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

+ **CRL. L.P. 226/2017**

% *Date of Judgment:* 19th April, 2017

STATE (GOVT OF NCT OF DELHI) Petitioner

Through : Ms. Radhika Kolluru, APP for State.

versus

CHARAN SINGH & ORS.

.... Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

Crl.M.A. 6315/2017 (Condonation of Delay in Filing)

1. For the reasons stated in the application, delay of 260 days in filing of the petition is condoned. The application stands disposed of.

Crl.M.A. 6316/2017 (Exemption)

2. Exemption allowed, subject to all just exceptions. The application stands disposed of.

Crl. L.P. 226/2017

3. The present leave to appeal has been filed by the State under Section 378 (1) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment dated 30.04.2016 passed by the Additional Sessions Judge in Sessions Case No. 41/13 by virtue of which the respondent no.1/Charan Singh has been acquitted from charges under Sections 363/366/376 of the Indian Penal Code, 1860 (briefly the 'IPC');

respondent no.2/Rohtash has been acquitted for offences under Section 363/328/366 read with Section 34 IPC; and respondent no.3/Ramesh Chand has been acquitted from charges under Section 363/328 read with Section 34 IPC.

4. Briefly put the case of the prosecution is that on 05.09.2008, a report was lodged with the Police by one, Sh. Subhash Sharma (PW-1) that around two months back, the daughter of his brother in-law, viz. the prosecutrix (PW-7), aged about 17 and a half years came to his house and on 29.09.2008, at around 12 Noon went from the house of the complainant saying that she is going to her house, but she never reached there. It was also mentioned that upon search, it was learnt that the respondent no.2 Roshtash had taken the prosecutrix along with him. Accordingly, a case was registered and the search for the prosecutrix ensued. During the investigation, the call records of the respondents/accused were procured and consequently, the prosecutrix was recovered from the house of the respondent no.1 Charan Singh in Village Mandothi, District Jhajjar, Haryana on 27.10.2008. Upon inquiry, the prosecutrix revealed that on 29.08.2008, respondent no.2 Roshtash and his brother respondent no.3 Ramesh had taken her in a car being driven by a driver. Respondent no.2 Roshtash had given a glass of juice to her, after consuming which she became unconscious. Later, the prosecutrix met the respondent no.1 Charan Singh at Rohtak Hospital who brought her to his house. She was then given some stupefying substance in a glass of milk and the respondent no.1 made physical relations with her. She was further informed that respondent no.1 Charan Singh had married her and taken signatures on blank papers. The respondent no.1 Charan Singh was arrested and the

prosecutrix was medically examined from AIIMS Hospital. Exhibits were sent to FSL, Rohini for examination. Though the other accused, i.e. respondents no.1 and 2 herein, initially evaded their arrest, they were later arrested and all the accused/respondents were put to trial.

5. A charge was framed against respondent no.1 Charan Singh for offences punishable under Sections 363/366/376 IPC; against the respondent no.2 Rohtash under Sections 363/328/366 read with Section 34 IPC; and against the respondent no.3 Ramesh under Sections 363/328 read with Section 34 IPC.
6. To bring home the guilt of the accused, the prosecution examined twenty witnesses, while the respondent no.1 Charan Singh examined two defence witnesses. The relevant prosecution witnesses are the complainant Sh.Subhash Sharma (PW-1); Sh.Rajender Singh (PW-2), DDO, Govt. High School, Arua, Faridabad, Haryana; Sh.Ramjeet (PW-5) the father of the prosecutrix; the prosecutrix herself (PW-7); and Pritam Singh (PW-10) a work colleague of respondent no.3 Ramesh.
7. All the accused were examined under Section 313 of the Code of Criminal Procedure, 1973 (briefly '*CrPC*'). The respondent no.1 Charan Singh claimed innocence and stated that the prosecutrix had falsely deposed under the pressure of her parents. He stated that the prosecutrix married him voluntarily and was living happily with him and that since her parents were pressurizing her for a second marriage, she has committed suicide. He also produced Pandit Sh.Shiv Swami (DW-1), priest of Arya Samaj Mandir deposing he had solemnized the marriage of the respondent no.1 and the prosecutrix in the temple and issued marriage certificate. Smt.Rajwati (DW-2), neighbour of

respondent no.1, deposed that she used to meet the prosecutrix who neither complained nor seemed to be forced to live with the respondent no.1. The other accused/respondents no.2 and 3 stated that a false case was made against them on account of rivalry in the village.

