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

Date of Decision: 28th November, 2019

+ **CRL.L.P. 645/2019**

STATE OF NCT OF DELHI)

..... Petitioner

Through: Mr. Amit Gupta, APP for the State with
SI Raju Yadav, PS Sultanpuri

versus

SATYAVIR

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

SANGITA DHINGRA SEHGAL, J (Oral)

CRL. M.A.41316/2019 (exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

CRL. M.A.41315/2019 (for condonation of delay in filing)

The present application is filed by the petitioner for condonation of delay of 17 days in filing the present leave petition.

For the reasons stated in the application, the present application for condonation of delay in filing the present leave petition is allowed.

Application stands disposed of.

CRL.L.P. 645/2019

1. By the present Leave Petition filed under Section 378 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') the State seeks leave to appeal against the judgment dated 26.07.2019 passed by Additional Sessions Judge-01, Special Court (POCSO) North West District, Rohini Court, Delhi whereby the respondent (accused before the Trial Court) was acquitted of the charges punishable under Sections 376/506 of the Indian Penal Code (hereinafter referred to as 'IPC') and Sections 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO').
2. The brief facts of the case, as mentioned by the learned Trial Court are reproduced as under:

“Brief facts of the prosecution case are that on 09.03.2016, DD No.3A at 1.00 a.m in the night was recorded and pursuant to that IO reached the house of the victim where victim complained of rape. She was taken to SGM hospital where she was found pregnant and after counselling victim gave her statement that she is living at the second floor of her rented accommodation where accused Satyavir lives on the first floor. She came back from her village about three months before and accused used to stare at her. About 5-6 days after her returning from the village, she went to the house of accused to take Rs.100/- from him lent by her mother to the accused. Accused made forcible physical relations with her at the point of knife and also threatened to kill her. Since then for about two months, he continued to rape her under threat. She missed her monthly periods and informed her mother who brought pregnancy test kit from the chemist and found UPT positive and called the PCR. On this

complaint, present FIR was registered. IO prepared the site plan and arrested the accused and got him medically examined. Statement of the victim u/s 164 Cr.P.C. was recorded where she reiterated her police complaint. After orders from CWC, the pregnancy was terminated and the samples from the fetus was seized and sent to FSL and awaiting result, present charge sheet was filed against the accused before this Court. Copy supplied to the accused. ”

3. In order to bring home the guilt of the accused person, the prosecution examined 11 witnesses in all. The incriminating evidence and circumstances were put to the accused person during his statement recorded under Section 313 of Code of Criminal Procedure, wherein he claimed to have been falsely implicated in the present case and chose not to lead any evidence in his defence.
4. The Trial Court in the impugned judgment while acquitting respondent-accused has held as under:-

*“ 8. Coming to the main incident, the victim claimed that she was raped continuously for one month by the accused in his room and after the first incident, he used to call her by coming to her room when there was none at their respective houses. **Why victim went to the house of accused on each and every occasion when he allegedly called her to his room remains unexplained. Further, victim never reported about the alleged incident to her mother. Further, victim never raised any alarm or hue and cry at the time of alleged incidents to rape. In the MLC, there are no injury to show the signs of rape. The FSL result is of no use as the sample of the fetus degraded and no DNA profile could be generated from the sample. Victim admitted in her cross examination that she had a grudge against the accused as he had slapped her and she also bled from ear because of that slap and undertook***

to teach a lesson to the accused. She did not report the matter to the anyone till her mother found her to be pregnant after pregnancy kit test. Victim admitted that even a small noise from the room of the neighbour can be heard in their room and vice versa yet none of her neighbours ever heard her alarm or hue and cry. **She also admitted that there was small dispute with the accused pertaining to money transaction between accused and her parents.** She also admitted that accused used to make her understand not to spend time with her friends in closed doors. **All these circumstances do not rule out the possibility of false implication. The statement of the victim does not inspire confidence to believe her about the incidents of rape. There is no corroboration to her version.** Thus, prosecution has failed to prove any offence against the accused beyond reasonable doubt. Benefit goes to the accused. Accused is acquitted accordingly.”

