

\$~9

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 61/2015**

%

Judgment dated : 14th March, 2016

STATE

..... Petitioner

Through: Ms. Aashaa Tiwari, APP for State with SI
Mohit Malik, PS - Parsad Nagar.

Versus

LALIT RATAWAL

..... Respondent

Through: Mr. Jitender Kumar Dhingra, Advocate with
respondent in person

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. Present leave to appeal petition has been filed by the State under Section 378 (1) of the Code of Criminal Procedure against the judgment dated 07.10.2014 passed by Sh. Pawan Kumar Jain, Additional Sessions Judge, Delhi in Session's Case No. 03/13, whereby the respondent was acquitted of the charges framed under Section 376 (2)(g)/506 of the Indian Penal Code and under Section 377 read with Section 34 of the Indian Penal Code.
2. The brief facts of this case, as noticed by the learned Trial Court in the judgment are enumerated as under:

“On September 17, 2010, complainant (PW4) got recorded her statement (Ex. PW4/A) to SI Balbir Singh.

(i) In her statement Ex. PW4/A, it was alleged that she was residing at H. No. 11850/9, Sat Nagar, Karol Bagh, New Delhi along with her family and doing household work. It was alleged that at about 1 ½ years ago her husband had passed away. Her eldest son aged 13 years (Victim Y), daughter aged about 12 years (Victim X) and youngest son (Victim Z) aged 7 years were studying in J. D Tytler Public School. Since, the atmosphere of the school was not good, thus she got her daughter i.e. victim 'X' admitted in the Salwan Girls Sr. Sec. School, Old Rajinder Nagar.

(ii) It was alleged that accused Lalit Ratawal used to take her children in his Maxi Cab bearing registration No. DL-1K 6380 to J. D. Tytler School. About 1 ½ years ago, he took her daughter i.e. victim 'X', alone in his Maxi Cab and gave her some toffee like thing. On that day both of her sons had not gone to school. After eating toffee, her daughter i.e. victim 'X' fell unconscious. It was alleged that after dropping other children at school, accused took the victim 'X' to Madhur's home, who also studied in J. D. Tytler School in 8th standard. When her daughter i.e. victim X re-gained consciousness, she found that she was naked. It was alleged that accused Lalit Ratawal and Madhur had sexually assaulted the victim 'X' and filmed her. When her daughter protested, they threatened to expose her on internet and also threatened that they would kill her.

(iii) It was further alleged that after 3-4 days of the said incident, when accused Lalit Ratawal took above her three children to school, he did not allow them to get down at the school from van and took them to Madhur's house where another boy named Sarthak, who was Madhur's classmate, was already present there. It was alleged that accused Lalit Ratawal, Madhur and Sarthak forced her children to drink liquor and later on they all sexually assaulted her daughter (victim X) and also performed unnatural sex with her both sons i.e. victim Y and victim Z.

(iv) It was alleged that after a week, accused Lalit Ratawal again took the victims in his van but instead of taking them to school, he took them to Madhur's house where two other boys namely Pawan and Anup were already present and they all five persons performed unnatural sex and raped her daughter. It was alleged that since then all the five persons used to do unnatural sex with her sons i.e. victim Y and victim Z and also raped her daughter i.e. victim X.

(v) It was alleged that in the month of Sawan she had received a dirty SMS on her mobile no. 9560348070. After going through the same, she suspected something fishy, accordingly she made an inquiry from her children and when they narrated the incidents to her, she made a call to police at 100.

(vi) On her statement, an FIR for the offence punishable under Section 376/377/506/34 IPC was got registered.

3. Charges for the offences punishable under Section 376 (2) (g)/506 of the Indian Penal Code and under Section 377 read with Section 34 of the Indian Penal Code were framed against the respondent to which he pleaded not guilty and claimed to be tried.
4. To bring home the guilt against the respondent, the prosecution examined 26 witnesses in all. Statement of the respondent was recorded under section 313 of the Code of Criminal Procedure wherein he reiterated his innocence, denied all the charges of the prosecution and examined two witnesses in his defence.
5. The learned Trial Judge, after scrutiny of the evidence observed that the prosecution has miserably failed to bring home the guilt of the respondent for the offences punishable under Section 376 (2)(g)/506 of the Indian Penal Code and under Section 377 read with Section 34

of the Indian Penal Code and thereby acquitted the respondent from charged offences.

