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

+ CRL.L.P. 206/2020

STATE GOVT. OF NCT OF DELHI

.....Petitioner

Through: Mr. Hemant Mehla, APP for the State
with Ms. Ananya Luthra, Adv.
SI Karamveer, PS Mundka.

versus

MUKESH KUMAR

.....Respondent

Through: Mr. Satya Narayan Vashishth and Mr.
Nitin Kumar Tewatia, Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

11.12.2024

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1. The present leave to appeal has been filed by the State under Section 378(3) of the Code of Criminal Procedure, against the judgment dated 30.10.2019 passed by Additional Sessions Judge-06, West Tis Hazari Courts, Delhi, in FIR No. 216/16 under Section 354 IPC and Section 10 of the POCSO Act, P.S. Mundka, titled *State vs. Mukesh Kumar*. Vide this judgment, the respondent was acquitted by the learned trial court of the offences under Section 354 IPC and Section 10 of the POCSO Act.
2. The relevant facts of the present case, as noted in the impugned judgement, are reproduced herein below:

"1. In brief, the facts of the prosecution case is that the present case was registered on the complaint of one Smt, G, (identity withheld), the mother of the prosecutrix Ms. 'Ch' (identity withheld), a minor girl of the age of about 5 years. The complainant Smt. G, has raised the



allegations that on 06-05-2016, at about 4:30 PM, the accused who was the seller of one Cream had lifted her daughter in his lap, kissed her right cheek and he was apprehended with the help of some public persons, who have also beaten him and she called the police on 100 number and handed over the ,, accused to the police. On her complaint, the FIR No. 216 dated 06-05-2016 Ex. PX1 was registered.

2. During the course of investigation, the prosecutrix was taken to the hospital for her medical examination and thereafter to the court for recording of her statement under section 164 Cr.PC and on completion of the investigation, the charge-sheet was filed against the accused for the offences punishable under Section 354 IPG and u/s 10 of POCSO Act.

3. Vide order dated 01-03-2017, the charges were framed against the accused for the offences punishable 10 of POCSO Act and 354 IPG, by the Predecessor Court of Sh. Pawan Kumar Matto, Ld. ASJ-01, then, to which the accused pleaded not guilty and claimed trial.”

3. Learned APP for the state has submitted that the impugned order of the Learned Trial Court is perverse, based on conjectures, and liable to be quashed. Learned APP submitted that the Learned Trial Court has wrongly misapplied the proposition relating to the high standard of evidence required for a sole prosecutrix's testimony. Learned APP submitted that the Learned Trial Court failed to consider the minor victim's testimony, where she stated that an "Uncle" took her on his lap, kissed her, and bit her cheek, clearly indicating sexual intent.
4. Learned APP further submitted that the Learned Trial Court improperly relied on contradictions in cross-examination, disregarding credible examination-in-chief statements. Furthermore it has been submitted that, the Learned trial court wrongly concluded that no sexual intent was proven and unjustifiably doubted the



investigation, contrary to established legal principles that minor lapses in investigation do not discredit the prosecution's case.

5. Learned Counsel for the Respondent has submitted that the appeal filed by the petitioner is barred under Section 5 of the Limitation Act due to a delay of approximately 95 days, with no application for condonation of delay. It is further submitted that the case relies on the testimonies of PW-1 (victim) and PW-2 (mother of the victim/complainant), which are riddled with contradictions. Moreover, PW-1 admitted in cross-examination that the respondent only consoled her by hugging her with affection. Similarly, PW-2 contradicted her own complaint by admitting in cross-examination that she did not witness any wrongdoing and was informed by neighbours that the respondent was merely trying to console the crying child.
6. Learned Counsel for the Respondent submitted that, the prosecutrix's statement under Section 164 Cr.P.C. and PW-2's testimony are inconsistent with each other, and no independent witnesses from the locality, as mentioned in the complaint, were examined. Furthermore, it has been submitted that the MLC does not support the prosecution's claims, with no evidence of teeth marks as alleged. Police witnesses merely testified to procedural aspects of the investigation and are not material witnesses to the occurrence.
7. Learned Counsel for the respondent has submitted that the statement of the accused under Section 313 Cr.P.C. indicated that the allegations were baseless, arising from a misunderstanding. It has further been submitted that the evidence on record does not fulfil the essential



ingredients of Section 354 IPC or Section 10 of the POCSO Act, as there is no proof of sexual assault or intent to outrage modesty. Thus, the Learned Trial Court correctly acquitted the respondent after examining all evidence.

8. Having heard the learned APP and the submissions of the learned Counsel for the respondent, and upon *prima facie* perusal of the documents which are placed on record, this Court finds that there are material contradictions in the testimony of the prosecution witnesses and same are inconsistent with each other, making the case of the prosecution doubtful. The prosecutrix has materially improved upon her initial statements and was inconsistent in identifying the respondent-accused, as noted in the MLC and her statement under Section 164 Cr.P.C. The relevant portion of the impugned judgment on this aspect is reproduced herein below:

14. As per the evidence placed on record, the statement of the prosecutrix was recorded u/s 164 Cr.PC, wherein she has given a brief account of 3 sentences that she was outside her house, where one uncle came, lifted in his lap, kissed her and had taken teeth bite and then she had gone to her house. On the question that accused did something else, she answered in negative.

