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

+ **CRL.L.P. 335/2017**

STATE

.....Appellant

Through: Mr. Shoaib Haider, APP for State

versus

PANKAJ KUMAR

.....Respondent

Through: Mr. Biswajeet Kumar Patra and Ms
Khushboo Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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17.07.2026

CRL.M.A. 9212/2017 (Condonation of delay)

1. For the reasons stated in the application, the same stands allowed. The delay of 283 days in filing the appeal stands condoned.
2. The application stands disposed of.

CRL.L.P. 335/2017

1. The instant appeal is for the following reliefs:-

“(a) summon the record of the case and set aside the order of acquittal passed by Sh. Raj Kumar Tripathi, Addl. Sessions Judge-02, South-East, Saket Courts, New Delhi, vide Judgment dated 13.05.16, whereby the Respondent was acquitted and Convict him for the Offence for which he was booked; and,

(b) pass such other and rather orders\ (s) as it may deem fit; and proper in the facts and circumstances of the case and in the interest of the justice.”

2. The present appeal has been preferred by the appellant against the



judgment and order dated 13.05.2016 [**“Impugned Judgment”**] passed by the learned Additional Sessions Judge-02, South-East District, Saket Courts, New Delhi, whereby the respondent was acquitted of the charges.

3. The facts of the case reveal that on 04.04.2014, FIR No. 205/2014 was registered at Police Station Lajpat Nagar under Section 363, Indian Penal Code, 1860 [**“IPC”**] on the complaint of PW-2, father of the prosecutrix, alleging that his minor daughter, Ms. ‘X’, aged about 15 years, had gone missing. During investigation, the complainant expressed suspicion against the respondent, pursuant to which the investigating team proceeded to District Katihar, Bihar, where the prosecutrix was recovered from the respondent's house and brought back to Delhi.

4. Thereafter, the prosecutrix was medically examined and her statement under Section 164 Code of Criminal Procedure, 1973 [**“CrPC”**] was recorded. Upon completion of the investigation, a charge-sheet was filed under Sections 363 and 366 IPC, and charge under Section 366 IPC was framed against the respondent. The prosecution examined twelve witnesses, while the respondent, after his statement under Section 313 CrPC was recorded, did not lead any defence evidence. By impugned judgment, the learned Trial Court acquitted the respondent, which has led to the filing of the present appeal.

5. Mr. Shoaib Haider, learned APP appearing for the State, submits that the learned Trial Court erred both on facts and in law in acquitting the respondent without properly appreciating the evidence on record. It is contended that the prosecutrix, a minor, consistently stated in her testimony as well as in her statement recorded under Section 164 CrPC that she had accompanied the respondent to his house in Katihar, Bihar, from where she



was subsequently recovered by the police in the presence of her father. It is further submitted that the factum of recovery from the respondent's house stands duly proved through the testimonies of the prosecution witnesses and was not disputed by the respondent in his statement under Section 313 CrPC.

6. Learned counsel further submits that the prosecution had conclusively established that the prosecutrix was below 18 years of age through medical and oral evidence and, therefore, her consent, if any, was wholly immaterial for the offence of kidnapping from lawful guardianship under Section 363 IPC. Reliance has been placed upon the decision of the Supreme Court in ***State of Haryana v. Raja Ram***¹, to contend that the offence is complete once a minor is taken out of the lawful guardianship without the consent of the guardian. It is, thus, urged that the findings recorded by the learned Trial Court are perverse and contrary to the settled principles of law, warranting interference by this Court.

7. *Per Contra*, Mr. Biswajeet Kumar Patra, learned counsel appearing on behalf of the respondent submits that the prosecutrix (PW-1), in her deposition before the Trial Court as well as in her statement recorded under Section 164 CrPC, categorically stated that she had accompanied the respondent to Bihar of her own volition and that the respondent had neither induced, enticed nor compelled her to accompany him. It is further submitted that the prosecutrix also deposed that during her stay at the respondent's residence, the respondent neither subjected her to any sexual assault nor molested her in any manner, and that she had voluntarily left her parental home without informing the police.



8. Learned counsel further submits that the testimony of PW-3, the mother of the prosecutrix, also supports the defence version, as she deposed that the prosecutrix had informed her that she had voluntarily accompanied the respondent without any coercion or pressure. It is, therefore, argued that the prosecution has failed to establish the essential ingredients of "taking" or "enticing" as contemplated under Section 361 IPC, which form the foundation for the offences punishable under Sections 363 and 366 IPC.