6. Ms. Aashaa Tiwari, learned APP for the State submitted that the Trial Court disregarded and failed to take into account the relevant material available on record and has based its findings on mere conjectures and surmises. She further submitted that the Trial Court has committed serious error in discarding the cogent, credible and trustworthy testimonies of PW1 and her mother.
7. Counsel for the State further submitted that the Trial Court committed an error by ignoring that the hymen of PW1 was torn which corroborates the testimony of the child victim.
8. Counsel for the State further submitted that the Trial Court failed to appreciate that the victim was of a very tender age at the time of the alleged incident and even otherwise considering the heinous crime some differences regarding the details of the incident were bound to occur between her statements under Section 161 of the Code of Criminal Procedure and her testimony recorded during trial.
9. Counsel vehemently urged that the Trial Court erred by observing that it was not feasible for the respondent to take the victims anywhere for the sole reason that the victims used to be picked up in the last and dropped first from the van. It was further urged that the testimonies of PW1 and PW5 could not be discarded merely on the ground that the school attendance register indicated their presence.
10. Per contra, supporting the impugned judgment, Mr. Jitender Kumar Dhingra, learned counsel for the respondent submitted that the learned trial court after appreciating all the facts, circumstances, submissions

and evidence led by both the parties concluded with the innocence of the respondent. It is further submitted that PW1 has not been using the van of the respondent as she left J.D. Tytler School and joined Salwan Government Girls Senior Secodary School, Rajinder Nagar as her mother was unable to pay the school fees.

11. Counsel for the respondent urged that upon medical examination of PW1, hymen was torn but no local injuries, lacerations or tear was found. Laying great stress upon *Modi's medical jurisprudence 11th addition chapter XVII page 475* counsel advanced an argument that the hymen of PW1 was torn as she participated in sports, yoga, aerobics, swimming as admitted by her.
12. Counsel for the respondent further urged that Madhur and Sarthak did not travel in the van of the respondent and the attendance records of all three victims and Madhur and Sarthak did not reveal irregular absence of two victims till September, 2010 as well as the third victim till March, 2010.
13. Repudiating the submissions of the counsel for the State, Mr. Jitender Kumar Dhingra, placed reliance on Apex Court Judgments *Tota Singh and Anr. Vs. State of Punjab* reported in (1987) Vol. 2 SCC page 5 to 9 and *State of Rajasthan Vs Raja Ram* reported in AIR 2003 SC 3601 to contend that no interference is to be made with the order of acquittal as the presumption of innocence of the accused is further strengthened by an order of acquittal.
14. We heard the learned counsel for the parties at length, perused the record and also examined the impugned judgment in detail rendered by the trial court.

15. Before probing any further to elucidate the law on the matter, it would be appropriate to deal with the testimonies of the material witnesses.
16. PW1, the child victim in the witness box testified that since 2008 she and the other victims travelled in the van of the respondent along with 10-12 other children. They were the last ones to be picked up and were the first ones to be dropped from the van. She continued to use the van of the respondent for about two months even after changing her school. The respondent used to take them to the house of Madhur (student of J.D Tytler School) and to one more house for about two years wherein he used to give intoxicating substance (make them inhale the fumes of some powder/ place a handkerchief) and do 'Galat Kaam and stated "*kapde uttar kar wo mere saath zabardasti shaaririk sambandh banata tha.*" On the first occasion PW1 had seen Madhur but 'Van wale uncle' also came there. After 2-3 days Pawan, Sarthak, Anoop @Akshay (class mate of Madhur) and Madhur all did 'Galat Kaam' on that day and other occasions. They had recorded a movie from a mobile phone and threatened PW1 by saying that they would upload it on the internet.

