 5-6 days and not made any efforts to know about her daughter's whereabouts.

36. Learned counsel for the State raised an argument that the respondent had admitted his guilt in his statement under Section 313 of the Code of Criminal Procedure. We have carefully gone through the statement of the respondent recorded under Section 313 of Code of Criminal Procedure. The respondent throughout in his statement recorded under Section 313 of the Code of Criminal Procedure, has taken up a stand that he is innocent and not involved in the crime. Even in the concluding Question No.33 *“Do you want to say anything else?”*, he has specifically denied the allegation of rape. From the perusal of the statement of the respondent under Section 313 of the Code of Criminal Procedure in its entirety it appears when Question No.4 was asked that *“It is further in evidence against you that on the above said date, time and place, you also made false promise to marry with the prosecutrix/victim R, a minor girl aged about 17 years, knowing the fact that you had no intention to marry her and under the false promise of marriage, you repeatedly raped her thereafter. What have you to say?”* to which the respondent answered that *“It is correct”*, the same appears to be recorded inadvertently.
37. In the present case, on a cumulative reading and appreciation of the entire evidence on record, we are of the considered view that the evidence of the prosecution has been held to be unworthy of acceptance because the same is found to be replete with infirmities and found to be contradicted by the medical evidence itself.
38. The law with regard to grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only 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.

39. In ***Sudarshan Kumar Vs. State of H.P. : 2014 (14) SCALE 276***, the Hon'ble Apex Court observed that:

*“29. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is 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 v. State by Public Prosecutor, Madras : (2009) 10 SCC 401** is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In **Para 39**, propositions laid down in an earlier case are taken note of as under:*

*39. In **Chandrappa and Ors. v. State of Karnataka : (2007) 4 SCC 415**, this Court held:*

(1) An appellate court has full power to review, reappreciate 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 reasons", "good and 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 language" to emphasise the

reluctance of an appellate court to interfere with 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 in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the 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.

30. Thereafter, **in Para 41**, the Court curled out five principles and we would like to reproduce the said para hereunder:

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 reason 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."

40. Keeping in view the above settled law and in totality of the facts and circumstances, we do not find any reason to interfere with the impugned judgment passed by the learned Trial Court. Accordingly, present leave petition being devoid of merit is dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MAY 19 , 2016

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