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

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Judgment dated: 2nd May, 2017

+ **Crl. L.P. 257/2017**

STATE

..... Petitioner

Through : Mr. Rajat Katyal, APP

versus

RAHUL KUMAR

..... Respondent

Through : None

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

CRL.M.A.7181/2017 (Exemption)

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

CRL.M.A.7180/2017(delay)

3. This is an application seeking condonation of 150 days delay in filing the present leave to appeal.
4. For the reasons stated in the application and since we have considered the leave to appeal on merits, the delay in filing the leave to appeal is condoned.
5. The application stands disposed of.

CRL.L.P.257/2017

6. Present leave to appeal is directed against the judgment dated 27.08.2017 passed by the learned Trial Court by which the respondent was acquitted.
7. An FIR No.579/2015 was registered on the basis of a complaint made by the father of the prosecutrix (PW-2) alleging that on 05.05.2015 at about 9:00 A.M., his daughter went missing from the house of his brother-in-law. He alleged that she had been enticed by some unknown persons. On 07.05.2015, the prosecutrix (PW-1) and the respondent were produced before the Police by the brother of the respondent. The respondent was arrested.
8. In this case, the prosecutrix (PW-1) has not supported the case of the prosecution. She has testified that she knew the respondent as he was residing in her locality. She deposed that she got engaged with the respondent on 26.01.2015. She further deposed that on 05.05.2015, she had left her house alone to meet the respondent after informing her parents and securing their permission. Thereafter, they had gone to *Lal Quila* and since it had become late, they spent a night with the family of friend of the respondent; where she slept with the wife of the friend. The prosecutrix (PW-1) also made a categorical assertion that during her stay with the respondent, nothing had happened with her as she had slept with the wife of the friend of the respondent. We may also note that since the prosecutrix did not support the case of the prosecution, she was cross-examined by the Additional Public Prosecutor and during cross-examination, she deposed that the respondent did not establish physical relationship with her.

9. Even in her statement under Section 164 of the Code of Criminal Procedure, 1973 (in short '*Cr.P.C.*'), the prosecutrix did not level any allegations against the respondent. She categorically stated that the respondent did not commit any wrong act with her.
10. Since it was evident from the testimony of the prosecutrix (PW-1) that neither 'taking away' or 'enticement' was established nor the factum of physical relation between the prosecutrix and the respondent were established, the Trial Court acquitted the respondent/accused, which has led to the present petition seeking leave to appeal.
11. Mr. Katyal, learned APP for the State, submits that medical evidence establishes that the prosecutrix had physical relation with the respondent and since she was a minor, the Trial Court has erred in acquitting the respondent.
12. After examining the judgment passed by the learned Trial Court and taking into consideration the testimony of the prosecutrix before the Trial Court and her statement under Section 164 Cr.P.C. which are consistent that (1) the respondent was not involved in removing her from the custody of the parents; (2) she had left her house after taking permission from her parents; and (3) her testimony that the respondent did not commit any wrong with her, we find there is no infirmity in the order passed by the learned Trial Court which requires interference in these proceedings by this Court.
13. Even otherwise, it is settled law that the Appellate 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)].

14. The leave to appeal is accordingly dismissed.

G. S. SISTANI, J.

VINOD GOEL, J.

MAY 02, 2017

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