8. After examining the evidence, the Additional Sessions Judge acquitted all the accused/respondents primarily on two grounds: first, as the factum of the prosecutrix being a minor was not established and second, that for all the offences, the prosecution had relied upon the statement of the prosecutrix which was found to be full of contradictions and improvements and thus, under influence or tutored.
9. Ms.Kolluru, learned APP for the State, submits that the impugned judgment is manifestly wrong, illegal and against the facts on record and thus, warrants interference by this Court. Learned counsel pointed out that the prosecutrix had correctly identified the accused persons and categorically deposed that the respondent no.1 Charan Singh had taken her from the hospital to his residence in order to make physical relations with her. Accordingly, Ms.Kolluru submits that the charges stand proved beyond reasonable doubt and the Trial Court had erred in acquitting the accused.
10. In response to the contradictions and improvements noticed by the Trial Court, Ms.Kolluru submits that by and large the prosecutrix has supported the case of the prosecution and therefore, her testimony should have been relied upon to convict the accused. It has been submitted that the Trial Court had failed to appreciate that some contradictions are bound to occur in the truthful deposition of facts particularly after a long gap of time and the entire case cannot be

brushed aside on account of contradictions until and unless they are fatal to the case. Further, learned counsel submits that the Trial Court failed to appreciate that the MLC of the prosecutrix stated that her hymen was found to be ruptured. Consequently, the testimony of the prosecutrix could be relied upon to prove the charges against the respondents/accused.

11. It has also been additionally contended that the Trial Court had erred in returning a finding that the prosecutrix was of more than 18 years of age on the date of incident. Learned counsel substantiated her argument by stating that the admission and withdrawal register pertaining to the year 2002-2003 of class VI to VIII and paste file of Government High School, Arua, Faridabad, Haryana, which had been proved by Sh.Rajender Singh (PW-2), DDO, Govt. High School, Arua, Faridabad, Haryana, could be relied upon to establish the age of the prosecutrix.
12. We have heard learned counsel for the State and have carefully examined the judgment of the Trial Court. Two questions arise for our consideration:
 - (i) Whether the Trial Court was correct in concluding that it cannot be assumed that the age of the prosecutrix was less than 18 years on the date of the incident?
 - (ii) Whether the Trial Court erred in disregarding the testimony of the prosecutrix which could be made sole basis for convicting the accused?
13. As to the age of the prosecutrix on the date of the incident, it was the case of the prosecution before the Trial Court that the prosecutrix was

17 and a half years old on the date of the incident as her date of birth is 12.02.1991.

14. The age of the prosecutrix gains relevance for two charges: rape under Section 376 and kidnapping under Section 363 IPC. As per sixth description under Section 375 IPC [prior to the Criminal Law (Amendment) Act, 2013], if the victim of rape is under 16 years of age, her consent becomes inconsequential. In the present case, the age of the prosecutrix was alleged to be 17 and half years and therefore, has no bearing on the charge under Section 376.
15. Under Section 361 IPC, the taking of a minor under 18 years of age in case of a female out of the keeping of the lawful guardian without the consent of the guardian amounts to kidnapping punishable under Section 363 IPC. For this purpose the age of the prosecutrix is relevant.
16. The Apex Court in ***Jarnail Singh v. State of Haryana, (2013) 7 SCC 263*** it has been held that Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable for ascertaining the age of the child who is a victim of a crime. The relevant portion reads as under:

“20. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). ... Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. ...”

17. To avoid prolixity, one may also refer to the judgments in *Mahadeo v. State of Maharashtra*, (2013) 14 SCC 637; *State of M.P. v. Anoop Singh*, (2015) 7 SCC 773; and *Santosh Sonar @ Santosh Verma v. State of Bihar*, 2014 (4) PLJR 192.
18. Therefore, Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is applicable for ascertaining the age of a child who has been a victim of a crime as well. Sub-rule (3) of Rule 12 reads as under:

“12. Procedure to be followed in determination of Age.-...

