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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRIMINAL LEAVE PETITION No. 60/2016

% *Date of decision : 8th February, 2016*

STATE **Appellant**
Through : Ms. Aashaa Tiwari, APP for the State.
versus

RAJ KUMAR **Respondent**
Through : None.

CORAM:
HON'BLE MR. JUSTICE G. S. SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL
SANGITA DHINGRA SEHGAL, J.

CRL.MA.1263/2016

1. This is an application under Section 5 of Limitation Act read with Section 482 of the Code of Criminal Procedure filed by the State seeking condonation of delay of 239 days in filing the present leave to appeal petition.
2. Heard. Delay in filing the present leave to appeal petition is condoned.
3. Application stands disposed of.

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4. By the present criminal leave petition filed under section 378(1) of the Code of Criminal Procedure, the Appellant/State seeks leave to appeal against the order dated 16.02.2015 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi in Sessions Case

No. 54/2014 whereby the respondent (accused before the Trial Court) was acquitted of the charges punishable under section 376 of the Indian Penal Code read with section 4 of the POCSO Act and Section 506 of the Indian Penal Code.

5. Ms. Aashaa Tiwari, learned Additional Public Prosecutor for the State submits that the learned Trial Court has passed the impugned judgment on hypothetical presumptions, conjectures, surmises and the same is perverse and lacks legality. She further submits that the learned Trial Court has not appreciated the settled position of law that the prosecutrix was a minor at the time of alleged offence and her consent was immaterial. She further contends that the learned Trial Court has not appreciated the evidence put forth by the prosecution through testimonies of the prosecutrix and her father in the right perspective and ignored the settled position of law that if the sole testimony of the prosecutrix is credible, conviction can be based thereon without any further corroboration.
6. Before appreciating the submissions of learned counsel for the State, we deem it appropriate to reproduce the facts of the present case as noticed by the learned Trial Court in the impugned judgment dated 16.02.2015. Relevant portion of the impugned judgment reads as under:

“The facts in brief are that the prosecutrix had given a statement to the police on 10.02.2013 about having been raped by the accused, who was living on the same Farm House as the prosecutrix, one month prior to the date of complaint and 5-6 times thereafter. On the complaint,

FIR was registered and the medical examination of the prosecutrix was got done. The statement of the prosecutrix under Section 164 of Code of Criminal Procedure was also got recorded. The accused was arrested from the Farm House and his medical examination was got done. The statements of the witnesses were recorded. The age determination of the prosecutrix was got done from the Medical Board which gave the opinion that the age of the prosecutrix was between 16-18 years. On completion of investigation, charge sheet was filed in the Court on 16.04.2013.”

7. After completion of the investigation, charges were framed under Section 376 of the Indian Penal Code read with Section 4 of POCSO Act and Section 506 of the Indian Penal Code against the accused and the same were read over and explained to the accused to which he pleaded not guilty and claimed trial.
8. To bring home the guilt of the accused, prosecution examined 16 witnesses in all. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure wherein he denied all the incriminating evidence against him and reiterated his innocence.
9. After going through the evidence brought on record by the prosecution, the learned Trial Court came to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt and acquitted the respondent.

10. We heard learned counsel for the State and perused the material available on record.

Age of the prosecutrix

11. The primary issue that arises for consideration in the present leave petition is whether the prosecutrix was minor at the time of incident? The Trial Court while after going through the testimonies of PW1, PW5 coupled with the opinion of Medical Board held that she was around eighteen years of age.

Perusal of the record shows that PW5 father of the prosecutrix testified in a categorical manner about the factum of age of his daughter. He deposed in his examination in chief that *"I have 5 children. Out of them four are daughters and one is son. Neelam is my eldest daughter."* During cross examination he stated that *"I got married at the age of 5 years and gona took place in 1987 when I was about 16 years old. As far as I recollect, my first child was born after 5-6 years of marriage."*

PW1, the prosecutrix in her cross examination deposed that *"I used to remain at home and look after my younger brother and sisters."* She further deposed that *"My three younger sisters are aged 10 years, 8 years and 6 years and my brother is about 18 years of age."*

12. A joint reading of the testimonies of the above two witnesses show that the age of the younger brother of the prosecutrix was about 18 years and the prosecutrix being the eldest child must be more than 18 years at the time of the alleged incident in the year 2013 and thus the

prosecutrix was a major at the time of the alleged incident. Having held so, we shall now examine her testimony.