She further deposed that in August, 2010 one SMS was received on her mother's mobile phone from Madhur where it was written "***wife, I am waiting for you***" and as she became afraid she deleted the said message. It was stated by her that she never took continuous leave and used to remain absent for 1-2 days at a time and therefore never submitted any leave application. She left J.D Tytler School as the school fees was very high and only her younger brother was not

charged any fees as he suffered from fits. No leave application was submitted in the school due to his absence.

Further, PW1 had informed the doctor that she was given beatings by her mother who had slapped her for not disclosing the true facts. She had led the police to only one place that is Gurunanak Market. She further deposed that :

“It is correct that I have regularly attended in my class in Salwan Public School. (Vol. Except on two occasions when Lalit uncle took me alone to the same place)”.

She deposed that she used to participate in sports, music, yoga, aerobics and racing. At one juncture she deposed that the names of badminton coach, swimming coach, driver Jeeta, security guards were wrongly mentioned by her in the copy written by her in the presence of her mother which took more than 7-8 days to complete the note book. She deposed that “some of the contents of the notebook are true, whereas some are false”. Contradicting her stand she deposed “I did not write the said notebook in the presence of my mother”. Further she deposed that she was taken to the hospital for drug addiction probably on 18.09.2010 but was not admitted by her mother as she stated that treatment for fever could be provided even at the house.

17. PW5, another child victim in his examination in chief deposed that one day, his mother received an SMS at 12 AM. The message was in English and his mother could only read the word ‘wife’ so she asked Megha to read over the message. Megha read over the message and explained the message to her mother. Thereafter, his mother became suspicious over Megha and showed the SMS to Vijay bhai and Aman

bhai. On further inquiry, Megha disclosed the name of Madhur. PW5 told his mother that Lalit used to take them to a room. Thereafter, his mother gave beatings to Megha.

PW5 in his cross examination stated that his mother discontinued the van of Lalit when she came to know about the incident. He admitted that his sister was going separately after joining Salwan School and according to him new sessions commences from 1st April every year. PW5 admitted that whenever a student remained absent, the reason about their absence had to be mentioned in school diary and the same was to be signed by the parents. He further stated that he used to take leave whenever he suffered from fever and he used to submit a leave application for the same. He denied that Madhur and Sarthak used to go in his school van. PW5 further admitted that Lalit used to take them last and were the first ones to be dropped. PW5 stated that besides them there were five to six other students who used to go in the van. PW5 further stated that Pawan neither studied in their school nor travelled in the van of Lalit.

18. In ***Panchhi and Ors. Vs State of UP: (1998) 7 SCC 177***, the evidentiary value of the testimony of a child witness has been examined by the Hon'ble Apex Court which reads as under:

“11 ...It is not the law that if a witness is a child his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell them and thus a child witness is an easy prey to tutoring.

*12. Courts have laid down that **evidence of a child witness must find adequate corroboration before it is relied on.** It is more a rule of practical wisdom than of law”.*

19. In **Radhey Shyam Vs State of Rajasthan : (2014) 5 SCC 389**. Hon'ble Apex Court observed :

*“9. In **Panchhi**, after reiterating the same principles, this Court observed that the evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and, thus, a child witness is an easy prey to tutoring. This Court further observed that the courts have held that the evidence of a child witness must find adequate corroboration before it is relied upon. But, it is more a rule of practical wisdom than of law. It is not necessary to refer to other judgments cited by learned Counsel because they reiterate the same principles. The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, **the court must find adequate corroboration to the child witness's evidence.** If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation...”.*

20. Indisputably, testimony of a child witness can be relied upon but as a matter of caution, the court must find adequate corroboration to the child witness's evidence. Let us now examine whether the

corroborative piece of evidence surfaces the veracity of the child witnesses.