5. Aggrieved by the impugned judgment Mr. Amit Gupta learned prosecutor appearing for the State argued that the judgment dated 26.07.2019 is based on conjectures, surmises and the learned Trial Court has failed to appreciate the testimony of the prosecutrix in its right perspective ignoring the well-settled proposition of law that the sole testimony of the victim in the case of sexual assault is sufficient to base conviction of the accused.
6. Learned prosecutor further contended that the Trial Court has given undue weightage to minor discrepancies in the statements of the prosecutrix (PW-3) contrary to which her statement is consistent and corroborative in nature and there are no major omissions and contradictions in her testimony. He further submits that the Trial

Court failed to appreciate that the prosecutrix was a minor at the time of the incident. He further submits that the Trial Court failed to appreciate that there is a presumption under Sections 29 and 30 of POCSO Act against the respondent-accused and it is for the respondent-accused to prove to the contrary. He further contended that the impugned judgment is a case of legal defects and the trial court has failed to appreciate the testimony of the prosecutrix in its correct perspective, and therefore is liable to be set aside.

7. We have heard the learned APP for the State at length and perused the available material on record.
8. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence and where the testimony of a victim of sexual assault instills confidence in the Court the same can be relied upon for conviction of the accused. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the victim is not a requirement of law but a guidance to prudence under the given circumstances. In ***Mohd. Ali @ Guddu Vs. State of Uttar Pradesh***, reported in (2015) 7 SCC 272, the Apex Court has observed as under: -

“29. 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 [Criminal Appeal No. 602 of 2006, decided on 25-3-2009 (All)] , 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 a 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.

30. *True it is, the grammar of law permits that 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 does 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 appellant-accused for the alleged offences and the High Court has fallen into*

error, without reappreciating the material on record, by giving the stamp of approval to the same.”

9. In view of the settled law, we shall now examine whether the evidence adduced by the prosecution, particularly the testimony of the victim is trustworthy, credible and can be relied upon or not and in order to test the veracity of the deposition of prosecutrix, it needs to be examined thread bare. The prosecutrix was examined as PW-3 and during her cross-examination she deposed “*Ye kehna sahi hai ki case karne se do mahine pehle ek din accused ne gusse mai mere gaal per bahut zor se ‘chata’ maara aur mujhe wahan se bhaga diya. Vol. Mere kaan se khoon bhi nikal gaya tha. Ye kehna sahi hai ki uske baad mujhe accused per bahut gussa aa gaya aur main us se rooth gai. Ye kehna sahi hai ki us thapad wali ghatna ke baad maine socha ki us jallad ne mere sath aisa kyon kiya jabki mere aur uske achhe sambandh the aur mere gharwalaon ke sath bhi uske achhe sambandh the. Ye kehna sahi hai ki uske baad maine than li ke maiu use us thapad ka maza zaroor chakhaungi.*”
10. Further, during her cross-examination she had stated that there were no cordial relations between the accused and her parents, as she had deposed that “*Ye kehan sahi hai ki accused ko jab bhi poison ki zaroorat hoti thi to wo mere mummy papa se le leta tha. Ye kehna sahi hai ki mere gaon se aane ke baad bhi paise dene ka ye silsila chal raha tha. Ye kehna sahi hai ki meri mummy mai aur accused mai paise lautane ka ya paise dene per nokjhok hoti rehti thi. Ye kehna sahi hai ki paise lene ke baad accused jaldi se use lautata*

nahi tha aur hume paise lene ke liye uske kai chakkar katne padte the.”

