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

Judgment reserved on: 05th December, 2018
Judgment pronounced on: 13th December, 2018

+ **CRL.LP. 478/2018**

STATE (GOVT.OF NCT OF DELHI)

....Appellant

Through: Ms. Radhika Kolluru, APP for
State.

Versus

KULDEEP@KALLU& ANR

....Respondent

Through: Mr J.P. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J

1. By the present Leave Petition filed under Section 378 (1) of the Code of Criminal Procedure, (hereinafter referred as Cr.P.C.) the State seeks leave to appeal against the judgment dated 10.05.2018 passed by the learned Trial Court in Session Case No. 29/13, whereby both the respondents (accused before the Trial Court) were acquitted of the charges punishable under Section 376(G)/506/120B of the Indian Penal Code (hereinafter referred as IPC) and Section 4 & 6 of the POCSO Act.

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

“Brief facts of the prosecution case are that DD /no. 16A dated 08.12.2012 was registered on a PCR call regarding rape with a girl by some boys near A-Block, Mangol Puri, Laxmi Dairy. The said DD was handed over to SI Gaurav and thereafter to W/SI Suman Kumari who called official from NGO and got the victim counselled and thereafter, victim was taken to SGM hospital for her medical examination and thereafter, she gave her statement that she is studying in class IX and on 04.12.2012 at about 2.00 p.m., she went to A-Block market to purchase copy where accused Jogender @ chhapri was standing at a shoe shop who was known to her and came to her and asked her to come with him and believing him she went with him in the shoe shop where accused Kuldeep @ Kallu was already present. There they both threatened her and asked her to come to first floor room of that shop which has stairs from the shop itself. Because of their threats, she went to the first floor room with them. Accused Jogender pressed her mouth and accused

Kuldeep removed her clothes and thereafter, they raped her despite her resistance and then asked her to leave after wearing the clothes and threatened that if she will tell about this to anyone, they will kill her and her family members. Because of their threat, she kept silent but today she gathered courage and informed about the incident to her mother. On her statement, present FIR was registered.”

3. To bring home the guilt of the respondents, the prosecution has examined 18 witnesses in all. Statements of both the respondents were recorded under Section 313 of Cr.P.C. by the learned trial court wherein they pleaded not guilty and claimed trial. The respondent chose not to lead any evidence in their defence.
4. Ms. Radhika Kolluru, APP for State contended that the impugned judgment dated 10.05.2018 was based on conjectures and surmises and the same deserves to be set aside, convicting the respondents for the offences punishable under Section 376(G)/506/120B of the IPC and Section 4 & 6 of the POCSO Act. Learned counsel for the State further contended that the statements of the PW-3 (*the victim*) were consistent and stood corroborated with the testimonies of PW-12 (*brother of the victim*) and PW-16 (*mother of the victim*). Learned counsel further contended that the learned trial has placed undue weightage on the minor contradictions and discrepancies in the

statements of the PW-3 (*the victim*) which is contrary to the settled principles of law that the courts should not get swayed by minor contradictions or discrepancies on the statement of the prosecutrix, which are not of a fatal nature to throw out an otherwise reliable case of the prosecution. Learned counsel for the State further contended that the trial court has erred in disregarding the MLC of the victim, which reveals that the victim was subjected to sexual assault. She further contended that the victim was bleeding even after four days of the incident, which goes to prove that the victim was sexually assaulted. She further relied on the case of ***Parminder alias Ladka Pola Vs. State of Delhi*** report in ***JT 2014 (2) SC 305***.

5. On the other hand, Mr. J.P.Singh, learned Counsel for the respondents contended that there is no infirmity in the impugned judgment passed by the learned Trial Court and does not call for any interference. He further contended that there are major contradictions and discrepancies in the statements of the prosecution witnesses and the prosecution has miserably failed to establish a case against the respondents, beyond reasonable doubt.
6. We have heard the learned counsel for the parties and perused the material on record.
7. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault and if the evidence of the prosecutrix inspires confidence, it must be relied upon

without seeking corroboration of her statement in material particulars. Coming to the facts of the present case, it is to be seen, whether evidence adduced by the prosecution, particularly the testimonies of PW-3 (*the victim*) and PW-16 (*mother of the victim*) are trustworthy, credible, corroborative and worthy of reliance.