The relevant extract of her statement u/s 164 Cr.PC is extracted below:

'Main apne ghar ke bahar thi. Wahan ek uncle aaye. Unhone mujhe godi main utha liya aur phir chummi kar rahe the. Mujhe gal par kat khaya. Phir main apne ghar chall gayi.

Q. Kya uncle ne kuchh aur bhi kiya tha?

Ans. Nahi'.



15. The prosecutrix was examined in the court as PW1 and as per her deposition, she was outside her residence, one uncle took in his lap and kissed on her cheek and had given her teeth bite and her mother gave complaint to the police.

But this witness when cross-examined has taken u-turn to what stated in her chief-in-examination on 16-11-2017. She has stated that accused uncle was selling cream. She has spoiled the packed of cream. The accused abused her and she started crying then that uncle started stopping her crying. She explained that he was loving her only for making her happy and stopping her crying.

The relevant extract of her testimony is extracted below:

'Q. Kya yeh sahi hai ki yeh uncle aapke pados ke makan ke pass baith gaye theli, tab kya hua tha?

A. Haan, yeh uncle pados ke makan ki seedi par baith gaye thei aur maine unki cream ki dabbi kharab kar di thi, tab unhone mujhe daata tha aur main rone lag gayi thi. Uncle phir mujhe chup kara kar chale gaye thei.

.....

Q. Kya yeh baat sahi hai ki uncle ne kewal chup karane ke liye hi pyar kiya tha aur kuch nahi?

A. Yeh sab chup karane ke liye kiya tha'.

9. The MLC conducted at Sanjay Gandhi Memorial Hospital, Mangolpuri, Delhi, on 06.05.2016, revealed some signs of bruising on the face, but no specific evidence of teeth marks. PW6, Dr. Gurdeep, CMO, SGM Hospital, testified that the medical records showed no teeth marks on the victim's face, thereby undermining the claim that the Respondent bit the prosecutrix's cheek. Furthermore, the mother of the prosecutrix, who is also the complainant, stated that she did not want any internal examination of her daughter because nothing wrong had been committed against her, that she did not want any police



of the evidence, as observed by the Learned Trial Court. It was neither made part of the judicial record nor included in the chargesheet. The Ld. Trial Court has pointed out these contradictions and the same is reproduced herein below:

12. On close scrutiny of the evidence of the prosecution, it is observed that the statement of the prosecutrix u/s 161 Cr.PC was not made a part of the evidence or of the judicial record as no such statement was traced in the judicial record nor it is mentioned in the list of documents in the charge- sheet.

13. As per the testimony of PW5, W/SI Sarita, she has recorded the statement of the mother of the prosecutrix at the spot, thus, it is not explained by the prosecution as to why the statement of the prosecutrix recorded by the IO W/SI Sarita u/s 161 Cr.PC was not made part of the charge-sheet or of the judicial record nor it was produced before the court during trial.

12. In view of the aforesaid, it appears that there is some substance in the defence raised by the respondent-accused, and the prosecution has not been able to sufficiently disprove the same. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, although it has wide powers to review the evidence and reach its own conclusion. Furthermore, the power to grant leave must be exercised with care and caution, as the presumption of innocence is further strengthened by the acquittal of the accused.

13. The Supreme Court, in a subsequent judgment in **Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr.**, (2009) 10 SCC 206, it was inter alia held as under;

“40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal



only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position crystallized by aforementioned judgments of this Court. 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. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court.”

14. Similarly, in **Ghurey Lal v. State of U.P (2008)** 10 SCC 450, the Supreme Court, inter alia held as under;

69. The following principles emerge from the cases above:

1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappraise the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.

2. The accused is presumed 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.

3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.

70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:



1. 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.

A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:

- (i) The trial court's conclusion with regard to the facts is palpably wrong;*
- (ii) The trial court's decision was based on an erroneous view of law;*
- (iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;*
- (iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*
- (v) The trial court's judgment was manifestly unjust and unreasonable;*
- (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*
- (vii) This list is intended to be illustrative, not exhaustive.*

2. The appellate court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable 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.

15. The bare perusal of the above said judgments make it clear that an acquittal order can be set-aside only if there are substantial and compelling reasons and it is found that the impugned judgment is perverse in any manner. The discussion made herein above does not make out any case for interference in the order of Ld. Trial Court. Consequently, this Court is of the view that the prosecution has failed



to establish its case against the respondent-accused beyond reasonable doubt and the Trial Court committed no error in acquitting the respondent-accused.

16. Accordingly, the present leave petition, being bereft of merit, is dismissed. Consequently, this Court is of the view that the prosecution has failed to establish its case against the respondent-accused beyond reasonable doubt and the Trial Court committed no error in acquitting the respondent-accused.

17. In view of the above, the present leave petition, being bereft of merit, is dismissed.

DINESH KUMAR SHARMA, J

DECEMBER 11, 2024

‘pp’/ NA’