21. PW4, the complainant (mother of PW1) deposed that when her daughter passed out from VI standard, she changed her school to Salwan girls Sr, Sec. School at Rajendar Nagar where she was admitted in VII standard. She changed her school as she was unable to afford the school fees of J.D. Tytler school. PW4 further deposed that Lalit used to pick and drop her daughter in his van but after the summer vacations she hired another van. In the month of September, 2009, her son Aman went to bring 'kawad' at Haridwar and as Ishank used to go alone in the van of the accused Lalit sometimes her daughter Megha also went in the van. She stated that in the month of September itself, she saw an SMS on her mobile phone and asked Megha to read over the SMS to her. Her daughter told her that she deleted that SMS due to which she started suspecting that something was wrong and on enquiry from her daughter she disclosed the name of one Madhur Bhardwaj who studied in J.D. Tytler school. Megha also disclosed that one day Madhur came to their house and touched her and took her photographs from his mobile phone.

PW4 further deposed that the Principal called Madhur Bhardwaj and Sanjay Bhardwaj and before they could tender their reply Megha herself revealed that she had stated wrong facts to her mother. The Principal also tried to inquire from Megha but she denied that any such incident had taken place. She further stated that her son Ishank told her that Van wala Uncle took them to some other house instead of taking them to school.

PW4 in her cross examination testified that the van in which her children went remained full with the students and that her children were the last ones to be picked and first ones to be dropped. She further testified that when her daughter was in Salwan Girls Sr. School her daughter had already taken 3-4 days leave at the time when PW4 was inquiring about the matter from her daughter. During this time she used to drop her daughter herself and had discontinued the van after one month. She testified that Vijay visited their house almost daily and she used to speak to him on the mobile several times in a day and talked to him frequently with regard to the sale of top floor of her house and purchase of the house measuring 50 square yards at Burari. PW4 stated that her son Aman was not taking 'Kawad' regularly but for the first time, he went in September 2010. Further, she stated that her children told her that Madhur, Anup, Akshay and Sarthak were studying in class IX. She did not know in which class Pawan used to study. She stated that her son Ishank used to suffer from fits from the age of 2 – 3 years. She further stated that she took her children from the hospital as she was told by the doctors that her children were suffering from fever only and they were being given crocin whereas she was told by her children that it was a drug- addiction centre. She stated that the notebooks were written by her children in LNJP hospital. She was sleeping when her children wrote the said notebooks as she was unwell at that time. She further stated that they had gone to House No. 14-A/96, second floor, Karol Bagh during the investigation with the police and the said premises was found vacant. She further stated that she went to H.NO. 2251/2/4A, Gurunanak Nagar, New

Ranjit Nagar, Delhi along with the police and the said house belonged to Nagra Brothers who were living there with their families. She also stated that she went to H.NO.4050, Gali No.36, Regarpura, Karol Bagh, Delhi and that house belonged to one Om Prakash.

22. PW26 Inspector Arti Sharma, SHO, PS Mauris Nagar deposed that on 27.09.2010 she received information from LNJP hospital that all the three victims had absconded from the hospital on 26.09.2010 and they were again admitted in the hospital on 27.09.2010. During investigation, it was revealed that victims were the last ones to be picked up from their house and were the first one to be dropped at their house from the school. It was also revealed that besides the victim about 12 other children were travelling in the school Van. She deposed that she visited LNJP hospital where the mother of the victims handed over three note books written by the victims wherein the victims had narrated the incident and their trauma. PW26 further stated that mother of the victims had also handed over one school magazine wherein other four victims were encircled by the victims and also mentioned their address as 14A/96, Karol Bagh, Delhi where the said victims were allegedly assaulted. Thereafter she visited the said address and made inquiry. The said premises belonged to Ms. Maya Niranjana Gara, who was residing for the last 12 years and she also had paying guests. During the investigation it was revealed that the fee for Ishank and Mayank were waived off and the study of Megha was dropped due to financial crises. PW26 further stated that she did not find any evidence to support the allegations of happening of incidents as alleged by the complainant after checking the school attendance