8. The statement of prosecutrix, under Section 164 of the Cr.P.C. (*Ex.-PW-3/B*) was recorded on 10.12.2012 wherein she deposed that 'on 04.12.12 around 2:00 of clock noon, when she went to shop to purchase copies, one boy named Chapri called her and forcefully dragged her inside the shop'. She further deposed that 'one more boy was present there and they both dragged her upstairs, in a room'. She further deposed that both the boys then raped her and 'threatened her not to inform anybody otherwise they would kill her and her family'. She further deposed that being terrified, she disclosed about the alleged incident to her family members after four days of the incident and thereafter police was informed.
9. The prosecutrix was examined as PW-3 and during her examination-in-chief she deposed as under:-

“ Mein 4th December, 2012, ko after noon me 02:00 baje mein stationery shop se copy lene gay thi. Uske samne ek shoe shop thi, waha par ek ladka khada tha, jisse maine pehle se dekha hua tha. Mujhe uska naam nahi pata tha. Yeh ladka mujhe school se aane jaane me pehle bhi chedta tha. Uss ladke ne mujhse kaha ke mere dost uppar hai isliye mere sath uppar chalo. Mein uske sath upar chali gayi waha koi bhi nahi tha.

Phir usne waha par apne dosto ko bula liya. Dukan ka malik Sandeep, kallu aur Nanu uppar aa gaye. Phir unhone Nanu ko niche dukan me bhej diya. Phir unhone zabardasti uppar ka gate bandh kar diya. Woh mere kapde uttarne lage. Sabse pehle Chapri ne mere sath galatkam kiya. Uske baad mere chatpatane ke baad bhi kallu ne mere sath galatkam kiya. Mere manna karne ke baad bhi Sandeep ne bhi mere sath galatkam kiya. Mein bahut ro rahi thi aur apne kapade mang rah thi. Phir Sandeep niche kapade lene chala gaya tha. Phir Nanu uppar aa gaya aur usne bhi mere sath zabardasti galatkam kiya. Unn sabne mere sath balatkar kiya. Kallu aur Chapri ne muje dhamki di ki chupchap kapade pehan kar chali jao aur kissi ko kuch nahi batana nahi toh tujhe aur tere gharwalo ko jaan se mar denge. Phir mein apne ghar chali gayi. Mujhe bahut bleeding ho rahi thi. Maine apne ghar jane ke baad darr ke marre kissi ko bhi kuch nahi bataya tha.

Do din baad maine sari baat apni mummy ko batai aur mummy ne bhai ko bata diya, uske baad bhai ne police ko phone kar diya tha. Police mere ghar aa gayi unhone mujhse puchtach ki aur mujhe, meri mummy aur bhai ko police station le gaye. PS me police ne mujhse puchtach kari aur uske baad police mujhe hospital le gayi waha par mera medical hua, phir police mujhe wapas thane me le aayi. IO ne mere bayaan likhe aur maine uss par sign kiya.”

10. During her cross examination she deposed as under:-

“ I did not know the name of accused Kuldeep and Joginder prior to 04.12.2018. I do not recollect whether I had stated in Ex.PW3/B that I did not know the name of accused Joginder prior to 04.12.2012. I had not stated in my statement Ex. PW3/A that I knew accused Joginder by his nickname Chhapri. I had not stated either in Ex. PW 3/A or Ex. PW 3/B that accused Joginder used to tease me on my way to school prior to the incident. I had not stated in Ex.

PW3/A that on 04.12.2012 accused Joginder called me when I was going to the market and asked me to deny friendship in the presence of his friends.

My brother Himanshu had told me later on that Sandeep, the owner of that shoe shop was, the friend of accused Joginder. The same was told to me by my brother after recording; my statement before court but I do not recollect the exact date.

Xxxxxx

After the incident I did not go to school till two day thereafter I had disclosed the matter to my mother in the morning. After the incident I did not visit that shop again. It is correct that the said shop is situated in a crowded market having shops all around it

Xxxxxx

Vo. After coming home on the date of incident I had washed the said clothes.

I had made attempt to scream but my mouth was gaged"

11. From the perusal of the testimonies of the prosecutrix, we find that there were many improvements and contradictions in her statements recorded at various stages.
 - a. The prosecutrix in her statement recorded under Section 164 Cr. P.C stated that she was forcefully dragged inside the shop by the accused person, to the contrary in her examination in chief, she deposed that she accompanied the accused without any protest on being called by him to the place of incident, she described the same in these words ‘Uss ladke ne mujhse kaha ke mere dost uppar hai isliye mere sath uppar chalo. Mein uske sath upar chali gayi waha koi bhi nahi tha.’