11. The *conduct of the prosecutrix* shows that she has falsely implicated the respondent-accused in the present case to take revenge against him because of the longstanding monetary disputes inter se between her family and the prosecutrix and had also developed a predetermined intention to implicate the respondent-accused in the present case because the respondent-accused had viciously slapped her two months prior to the alleged incident.
12. Further, the learned trial court has precisely taken the view that the *medical evidence* does not support the case of the prosecution because as per the medical examination (i.e. MLC of the prosecutrix) there was no Vulva Injury with any swelling, bruising and bleeding. Thereupon, even the FSL report does not support the version of the prosecution because no DNA profile was generated from Exhibit ‘1’ (*Fleshy material described as “POC of victim Anjali”*).
13. However, as far as the *age of the prosecutrix* is concerned the trial Court had concluded that the prosecution has failed to prove the fact that the victim was minor at the time of the incident or was born on 12.05.2003. The relevant portion of the trial Court judgment has been reproduced as under:

“7. As far as the age of the victim is concerned, prosecution has failed to prove the age of the victim or that she was minor at the time of alleged incident. PW-1 and PW-2 produced the record of the schools of the victim where she was admitted on the basis of affidavit given by mother of victim with date of birth as 12.05.2003. By this date of birth, the victim comes

around 13 years of age at the time incident. Her mother PW-6 who was around 35 years of age on the date of her deposition stated that she got married at the age of 15 which means that she got married about 20 years before i.e. in 1996. She further stated that her first child was born after one year of her marriage i.e. in 1997 followed by victim who born after one year of the first child which means in 1998. She further clarified that second child was born after two year of first child which comes 1999. In both circumstances, victim was born either in 1998 or 1999 but for no reason in 2003 as recorded in her school. There are sufficient doubts on record regarding date of birth of the victim as victim herself stated that her brother is 8-10 years elder to her which is contrary to the statement of her mother who initially said there is difference of one year between the age of the victim and her brother but again modified it to be a difference of two years. Prosecution has failed to prove that victim was minor at the time of incident or was born on 12.05.2003.”

14. Consequently, this court is in agreement with the finding of the trial court that the prosecution has failed to prove the age of the prosecutrix. Though, the presumption under Sections 29 & 30 of the POCSO Act would be attracted, in the present case, yet the conflicting version of the prosecutrix on material points creates a serious doubt about the truthfulness of the statement/testimony of the prosecutrix.
15. Undoubtedly, there is no dispute with the legal submission of the learned APP for State that conviction in a rape case can be based on the sole testimony of the prosecutrix if the same is consistent, credible and trustworthy and instills confidence in the Court.

16. The Hon'ble Apex court in the case of ***Sham Singh Vs The State Of Haryana*** reported in (2018) 18 SCC 34 has laid down the following principles which need to be taken into consideration while analyzing the elements of false allegations in the case of rape because the same can cause equal distress, humiliation and damage to the accused. Relevant portion from the aforesaid judgment is extracted below:

“8. It is also relevant to note the following observations of this Court in the case of Raju vs. State of M.P. (2008) 15 SCC 133, which read thus:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the

statement of such a witness is always correct or without any embellishment or exaggeration..”

17. Further, a coordinate Bench of this Court in ***Rohit Bansal Vs State*** reported in ***2015 SCC OnLine Del 9937*** has discussed that there is no hesitation in establishing that rape causes great suffering and embarrassment to the prosecutrix, contrarily false implication of committing a rape also results in defaming the reputation and social dignity of the accused. The germane portion of ***Rohit Bansal (Supra)*** is extracted below:

“47. There is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. An accused has also rights which are to be protected and the possibility of false implication has to be ruled out. The Supreme Court in Radhu vs. State of Madhya Pradesh reported in 2007 Cri. LJ 4704 had in this context noted as follows:

“The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

and in Abbas Ahmed Choudhary Vs. State of Assam : (2010) 12 SCC 115, the Hon'ble Supreme Court has held that:

“We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove

its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.”

18. Keeping in view the facts of the present case and applying the principles laid down by the Hon’ble Apex Court, this Court is of the view that it would neither be fair nor reasonable to convict the respondent-accused on the sole testimony of the prosecutrix/victim, which had been wavering and was not consistent as recorded by the Learned Trial Court. Hence, this Court is of the opinion that the respondent-accused is entitled to the benefit of doubt.
19. 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.
20. 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 perversity in the reasoning given in the impugned judgment and for the abovementioned reasons, this Court does not find any reason to interfere with the same.

21. Accordingly, the present leave petition, being bereft of merit, is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

NOVEMBER 28, 2019
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