record of J.D. Tytler school. It was found that Pawan never used to study in the said school and Anup used to study in the second standard. After conducting the investigation from the Principal of the school, it was revealed that Megha had lied to her mother about the SMS. It was also revealed that there was no badminton coach in the school and there was no driver by the name of Jeeta. During investigation, it was also revealed that since April, 2010, Megha was not using the school van of accused Lalit Ratwal as she had shifted to Salwan Girls School at Rajinder Nagar. As per MLC, injuries found on the body of Megha, Ishank and Aman were caused by their mother. Further, she deposed that she interrogated other children who used to travel in the school van of the respondent and named in the notebooks but nothing adverse was found against the respondent. None of the other children made any complaint against accused Lalit Ratwal. PW26 stated that during investigation it was also revealed that SMS and calls were exchanged between Vijay and mother of victims and only two calls were made from the respondent. PW26 further stated that she verified the occupants of 2251/4/4A Guru Nanak Nagar, New Ranjit Marg, Delhi and independent public persons who disclosed that the house belonged to Nagra brothers who lived in the joint family since the last 40 years and nobody disclosed to PW26 that they had either seen the respondent or victims.

23. PW8 Dr. Rattan and PW9 Dr. Rukya who conducted the medical examination of child victims opined that no injury was found on the private parts of the victims.

24. PW3 Dr Manisha Bhagat SR LHMC, Delhi medically examined PW1 and deposed as under:

*“I medically examined one Megha Malhotra vide MLC No. 882. As per the alleged history told by Megha that she and her two brothers were made to bunk the school by the cab driver and taken to a house where he shot obscene photographs and videos of them with other boys who were seniors in their school. She resisted but was given some medication and injections. The cab driver also assaulted her 5-6 times. This was repeated quite a number of times over a last one year. She was made to have sex with her brothers and other boys who were senior to her in school. **This last happened about 15 days back. She was beaten up by her mother 3-4 days back as she was reluctant in telling the truth.***

xxxxxxx

*On examination I found she was conscious, co-operative, well oriented to time, place and person. On local examination **no local injuries, hymen torn, annular admits one finger, vagina normal, no laceration or tear.** On PV findings, uterus normal size, anteverted, mobile and anal sphincter tone normal. On external examination, I found following:*

- 1) Black eye over right eye bluish-black in colour.*
- 2) Swelling over left hand dorsum.*
- 3) Healing injury mark over base of right thumb (scab present).*

Urine for pregnancy test was done which was negative.”

25. The Trial Court placed reliance on *Atender Yadav vs State Govt. of NCT of Delhi: 2013 (4) JCC 2962 54*, wherein the Hon'ble Apex Court held as under:

*“It is by far well recognised position that **the condition of hymen being torn of the prosecutrix may not necessarily lead to infer previous sexual intercourse and***

conversely being hymen not torn also does not necessarily mean that there was no sexual intercourse.”

26. On close scrutiny of the testimonies of the material witnesses, it is worthwhile to mention that PW4 deposed that the said SMS was received in September, 2009 contradictory to the deposition of PW1 who stated *‘In August, 2010 one SMS was received on the mobile phone of my mother where it was written ‘wife, I am waiting for you’.* During investigation, it was observed from the Principal of the school that Megha had lied to her mother about the SMS.

PW1 in her cross-examination stated that she had told the police *“Kapde uttar kar wo mere saath zabardasti sharirik sambandh banata tha”* however, the words *"Zabardasti sharirik sambandh"* do not find mentioned in her statement recorded under Section 164 of Code of Criminal Procedure.

It is highly improbable for the respondent to take the victims elsewhere since the victims were the last ones to be picked and first ones to get dropped home from a van full of children. Had they been taken to a different destination the other students from the van would have complained and been witnesses to the same.

Moreover, PW1 in her deposition before court admitted that most of the contents of the note books prepared by her during hospitalization were false. It is perverse in this scenario to rely upon the testimony of PW1.

During investigation it was surfaced that there was no irregular absence of victim Y and Z till September, 2010 as well as of victim X till March 2010. Moreover, PW1 left J. D. Tytler school and joined

Salwan Government Girls School in April, 2010. It was also revealed that since April, 2010, Megha discontinued travelling in the school van of the respondent as she had shifted to Salwan Girls School at Rajinder Nagar.