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining:—

- (a) (i) *the matriculation or equivalent certificates, if available; and in the absence whereof;*
(ii) *the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;*
(iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*
- (b) *and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a*

finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence, whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

(Emphasis Supplied)

19. Before the Trial Court, the complainant (PW-1) had stated in the complaint that the prosecutrix was about 17 and a half years of age. Further Sh.Rajender Singh (PW-2), DDO, Govt. High School, Arua, Faridabad, Haryana had proved the school records of the age of the prosecutrix. The admission and withdrawal register pertaining to the year 2002-2003 and the paste file of the School were produced. The entries in the register showed that someone with the name of the prosecutrix, daughter of one Sh.Rambeer, was given admission in VI class. He had deposed that at the time of admission, parent of the student had submitted school leaving certificate issued from the Government Primary School, Arua, Faridabad, Haryana and as per this certificate, the date of birth of the student is 12.02.1991. At the same time, the PW-2 had no knowledge by whom the particulars were filled and the certificate was issued. No witness from the Government Primary School was examined to prove the issuance of these documents.
20. Thus, the document which were produced was neither a matriculation certificate, a date of birth certificate from school first attended nor a birth certificate from a municipality. It was not covered by Rule 12 (3) (a) of the Juvenile Justice Rules. The document which was produced was the admission register of Govt. High School and a copy of school leaving certificate which has not been proved. In ***Birad Mal***

Singhvi v. Anand Purohit, 1988 Supp SCC 604, it has been held that:

“15. ...To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded....”

(Emphasis Supplied)

21. Therefore, such documents could not be relied upon to establish the age of the prosecutrix. Even otherwise, the Trial Court has noted other discrepancies raising a question about the veracity of such entries. The name of the father in the record is different and further, the prosecutrix had herself claimed that she was illiterate and had not gone to school.
22. Accordingly, the documents on record could not be relied upon and assumed that the age of the prosecutrix was less than 18 years on the date of the offence. Thus, the ingredients of Section 361 IPC are not made out as the person alleged to have been kidnapped was more than 18 years old. No infirmity can be found in the judgment of the Trial Court on this count.
23. We proceed to analyse whether the testimony of the prosecutrix could be made the sole basis of conviction. The prosecution had only

examined the prosecutrix in support of the incident of kidnapping and rape with her.

24. The Trial Court had refused to rely upon the testimony of the prosecutrix as it came to the conclusion that the testimony was full of contradictions and improvements. We deem it appropriate to reproduce the judgment of the Trial Court in this regard in extenso below:

“13. The complainant in his complaint has stated that the prosecutrix who had come to live with him left his home on 29.08.2008 at about 12.00 o’clock stating to her bua that she is going to her home and when it was inquired at 4.00 o’clock they were told that she had not reached there. She was searched and it came to know [sic] that Rohtash S/o Meharchand had abducted her. The complaint was filed with the police on 05.09.2008. The prosecutrix has denied that when she left the home she told about it to anyone.

...

17. The prosecutrix has not explained that if the accused Rohtash was dying to marry the prosecutrix and he kidnapped her for this then as to why she was left at the hospital. The prosecutrix has not deposed about any incident of rape committed with her by accused Rohtash and his brother Ramesh. There is no evidence on file that any stupefying or intoxicant substance was provided to the prosecutrix except her statement. As per her testimony she remained unconscious from 12 o’clock 29.08.2008 till 4/5 o’clock 30.08.2008. She found herself at a hospital when she regained consciousness. The name of the city is given differently by her at different stages. The hospital is usually a crowded place and it is not possible that no one will notice dropping of a girl unattended or lying there unconscious. The prosecutrix after regaining sense has not tried to contact her family or the staff of the hospital or tries to locate police official.

...

21. The prosecutrix has given versions of reaching to the home of accused Charan Singh. In her cross-examination [sic: she] stated that she went to the house of Charan Singh with Charan Singh in a tempo. She has not clarified whether she was provided milk prior to reaching accused Charan Singh his home [sic: Charan Singh's Home] or after his reaching there. She has not deposed about committal of rape upon her prior to losing consciousness and made aware about marriage with accused. In her deposition made in the court she has not deposed that she tried to make a call to her home at any time. She has not deposed how and why she made call to Ramesh.

