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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.LP. 494/2018**

STATE (GOVT.OF NCT OF DELHI) .....Appellant  
Through: Mr. Ravi Nayak, APP for the State  
with Inspector Surender Chahal,  
PS-Vijay Vihar.

Versus

MANISH .....Respondent  
Through: Mr. Rajeev Mohan, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**  
**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**ORDER**  
**07.12.2018**

**SANGITA DHINGRA SEHGAL, J. (ORAL)**

1. By the present Leave Petition filed under Section 378 (1) (a) of the Code of Criminal Procedure (hereinafter referred as '**Cr.P.C.**'), the State seeks leave to appeal against the judgment dated 26.04.2018 passed by the learned Trial Court in Session Case No. 60/13 arising out of FIR No. 84/2013 under Section 376/363/366/506 of the Indian Penal Code (hereinafter referred to as '**IPC**'), whereby the respondent (accused before the Trial Court) was acquitted for the offences punishable under Section 363/366/376/506 of the Indian Penal Code and Section 5 (1) & 6 of the POCSO Act.

2. Brief facts of the case, as noticed by the learned Trial Court, are as under:-

*“(i). That on 11.02.2013, the father of the victim came to the police Station at about 9.00 pm and stated that his daughter J, aged about 16 years went to her school in the morning at about 7.30 am with her younger sister, but she has not returned back, though her younger sister had returned. He was trying to search for his daughter, but when he could not find her, he has come to the Police station to lodge the missing complaint. On his statement the present FIR u/s 363 IPC was filled.*

*(ii) On 12.02.2013, the victim child came to the Police Station with her brother, her statement was recorded and was accordingly medically examined. Accused was brought to the police station by the brother-in-law (jija) of the victim and he was arrested on the identification of the victim and was subsequently medically examined.*

*(iii) The IO collected the age proof of the victim and her statement u/s 164 Cr.P.C was got recorded on 14.02.2013, wherein, she stated that she is a student of class 8th and she used to talk with her friends and message them through the mobile phone of her mother and on a particular day, she received a call from an unknown number, which she did not pick. Later on, by mistake, one message was sent to that unknown number and a reply was received from that mobile that my name is Manish Sehgal and presently we are not known to each other and eventually we should talk and know each other. From the next day, she started talking to that person, who after some time, told her that he loves her and wanted to marry her and*

*pressurized her to meet him. On his consistent pressure, she decided to meet him at Avantika. Thereby, he told her that his mother is ready for their marriage, but his sister is not ready and for convincing her, she has to send some compelling messages to him, on which, she forwarded certain compelling messages to him.*

*(iv) On 11.02.2013, at 7.30 am, she left her home for school and arrived at Sagar Pur, where Manish was residing. Manish took her to his room and they kept on talking for the entire day. In the evening, he brought food and after eating the food, he started coming close to her. When she refused, he said that we are about to marry and there is nothing wrong in it. Thereafter, he forcibly made physical relations with her on which she kept on weeping. Thereafter, she slept and woke up in the morning with lot of pain, but the accused again committed wrong act with her and also threatened her that if she will tell about this incident to anyone, then he will circulate her multi-media messages. Consequent, to which he asked her to go to Balaji, brought tickets for her, requested her to withdraw money from her account, and then arranged one auto for her. He asked her to call him as soon as money is withdrawn, but she could not withdraw the aid amount. Therefore, the accused had also called her parents and asked them to take the victim with them.*

*(v) IO later on, seized the exhibits of the victim and the accused as well as bed sheet and clothes of the accused from his room and the same were sent to the FSL, pending its result, the charge sheet was filed. Later on, FSL result was also received, which did not supported the version of*

*the prosecution as no DNA profile was generated from the blood sample of the accused.*

*(vi) After committal, arguments on the point of charge were heard and on 14.08.2013, charges u/s 363/366 IPC and u/s 5 (l) of POCSO Act 2012 (hereinafter referred to as the "Act"), punishable u/s 6 of Act, alternatively u/s 376 (2) (n) IPC were framed against the accused, to which he pleaded not guilty and claimed trial."*

3. To bring home the guilt of the respondent, the prosecution has examined 19 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. wherein he denied the charges framed against him and claimed that he has been falsely implicated in the case. The respondent chose not to lead any evidence in his defence.
4. After hearing the counsels on both sides and on appreciation of entire evidence available on record, the learned Trial Court acquitted the accused for the charged offences.
5. Mr. Nayak, learned counsel appearing for the State contended that the impugned judgment dated 26.04.2018 is based on conjectures and surmises; that the Trial Court has not appreciated the testimony of the prosecutrix in its right perspective ignoring the well-settled proposition of law that the sole testimony of the victim of sexual offence is sufficient to base conviction of the accused.
6. Per contra, Mr. Rajeev Mohan, learned counsel for the respondent contended that there is no infirmity in the impugned judgment passed by the learned Trial Court and no interference is called from

this Court. He further contended that the testimony of prosecutrix is bristled with a lot of contradictions, inconsistencies and improvements. She has given different versions in her statements recorded at different stages. Counsel admitted that it is true that sole testimony of the prosecutrix in a case of rape can be based for conviction of the accused subject to same inspires confidence of the Court, but in instant case, the sole testimony of the prosecutrix is not sufficient to establish the case of rape against the accused as the medical evidence does not corroborate the oral testimony of the prosecutrix.