9. It is accordingly submitted that the learned Trial Court rightly appreciated the evidence on record and returned a finding of acquittal, which does not warrant interference in the present appeal. In support of the aforesaid submission, learned counsel for the respondent has placed reliance upon paragraphs 20 and 21 of the impugned judgment, which read as under:

“20. In the present case, there is nothing on record to suggest that accused enticed Ms. X to accompany him. Ms. X, out of her own free will, accompanied the accused to his native place in Bihar. She stayed with his parents in his house. Ms. X has herself stated that accused had neither induced her nor pressurized her in any manner. She has also stated that during her stay with accused in his house at his village, he did not do any sexual act with her nor he molested her in any manner. She stated that she slept separately in his house and she did not marry with him. Since the victim Ms. X had herself accompanied the accused to his house, the ingredients of taking or enticing which are necessary to constitute the offence under section 363 and 366 IPC are not made out. If the version of accused is to be believed, it was Ms. X who forced him to take her somewhere. There is no material on record to suggest, that accused persuaded Ms. X or enticed her to accompany him and took her out of her lawful guardianship.

21. For the reasons discussed above, in my considered view, prosecution has failed to bring home the offence under section 366 IPC against accused beyond all shadow of reasonable doubt. Benefit of doubt is given to accused. Accused is hereby acquitted for offence punishable under section 366 IPC.”

10. I have heard the learned counsels appearing on behalf of parties and

¹ AIR 1973 SC 819



perused the record.

11. Before examining the rival submissions on merits, it would be apposite to advert to the settled principles governing the scope of interference in an appeal against an order of acquittal. Though the appellate Court possesses full power to re-appreciate the evidence and arrive at its own conclusions, such power is required to be exercised with due regard to the presumption of innocence, which stands reinforced by the order of acquittal. The appellate Court would ordinarily interfere only where the findings recorded by the Trial Court are shown to be manifestly erroneous, palpably wrong or demonstrably unsustainable

12. The Privy Council in ***Sheo Swarup v. King Emperor***², in a formulation that continues to anchor this branch of the law, held that while the High Court possesses full power to review the evidence in an appeal from an order of acquittal as it does in an appeal from conviction, it must nonetheless always give proper weight and consideration to parameters produced hereinunder:-

“But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as:

- 1) The views/opinions of the trial judge as to the credibility of the witness;*
- 2) The presumption of innocence in favour of the accused;*
- 3) The right of the accused to the benefit of any doubt; and*
- 4) The slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.”*

13. This formulation was reiterated by the Supreme Court in ***M.G. Agarwal v. State of Maharashtra***³, and has since been consistently

² 1934 SCC OnLine PC 42

³ 1963 SCR (2) 405



followed, most recently in *Siju Kurian v. State of Karnataka*⁴, where the Supreme Court reaffirmed that these considerations are not mere formalities but substantive checks on appellate interference. Paragraph no. 16 of *M.G. Agarwal* (supra) is reproduced as under:-

“16. Section 423 (1) prescribes the powers of the appellate Court in disposing of appeals preferred before it and clauses (a) and (b) deal with appeals against acquittals and appeals against convictions respectively. There is no doubt that the power conferred by clause (a) which deals with an appeal against an order of acquittal is as wide as the power conferred by clause (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. That is one aspect of the question. The other aspect of the question centres round the approach which the High Court adopts in dealing with appeals against orders of acquittal. In dealing with such appeals, the High Court ;naturally bears in mind the presumption of innocence in favour of an accused person and cannot lose sight of the fact that the said presumption is strengthened by the order of acquittal passed in his favour by the trial Court and so, the fact that the accused person is entitled to the benefit of a reasonable doubt will always be present in the mind of the High Court when it deals with the merits of the case. As an appellate Court the High Court is generally slow in disturbing the finding of fact recorded by the trial Court, particularly when the said finding is based on an appreciation of oral evidence because the trial Court has the advantage of watching the demeanour of the witnesses who have given evidence. Thus, though the powers of the High Court in dealing with an appeal against acquittal are as wide as those which it has in dealing with an appeal against conviction, in-dealing with the former class of appeals, its approach is governed by the overriding consideration flowing from the presumption of innocence. Sometimes, the width- of the power is emphasized, while on other occasions, the necessity to adopt a cautious approach in dealing with appeals against acquittals is emphasised, and the emphasis is expressed in different words or phrases used from time to time. But the true legal position is that however circumspect and cautious the approach of the High Court may be in dealing with appeals against acquittals, it is undoubtedly entitled to reach its own conclusions upon the evidence adduced by the prosecution in respect of the guilt or innocence of the accused. this position has been clarified by the Privy Council in Sheo Swarup v. The, King Emperor (1) and Nur Mohammad v. Emperor”

⁴ (2023) 14 SCC 63



14. The general principles governing the exercise of this jurisdiction were authoritatively summarised by the Supreme Court in **Chandrappa v. State of Karnataka**⁵, holding that “an appellate court has full power to review, reappreciate and reconsider the evidence upon which an order of acquittal is founded, and the Cr.P.C. places no restriction on the exercise of that power.” Expressions such as “substantial and compelling reasons,” “good and sufficient grounds” or “glaring mistakes” are not intended to curtail this power, but are, in the words of the Supreme Court, merely “flourishes of language” emphasising the appellate court’s reluctance to interfere. Paragraph 42 is reproduced as under:-

“42.From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge

(1)An appellate court has full power to review, reappreciated 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 law.