Place of occurrence of the alleged offence also does not stand proved as 14A/96, Karol Bagh, Delhi where the said victims were allegedly assaulted belonged to Ms. Maya Niranjana Gara, who was residing for the last 12 years and she was also having paying guests. House No.2251/4/4A Guru Nanak Nagar, New Ranjit Nagar, Delhi belonged to Nagra brothers who lived in the joint family since last 40 years and therefore the possibility of confinement and sexual assault is ruled out.

The conduct of the victims is highly suspicious as none of them informed or complained of the alleged repeated sexual intercourse to anyone they trusted even when they had ample time to do so.

The story of the prosecution that the child victims were given intoxicants by the respondent and thereafter he committed the alleged offence, falsified by the FSL report Ex.PW23/A which suggests that no ethyl alcohol, alkaloids, barbiturates, cannabinoids, amphetamines and tranquillizer were found.

MLC's Ex.PW3/A, Ex.PW8/A, Ex.PW8/B ExPW2/A, Ex.PW19/B, Ex.PW8/C, Ex.PW19/C, Ex.PW2/B, Ex.PW9/A, Ex.PW8/D of the child victims do not corroborate the story of the prosecution.

27. From the aforesaid evidence adduced on record, there is no support coming forth to the case set up by the prosecution that the act of rape

was committed upon PW1. It is quite apparent that the PW1 was not consistent in her stand. She has given different versions at different stages. It is also quite noticeable that there was no corroboration so far the prosecution case as set up by the State is concerned. The condition of hymen being torn of PW1 may not necessarily lead to infer previous sexual intercourse. It is pertinent to note herein that as per the case of the prosecution, the victims were repeatedly sexually exploited by more than one person. Had this been the case the victims would have sustained some injuries in their private parts. The evidence of the prosecution is unworthy of acceptance because the same is found to be replete with infirmities, improvements and contradictions and not supported by the medical evidence.

28. In ***Raju v. State of Madhya Pradesh: (2008) 15 SCC 133***, the Hon'ble Supreme Court has held that testimony of the victim of a rape cannot be presumed to be a gospel truth and observed that false allegations of rape can cause equal distress, humiliation and damage to the accused as well, in para 11, the Apex Court echoed the sentiments as under:-

"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."

29. In ***Tameezuddin @Tammu vs State of (NCT) of Delhi : (2009) 15 SCC 566*** it was held as under:

"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable."

30. DW2 Lalit Ratawal respondent herein in his defense deposed that he was falsely implicated in the instant case by PW4 (mother of the child victims) in collusion with his Ex-in-laws in connivance with some police officials. In the above backdrop, it is evident that PW1 (child victim) discontinued the van as her mother was unable to pay the cab fee to the respondent. Close scrutiny of testimony of DW2 unveil that the respondent underwent matrimonial dispute with his wife which was in the knowledge of PW4 therefore, there is every possibility that PW4 used this as a tool to make her daughter travel in his van.
31. The law with regard to grant of leave is well settled by a catena of judgments. Leave to Appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle.
32. In ***Sudarshan Kumar Vs. State of H.P. : 2014 (14) SCALE 276***, the Hon'ble Apex Court observed that:

"29. It has been stated and restated that a cardinal principle in criminal jurisprudence that

*presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled **Dhanapal v. State by Public Prosecutor, Madras : (2009) 10 SCC 401** is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In Para 39, propositions laid down in an earlier case are taken note of as under:*

*39. In **Chandrappa and Ors. v. State of Karnataka : (2007) 4 SCC 415**, this Court held:*

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

(3) Various expressions, such as, "substantial and compelling reasons", "good 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 court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

30. Thereafter, **in Para 41**, the Court curled out five principles and we would like to reproduce the said para hereunder:

41. The following principles emerge from the cases above:

1. 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.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court

must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has very substantial and compelling reason for doing so.

5. If two reasonable or possible 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."

33. Keeping in view the above settled law and in totality of the facts and circumstances, we do not find any reason to interfere with the impugned judgment passed by learned Trial Court. Accordingly, present leave petition being devoid of merit is dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

MARCH 14, 2016

gr //