7. We have heard the learned counsel for the parties and carefully examined the impugned judgment and the material available on record as well.
8. Admittedly, the case of the prosecution rests on the sole testimony of the prosecutrix. It is a settled law that the court can base the conviction of the accused solely on the evidence of prosecutrix, if it is found trustworthy and worthy of credence. If the evidence of the prosecutrix appears to be tainted, coloured and shaky, the corroboration of her testimony is required to convict the accused. In the instant case, there is no ocular or other circumstantial evidence available on record to support her testimony. Hence, duty is cast upon the Court to sift the evidence of the prosecutrix very carefully and cautiously.
9. Returning to the present case, the moot point involved for consideration in the present leave petition is whether the testimony of the victim (PW-17) is trustworthy, credible and worthy of

reliance. The statement of the victim was recorded under section 164 Cr.P.C (Ex.PW-11/B) before the concerned Metropolitan Magistrate wherein she stated that respondent took her to his room and they kept on talking for the entire day. In the evening, he brought some food and after eating the food, he started coming close to her. When she refused, he said that they both are about to get married and there is nothing wrong in doing it. Thereafter, she slept and woke up in the morning with lot of pain, but the respondent again committed rape with her and also threatened her that if she will inform about this instance to anyone then he will deliberately circulate her MMS. Contrary to which during her cross-examination on 02.05.2014, she resiled from her initial version and has stated various additional facts, which were initially not mentioned, in her statement recorded under Section 164 Cr.P.C. (Ex.PW-11/B). The relevant portion from her cross-examination dated 02.05.2014 is reproduced below:

*“My first statement U/s.161 Cr.P.C was recorded on 12.02.2013 at about 4:00-5:00 PM at PS. My statement was recorded by one Madam. My brother and parents were also present at PS but were not with me when my statement was being recorded.*

*Maine apne bayan Ex.PW-11/B me bataya tha ki Shaam ko jab wo vapas 7/8 baje aya, apne saath khana lekar aya, aur mujhe bataya, ki yeh khana “uski sister ne bhijwaya hai, jo pass me hi rahti hai. Uske baad, Manish mere saath **jabardasti si karne laga.....Mein kafi ro rahi thi aur usko mana kar rahi thi.....Mein rote rote pata***

***nahi kab so gayi. .... physical relation banaye"*** Confronted with statement, Ex.PW-11/B where it is not so recorded.

*Isne mere gharwale mobile par phone karke mere bhaiya ko inform kardiya ki tum apni Iadki le jao aur yeh bhi kaha ki mera naam nahi aana chahiye. Mere bhaiya aagaye aur mujhe wapass auto me bithakar thane le aaye. 'Thane me mera bayan likha gaya aur iske baad mujhe doctor janch (medical examination) ke liye hospital legaye.'* Confronted with statement Ex.PW-11/B where it is not recorded."

10. Further in her cross examination dated 20.09.2014, she has explicitly stated that on the date of the incident, she has voluntarily departed with the respondent on his motorcycle and in the following circumstances she did not raised any alarm or outcry. The relevant portion from the following cross-examination is reproduced below:

***"I sat on the motorcycle and went with the accused voluntarily and did not raise any alarm. I cannot tell as to how many stories were there in the house where I was taken by accused Manish. By the time I remained in the said room/house, I did not make any hue and cry. On that day I went to the house of accused Manish, he went to his office in the morning hours and came back in the evening time. In the meantime, I remained alone at the house of the accused. I did not tell any of the neighbours and passerby that I wanted to go to my house."***

11. From the perusal of the aforesaid cross-examination we find that victim had voluntarily joined the company of the respondent without any influence and did not make any hue or cry on the alleged circumstances. Undisputedly, the victim was recovered at the instance of the respondent as he only informed the brother of the prosecutrix and requested him to take her back. Sh. Ram Kumar Mathur(PW-10), brother of the victim, categorically stated that while he was waiting for his sister at, Kali Mandir, Sagarpur, he had a prior encounter with the respondent at the alleged spot and his sister had approximately arrived after 1½ hour in a separate auto (three-wheeler). The relevant portion from the statement of Sh. Ram Kumar Mathur(PW-10) recorded on 14.02.2014 is reproduced below:

*“On the next day, I received an anonymous call that my sister would be reaching at Kali Mandir, at Sagar Pur within one or one and a half hour in an auto. I went there and also called my brother-in-law (behnoi) at said place. While, I was waiting for my sister at Sagar Pur Kali Mandir, the said anonymous caller came there and it was the accused Manish @ Manjeet, present in the court today (correctly identified), who met me. When, accused had called me, he had told me that he would also meet me at Kali Mandir and he had also told me to maintain secrecy about his identity. After I had met the accused, I was made to wait for another one/one and a half hours and thereafter; my sister J came there in an auto.”*