Testimony of PW1, the prosecutrix

13. It is a settled legal position that the sole testimony of prosecutrix, if found to be reliable by itself, may be sufficient to convict the perpetrator of the crime and no corroboration of her testimony would be necessary. The only test is that such uncorroborated testimony of the prosecutrix should be of sterling quality appearing to be natural, truthful and reliable.
14. In ***Tameezuddin @ Tammu v. State (NCT of Delhi) : (2009) 15 SCC 566***, the Hon'ble Apex Court held :-

“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.”

In ***Vijay @ Chinee v. State of Madhya Pradesh : (2010) 8 SCC 191***, the Hon'ble Apex Court has dealt with the issue and held that :

“Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.”

In ***Rai Sandeep @ Deepu vs. State of NCT of Delhi*** : (2012) 8 SCC 21, the Hon'ble Apex Court held :-

"In our considered opinion, the 'sterling witness' should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co- relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the

manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

15. Reliance has also been placed on ***Krishan Kumar Malik Vs. State : (2011) 7 SCC 130***, where the Hon'ble Supreme Court has held that:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary

evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Code of Criminal Procedure), FIR and deposition in Court."

32. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. Record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the Appellant."

18. There are catena of judgments passed by the Hon'ble Apex Court wherein it has been held that the deposition of the prosecutrix by itself is also sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth. In ***Md. Ali Vs. State of UP : 2015 (3) SCALE 274***, the Hon'ble Apex Court

has held that “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.” and in ***Mohd. Iqbal v. State of Jharkhand*** reported in (2013) 14 SCC 481, the Hon’ble Apex Court has held that “There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.”

19. Returning to the facts of the present case, the moot point involved for consideration in this leave petition is whether evidence adduced by the prosecution on rape, particularly the testimony of prosecutrix PW1 is trustworthy, credible and worthy of reliance?
20. In order to test the veracity of the deposition of Prosecutrix PW1, it needs to be discussed threadbare. PW1 deposed in her examination in chief that “*About a month prior to the day the matter was reported to the police, my parents were not at the Farm house and I was alone with my younger brother and sisters. On that day at about 5-6 PM in the evening accused Raj Kumar came to our place and he caught hold of me and when my brother and sisters raised alarm accused Raj Kumar threatened them to keep quiet or else they would be killed. Accused Raj Kumar then took me behind the room and jabardasti galat kaam kiya.*” She further deposed in her examination in chief that “*The accused committed rape upon me on three different occasions. Once he had committed rape upon me in the toilets which place is behind our room. Each time when he committed rape upon me, accused Raj Kumar threatened me to keep quiet and not to tell anyone*

about the incident or else he threatened to kill me and my brother and sisters. The last time when accused Raj Kumar committed rape upon me it was winter time.”

21. PW1 in her cross examination deposed that *“None of my sisters or my brother had seen the accused committing rape upon me.”* She further deposed that *“My parents had gone to temple on the day the accused raped me for the first time. There was no one else present at the Farm House except for my three sisters and brother.”* She further deposed that *“On the first occasion when I was raped by the accused Raj Kumar, my family members were present in the house as well as the family members of Prem Nath. Accused had committed rape upon me first time at about 8:00 PM. Accused Raj Kumar had caught hold me near our toilet and he committed rape upon me. The toilet is situated in the corner of the Farm House which may be around 800-900 steps away from our portion of the property. The accused was not able to rape me at the toilet of the Farm House and although he attempted to catch hold of me, I managed to free myself from him and ran away to safety.”*
22. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and acceptable on its face value without any hesitation. In the instant case, the evidence of the prosecutrix, shows several lacunae which have already been projected hereinabove, would go to show that her evidence does not fall in the category where the same can be accepted without hesitation and

cannot be relied upon to hold the respondent guilty of the said offences. According to the prosecutrix, she was subjected to sexual intercourse by the respondent on three different occasions. It has emerged in the evidence of the prosecutrix that respondent took her behind the room in the presence of her siblings and committed forcible sexual intercourse against her wishes. After about a month, she disclosed this fact to her mother and thereafter complaint was lodged against the respondent. During this period, both the prosecutrix and her siblings had ample opportunities to make complaint, but remained silent for a reasonably long period. This unnatural conduct of the prosecutrix and her siblings casts a doubt on her story. Thus, it is necessary to get the evidence of the prosecutrix corroborated by examining the testimonies of her parents and medical evidence.