22. As per seizure memo Ex. PW 12/A only one silver necklace and one pair silver anklet were recovered from the house of Charan Singh on 07.11.2008 which was witnessed by the prosecutrix, but she has not stated that she was again taken to the house of the accused. It has not been explained what happened with the remaining articles which were taken by the prosecutrix with her while leaving the home of complainant. It is deposed by the prosecutrix that in the police station no body from her family came to meet her whereas PW9 HC Rajesh has deposed that Prosecutrix's uncle and one more person came to the police station and remained there in police station with prosecutrix till 10/10:30 PM and five more relatives (bua's, fufa's and others) of prosecutrix ... came to the police station and met with the prosecutrix. She has admitted that in the village of Charan Singh she was taken out from the house and once she went to the houses of his relative in other village. She has not disclosed the facts to any one.

23. As per the deposition of the prosecution witness PW10 accused Ramesh was with him from 28.08.2008 to 30.08.2008 in Gurgaon.

24. The witnesses examined by the accused Charan Singh in defence are suggesting that the prosecutrix was in her senses at the time of marriage and when used to go out in the village and has not disclosed that she is being treated badly and is being raped forcefully by the accused Charan Singh.

25. The testimony of the prosecutrix is full of contradictions and improvements and considering the same it can not be assumed that she is not under the influence of others and has deposed independently without any tutoring. As such placing reliance on the testimony of prosecutrix to convict the accused is not safe.

26. In view of the above said reasons where the sole testimony of the prosecutrix is found unreliable and full of contradictions the accused are entitled to get the benefit of doubt and accordingly accused Rohtash, Ramesh and Charan Singh are acquitted from the charges framed against them.”

(Emphasis Supplied)

25. It is clear that the Trial Court found glaring inconsistencies and contradictions in the testimony of the prosecutrix. Even though there is no quarrel with the proposition that conviction can be based on the sole testimony of the prosecutrix but at the same time, it must be unimpeachable and beyond reproach precluding any shadow of doubt over her veracity. We may only refer to pronouncements of the Apex Court in this regard. In **Ramdas v. State of Maharashtra, (2007) 2 SCC 170**, it was held as under:

“23. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

...

25. In the instant case there are two eyewitnesses who have been examined to prove the case of the prosecution. We have rejected outright the evidence of PW 5. We have also critically scrutinised the evidence of the prosecutrix, PW 2.

She does not appear to us to be a witness of sterling quality on whose sole testimony a conviction can be sustained. She has tried to conceal facts from the court which were relevant by not deposing about the earlier first information report lodged by her, which is proved to have been recorded at the police station. She has deviated from the case narrated in the first information report solely with a view to avoid the burden of explaining for the earlier report made by her relating to a non-cognizable offence. Her evidence on the question of delay in lodging the report is unsatisfactory and if her deposition is taken as it is, the inordinate delay in lodging the report remains unexplained. Considered in the light of an earlier report made by her in relation to a non-cognizable offence, the second report lodged by her after a few days raises suspicion as to its truthfulness.”

(Emphasis Supplied)

26. The Supreme Court in ***State of Rajasthan v. Babu Meena, (2013) 4 SCC 206***, has observed as under:

“9. We do not have the slightest hesitation in accepting the broad submission of Mr Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

27. We may also note the following observations in ***Mohd. Ali v. State of U.P., (2015) 7 SCC 272***:

“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, 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 unimpeachable, 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.”

(Emphasis Supplied)

28. Applying the foregoing principles to the present case, the Trial Court was correct in its view that the testimony of the prosecutrix could not be relied upon to convict the accused as her testimony was plagued with contradictions and improvement. Further, the submission of Ms.Kolluru that the Trial Court had failed to appreciate that the MLC Report provided that the hymen was ruptured does not impress us. The same would have no bearing upon the present matter as the prosecutrix, even as per the prosecution, was older than the age of consent, i.e. 16 years. Thus, in the absence of any proof that she had sexual intercourse against her consent, the MLC Report *ipso facto* would not make out a case under Section 376 especially when the Trial Court had already come to the conclusion that her testimony was unreliable. To conclude, the sole testimony of the prosecutrix could not be relied upon to convict the accused as her testimony failed to dispel the shadow of doubt.
29. Therefore, we are not inclined to grant the present leave to appeal. Even otherwise, it is settled law that the appellant court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); and

***Chandrappa v. State of Karnataka*, (2007) 4 SCC 415** (paragraph 42)].

30. Accordingly, we find no illegality or infirmity in the judgment of the Trial Court warranting interference.
31. Thus, the leave to appeal is dismissed.

G. S. SISTANI, J.

VINOD GOEL, J.

APRIL 19, 2017

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