(3) Various expressions, such as, “substantiated and compelling reasons”, “goof 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

⁵ (2007) 4 SCC 415



court.

(5) *If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court.”*

15. This Court had occasion to apply this framework in ***State v. Ravi Kumar***⁶, where leave to appeal against an acquittal was declined on the ground that the State had failed to demonstrate that the trial Court’s view was anything other than a plausible one, notwithstanding that certain individual observations of the trial court were themselves open to debate.

16. The Supreme Court’s decision in ***Ramesh Babulal Doshi v. State of Gujarat***⁷ supplies the analytical discipline that an appellate court must bring to this exercise. It requires the appellate court, before embarking upon any independent reappraisal of the evidence, to first pose a threshold question: do the findings of the trial court suffer from any of the recognised infirmities, namely, that the approach is vitiated by manifest error of law or fact, that it results in a miscarriage of justice, or that the conclusion is one that could not reasonably have been reached on the material on record.

17. Only if this threshold question is answered in the affirmative does the appellate court proceed to reappraise the evidence and substitute its own conclusion; if it is answered in the negative, the acquittal must stand undisturbed, and however persuasively an alternative view might be constructed. Paragraph No. 7 of ***Ramesh Babulal*** (supra) is reproduced as under:

“7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal

⁶ MANU/DEOR/48163/2025

⁷ (1996) 9 SCC 225



were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not.”

18. The Supreme Court in ***Ghurey Lal v. State of Uttar Pradesh***⁸ reinforced this position by holding that an appellate Court reviewing an acquittal must attach due weight to the trial Court’s finding, because the presumption of innocence is “further strengthened” by it, and must reverse the acquittal only where there exist “*very substantial and compelling reasons*”.

19. It is against this settled matrix of law that the submissions of the State must be tested, and it bears emphasis that the question before this Court at this stage is not whether an alternative view of the evidence is possible, but whether the view actually taken by the Trial Court is one that no reasonable court, applying its mind to the record, could have taken.

20. Applying the aforesaid principles, this Court is first required to examine whether the view taken by the learned Trial Court is palpably

⁸ (2008) 10 SCC 450



wrong, manifestly erroneous or demonstrably unsustainable. The reasoning of the Trial Court, therefore, deserves to be tested in the light of the legal ingredients of Section 361 IPC and the evidence led by the prosecution.

21. The gravamen of the finding recorded by the learned Trial Court is that the prosecution failed to establish the essential ingredient of "taking" or "enticing". In arriving at this conclusion, the Trial Court relied upon the consistent testimony of the prosecutrix that she had voluntarily accompanied the respondent, that he neither induced nor compelled her to accompany him and that no force, threat or persuasion was employed by him.

22. The Trial Court thus addressed itself to the precise distinction recognised by the Supreme Court in ***S. Varadarajan v. State of Madras***⁹, namely, that there exists a distinction between "taking" a minor and merely allowing a minor to accompany the accused. Where the minor, possessing sufficient understanding of her actions, voluntarily leaves the protection of her guardian and joins the accused without any inducement, persuasion or active participation on the part of the accused, the essential ingredient of "taking" is not established.

23. The Supreme Court further clarified that the prosecution must establish some positive act on the part of the accused, either by way of prior solicitation, persuasion or active participation in the formation of the minor's intention to leave the lawful guardianship. Mere facilitation after the minor has voluntarily left the guardian's protection does not amount to "taking" within the meaning of Section 361 IPC.

24. Viewed in the light of the aforesaid principles, the reasoning adopted by the learned Trial Court cannot be characterised as either contrary to law



or demonstrably unsustainable. The conclusion that the prosecution failed to establish the ingredient of "taking" is founded upon the testimony of the prosecutrix herself and accords with the exposition of Section 361 IPC in **S. Varadarajan** (supra). Consequently, this Court is unable to hold that the impugned judgment suffers from such perversity or manifest illegality as would justify interference in an appeal against acquittal.

25. In view of the foregoing discussion, this Court finds no ground to interfere with the impugned judgment. The appeal is, accordingly, dismissed.

26. Pending application, if any, also stands disposed off.

PURUSHAINDRA KUMAR KAURAV, J

JULY 17, 2026
Nc/SA

⁹ 1964 SCC OnLine SC 36