- b. The prosecutrix in her statement recorded under Section 164 Cr. P.C. stated that two boys threatened her and raped her and deposed that 'one boy named Chapri called her and forcefully dragged her inside the shop' and 'one more boy was present there and they both dragged her upstairs, in a room' to the contrary in her examination in chief she involved four persons, including the present two respondents.
- c. During the cross examination, when the prosecutrix was confronted with her statement recorded under Section 164 Cr. P.C wherein she identified the two accused as *Chapri* and *Kallu*, she deposed that she did not know the name of accused Kuldeep and Joginder prior to 04.12.2018.
- d. The prosecutrix in her cross-examination deposed that her brother Himanshu (PW-12) had told her the names of the accused persons, whereas to the contrary her brother Himanshu in his cross-examination on 04.10.2016 denied this version.
- e. According to the prosecutrix she did not attend school for two days consequently after the date of incident. To the contrary her brother, Himanshu (PW-12) deposed during his cross examination that the victim was regularly attending school from 04.12.2012 to 08.12.2012.
- f. During cross examination, the prosecutrix deposed that she attempted to scream but her mouth was gagged by the

accused persons to the contrary during the recording of statement recorded under Section 164 Cr. P.C. and examination in chief, she chose to remain silent.

12. At this stage, it is relevant to examine whether the medical evidence adduced by the prosecution finds support from the testimonies of the prosecution witnesses. The victim was medically examined vide MLC No. 20929 on 08.12.2012 (*Ex-PW-14/A*), relevant portion of which is reproduced herein below:-

“

08.12.2012

01:45 pm

L/E-No evidence of any external injury or any part of body.

P/S-Hymen ruptured absent.

Minimal bleeding”

13. Dr. M. Das, CMO, SGM Hospital, Mangol Puri, (PW-14) has examined the victim vide MLC No. 20929 on 08.12.2012 and has proved the MLC report as Ex.PW14/A and has opined that *no fresh external injuries were visible* at the time of the aforesaid medical examination. Dr. Akanksha, S.R. (Obs. & Gyane) (PW-15) appeared on behalf of Dr. Rachita, S.R.(Gyane), Sanjay Gandhi Memorial Hospital, Mangol Puri, Delhi who examined the victim and deposed that as per the MLC (Ex.PW14/A) *hymen of the patient was not ruptured*. Pursual of the MLC further reveals that there was ‘*minimal bleeding*’ at the time of the

examination of the victim but the fact that the hymen of the patient was not ruptured cannot be lost sight of.

14. Learned counsel for the State in support of her contention with regard to MLC of the victim relied on the case of ***Parminder alias Ladka Pola Vs. State of Delhi*** report in ***JT 2014 (2) SC 305***. From the perusal of the *Parminder (supra)* case, we find that the apex court has upheld the conviction of the accused not only on the ground of corroboration of the testimony of the prosecutrix but also on the ground of positive report of the CFSL. In *Parminder (Supra)* case, the clothes of the victim were sent for forensic analysis which proved the guilt of the accused person. However, in the instant case the statement of the prosecutrix is shaky, inconsistent and cannot be relied upon. The incident was reported four days after the alleged commission of the crime. The clothes were washed by the victim, making the report of the forensic analysis tainted. The MLC suggests presence of minimal bleeding but neither any external injuries were found nor hymen was torn. The prosecution has further failed to produce any independent witness to prove the guilt of the accused. Accordingly, reliance placed by learned counsel for the State on the case of *Parminder (Supra)* is misplaced.
15. Admittedly the incident occurred on 04.12.2012 at about 02:00 pm in a shop which is located in a *crowded market having shops all around it*. As per the prosecution witnesses there were many persons present in the market at the time of the incident. The

prosecution failed to produce even a single public witness to support its case. No feasible explanation came forth from the victim explaining the delay in lodging the complaint.

16. 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 not supported by the medical evidence itself.
17. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. Upon re-appraisal of evidence and relevant material placed on record, in case the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.
18. Having regard to the principles laid down by the Apex Court in the case of **Ghurey Lal vs. State of U.P., reported at 2008 (10) SCC 450**, we do not find that there is any illegality or perversity in the reasoning given in the impugned judgment. The learned trial court has taken a holistic view in the matter and carefully

analyzed the evidence of all the witnesses. Accordingly, no ground to interfere with the impugned judgment is made out and the leave petition is dismissed.

SANGITA DHINGRA SEHGAL, J

SIDDHARTH MRIDUL, J

DECEMBER 13, 2018
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