23. PW2 Smt. Rani Devi, mother of the prosecutrix deposed that *“On 10.2.2013 my daughter Neelam told me that accused Raj Kumar had caught hold the hand of my daughter Neelam and forcibly took her into a room and committed rape upon my daughter Neelam on 02.02.2013”*. PW5 Ram Baran, father of the prosecutrix deposed that *“My daughter Neelam told me that accused Raj Kumar committed rape upon her on 02.02.2013”*. He further deposed that *“I do not remember where was I on 02.02.2013. It might be that I had been to the mandi or busy in some other work.”*
24. On the alleged incident the version of the mother of the prosecutrix is that on 02.02.2013 the accused forcibly took her daughter into a room and committed rape upon her but in material contradiction to PW2 the

prosecutrix has stated that the three different occasions in which the alleged rape was committed were firstly, behind the room, secondly, in the toilets which was contradicted in her cross examination and thirdly, during winter time. At no point did the prosecutrix mentioned that the alleged incident of rape committed by the accused occurred in the room. Moreover, the description given by the prosecutrix pertains to only one incident which took place behind the room and this was about a month prior to the day the matter was reported to the police which would be sometime in January. No specific dates have been stated by the prosecutrix of the alleged rape on other occasions.

25. Though, the sole testimony of the victim can be sufficient in some cases, for inculcating an accused, however, if there are inherent contradictions in the testimony of the victim and her parents, sole testimony cannot be made the basis for establishing the case of the prosecution beyond reasonable doubt. In ***Abbas Ahmed Choudhury v. State of Assam : (2010) 12 SCC 115***, , the Hon'ble Supreme Court held as under:-

"Though the statement of prosecutrix must be given prime consideration, at the same time, broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there could be no presumption that a prosecutrix would always tell the entire story truthfully. In the instant case, not only the testimony of the victim woman is highly disputed and unreliable, her testimony has been thoroughly demolished by the deposition of DW-1."

26. In another case ***Raju v. State of Madhya Pradesh : (2008) 15 SCC 133***, the Supreme Court held as under:

"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."

27. On perusal of the testimonies, we are of the considered view that the versions of the prosecutrix are full of glaring contradictions. The place of occurrence of the alleged incident does not stand proved. Further, it is significant to mention that it has been admitted by PW2 that her family was not on talking terms with the family of Prem Nath as there were frequent quarrels regarding sharing of water for cultivation of flowers. The prosecutrix herself admitted that disputes occurred on the aforesaid issue which is evident from her deposition that *"It is correct that there have been some dispute about who would*

grow more flowers and cultivate. Vol. It was only from the side of Prem Nath.”

28. The medical examination of the prosecutrix was conducted by PW14, Dr. Anshu, Senior Resident, Safdarjung hospital, Department of Obsc. and Gynecologist who deposed that “*I conducted the medical examination of the prosecutrix. She had no external injuries and her pregnancy test was negative.*”

Thus, on analyzing the material on record, it is established that the testimony of the prosecutrix is doubtful. Her sole testimony has not stood the test of cross examination and has not been corroborated sufficiently. The deposition of the mother in a distinct manner coupled with the previous personal enmity and grudge between the two families makes the story of the prosecutrix unbelievable and in these circumstances, it will not be safe to convict the respondent.

29. The law with regard to the 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. The High Court cannot entertain a petition merely because another view is possible or that another view is more conceivable. In *Arulvelu and Anr. vs. State : 2009 (10) SCC 206*, while referring with approval the earlier judgment in *Ghurey Lal Vs. State of Uttar Pradesh : (2008) 10 SCC 450*, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:

"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 reasons" 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".

30. It is a settled principle of criminal jurisprudence that the burden of proof lies on the prosecution and the prosecution has to prove a

charge beyond reasonable doubt. The accused has a right to fair trial and the presumption of innocence is in favour of the accused.

31. Having regard to the principles laid down by the Apex Court in the case of *Ghurey Lal (Supra)*, we do not find that there is any illegality or perversity in the reasoning given by the learned trial court in disbelieving the case of the prosecution. This court cannot lose track of the settled law that interference is called for only when there are substantial and compelling reasons for doing so.
32. In view of the aforesaid facts, we do not find any infirmity in the impugned judgment passed by learned trial court. We also find no reasons to take a different view than the view taken by the learned trial court. Consequently, leave to appeal stands dismissed.

SANGITA DHINGRA SEHGAL, J

G. S. SISTANI, J

FEBRUARY 8, 2016

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