12. The case of the prosecution further weakens by the testimony of an independent witness examined as PW-6, landlord of the respondent who categorically identified the girl as his sister namely Rajni, aged about 28-30, accompanied him on the date of incident and stated that :

*"On 12.02.2013, the girl, who came along with the accused Manish in the said room told her name as Rajni. The household articles of the accused Manish were also later on collected by the said girl namely Rajni. She came to collect the said articles after about one month after the arrest of accused Manish in the present case. **The said girl appeared to be about 28-30 years old.** The said girl met me again in the Court on the last date of hearing when I appeared to depose before the Court and she is present outside the Court today also.*

*At this stage, at request of learned defence counsel, the girl referred to by the witness has been called inside the Court Room and has been duly identified by the witness. On query, it is revealed that the name of the girl is Rajni and she is real sister of the accused Manish.*

***It is correct that the girl shown to me today in the Court is the same girl namely Rajni, who had come with the accused to my house on 12.02.2013.***

13. Further, the story set up by the prosecution does not find support from the medical examination of the prosecutrix. Dr. Meghna Malik (PW-3) appeared on behalf of Dr. Deepika Jagga Senior Gynaecologist, BSA Hospital, who had examined the victim on 12.02.2013 and proved her report as Ex.PW3/A. The medical

report categorically stated that the hymen was torn with no external and internal injury and the labia minora and majora were found to be normal, with no sign of bleeding and rectal injury. The FSL report concluded with the datum that no DNA profile was generated from the blood sample of the respondent. Accordingly, we are of the view that the medical evidence does not corroborate with the version of the victim because there is no presence of any external or internal injuries and even the FSL report does not sustain and support the case of prosecution. Thus, the medical examination reports also does not lend any support to evidence of the prosecutrix. There is no other evidence available on record which could support the offence of rape having been committed upon her.

14. There is no dispute with the proposition sought to be urged by counsel for the State that there is no bar in law to convict the accused on the basis of the sole testimony of the victim, however, the Court must be satisfied that the testimony of the victim is of sterling quality and inspires confidence.
15. From the material available on record, we find that the testimony of victim does not inspire the confidence in court and the same cannot be relied for the conviction of the respondent. Her testimony is full of inconsistencies, concealment, improvements and exaggerations, which casts a shadow of doubt and has led us to find it difficult to rely upon, consequently the same does not corroborate with the medical evidence. Therefore, the

prosecution has failed to establish the charges against the accused punishable under the Indian Penal Code and consequently the charges punishable under the POCSO Act.

16. It is settled law that the Appellate Court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so. In *Muralidhar and Ors. Versus State of Karnataka* reported at (2014) 5 SCC 730, it has been held that :

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State: AIR 1954 SC 1, Madan Mohan Singh v. State of U.P.: AIR 1954 SC 637, Atley v. State of U.P.: AIR 1955 SC 807, Aher Raja Khima v. State of Saurashtra: AIR 1956 SC 217, Balbir Singh v. State of Punjab : AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra: AIR 1963 SC 200, Noor Khan v. State of Rajasthan : AIR 1964 SC 286, Khedu Mohton v. State of Bihar: (1970) 2 SCC 450, Shivaji Sahabrao Bobade v. State of Maharashtra: (1973) 2 SCC 793, Lekha Yadav v. State of Bihar (1973) 2 SCC 424, Khem Karan v. State of U.P.: (1974) 4 SCC 603, Bishan Singh v. State of Punjab: (1974) 3 SCC 288, Umedbhai Jadavbhai v. State of Gujarat: (1978) 1 SCC 228, K. Gopal Reddy v. State of A.P.: (1979) 1 SCC 355, Tota Singh v. State of Punjab: (1987) 2 SCC 529, Ram Kumar v. State of Haryana: 1995 Supp (1) SCC 248, Madan Lal v. State of J and K: (1997) 7 SCC 677, Sambasivan v. State of Kerala: (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.: (2002) 4 SCC 85, Harijana Thirupala v. Public

*Prosecutor, High Court of A.P.: (2002) 6 SCC 470, C. Antony v. K.G. Raghavan Nair: (2003) 1 SCC 1, State of Karnataka v. K. Gopalakrishna: (2005) 9 SCC 291, State of Goa v. Sanjay Thakran: (2007) 3 SCC 755 and Chandrappa v. State of Karnataka: (2007) 4 SCC 415.* It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following: (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court, (ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal, (iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanor of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified, and (iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view,

*interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.*

17. Keeping in view the aforesaid propositions, we see no compelling and substantial reason to interfere with an order of acquittal passed by the learned Trial Court in the present case and therefore, upon overall analysis, we are of the view that the present leave petition preferred by the State being meritless deserves to be dismissed.
18. Accordingly, the present leave petition being devoid of merit is dismissed

**SANGITA DHINGRA SEHGAL, J**

**SIDDHARTH MRIDUL, J**

**DECEMBER 7<sup>TH</sup>, 2018**  
**Gr/DA\***