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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 18th July, 2017

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CRL.L.P. 391/2017

STATE

..... Appellant

Through : Ms.Radhika Kolluru, APP

versus

WASIM & ORS

..... Respondent

Through : *Nemo*

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

Crl.M.A. 11225/2017 (delay)

1. Although no grounds are made for condonation of delay in filing the present leave to appeal, but since we have heard the leave to appeal on merit, the delay of 101 days in filing the present leave to appeal is condoned.
2. The application stands disposed of.

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3. The present leave to appeal has been filed by the State under Section 378(1) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') against the order of acquittal dated 29.11.2016 passed by the Additional Sessions Judge, Shahdara District, Karkardooma Courts in SC 317/2016 (old SC 173/2014).
4. Tersely put, the case of the prosecution is that on 17.08.2014 at 11:30 AM at Welcome Police Station, one Islam along with his daughter/prosecutrix aged about 17 years came to the police station and informed the Duty Officer that he had previously got recorded DD

70-B dated 13.08.2014 with regard to the missing of his daughter/prosecutrix who has now been found. The prosecutrix was then produced before W/SI Gunjan Singh, to whom the prosecutrix narrated the wrong act suffered by her. Prosecutrix informed that on 03.08.2014, she had come to stay with her uncle Taju Mohd. at F-261, Gali No.3, near Maharaj Masjid, Janta Mazdoor Colony, Delhi and on 13.08.2014 at 12:30 night when she came downstairs to the bathroom, someone knocked at the door calling the name of her uncle. When she opened the door, four boys entered into the house and two of them had covered their faces with clothes and she identified two others as the accused no.1 and 2/respondents no. 1 and 2 herein. The respondents no.1 and 2 were previously known to the prosecutrix as they used to tease her on her way to school at Meerut and for this reason, her parents had sent her to Delhi. Thereafter, the four boys pressed her mouth and forcibly put her into a vehicle and took her to Meerut and on the way back, respondents no.1 and 2 forcibly made physical relations with her repeatedly. They then took her to village Kalchheena, Ghaziabad where respondent no.2 got a suit from her sister for the prosecutrix and she changed in the clothes in a room there. Later, in the same big vehicle, probably Innova or Scorpio, they took her to Nizamuddin Railway Station, where respondents no.1 and 2 made her sit in a train. Respondent no.1 gave her tea and after drinking it, she became unconscious and when she regained senses, she found herself in Surat. There, they took her in a room and when they were talking outside, she heard them saying to someone that “*maal aa gaya hai, paise lekar aa jao*” (the goods have arrived, come with the money), at which she raised alarm, public gathered there and respondents no.1 and 2 ran away. Amongst the crowd, was her *mama*

(maternal uncle), who identified her and brought her to the police station.

5. On the basis of the complaint and the medical examination, FIR No. 465/2014 under Sections 363/328/376-D/34 of the Indian Penal Code, 1860 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') was registered. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded and since nothing incriminating was stated by the prosecutrix against the respondent no.3, the charge sheet was filed arresting the accused/respondent Shahnawaz. Charges were framed by the Trial Court against the respondent no.1 and 2 for the offences under Section 363/376-D/328/366-A/34 IPC and Section 6 POCSO Act. All the respondents pleaded not guilty and claimed trial.
6. To bring home the guilt of the respondents, the prosecution cited total 28 witnesses and examined 9 witnesses. Of the prosecution witnesses PW-1 to PW-7 were public witnesses, including the prosecutrix (PW-1). All these witnesses turned hostile and even the prosecutrix (PW-1) turned hostile when she was re-called for further cross-examination on 28.11.2016. Accordingly, the Trial Court finding all the public witnesses being hostile held that no purpose would be served in examining the remaining police and official witnesses. The Trial Court further held that all the public witnesses have not deposed even a single word against the prosecutrix and acquitted all the accused/respondents herein, which has led to the filing of the present leave to appeal.
7. Ms.Kolluru submitted that the judgment of the Trial Court is bad in law as the Trial Court has failed to properly appreciate the evidence on record and is based on conjectures and surmises and hence, cannot

stand the scrutiny of law. It is submitted that the Trial Court has come to a finding of acquittal on the basis of imagined doubts and *de hors* the evidence which surfaced during trial. Learned counsel for the State submitted that the prosecutrix (PW-1) had fully supported the case of the prosecution at the time of her examination-in-chief on 11.01.2016 and it was only when an application under Section 311 Cr.P.C. was moved by the respondents after a gap of 10 months that she in a *volte-face* denied the whole case of the prosecution. It is clear that the prosecutrix was won over by the defence and was deposing on 28.11.2016 under their influence, threats or pressure. Thus, Ms.Kolluru prays that the impugned judgment be set-aside and the respondents be convicted of the offence charged with.

8. We have heard the learned counsel for the State and carefully examined the impugned judgment of the Trial Court.
9. This is a case where all the public witnesses have turned hostile and have not supported the case of the prosecution. The prime thrust of the case of the prosecution was based upon the prosecutrix (PW-1), Imran (PW-2) (brother of prosecutrix), Mohd. Islam (PW-3) (father of the prosecutrix), Hashmin (PW-4) (aunt of prosecutrix), Ashar Mohd. (PW-5) (uncle of the prosecutrix), Naseem (PW-6) (relative of PW-3), and Taj Mohd. (PW-7) (uncle of the prosecutrix).
10. All the relatives of the prosecutrix, i.e. PW-2 to PW-7, turned completely hostile and did not depose even a single word against the accused/respondents. All of them were thoroughly cross-examined by the Addl. PP for the State before the Trial Court, but in vain. Nothing came in their testimony or the cross-examination by the Addl. PP. As regards, the prosecutrix (PW-1), though she initially supported the case of the prosecution, but when she was called for further cross-

examination, she completely exonerated the accused/respondents. In her cross-examination, she stated that her age is of 20 years age and categorically admitted the suggestions put to her as under:

“I am married today and living in my matrimonial house. It is correct that complaint Ex.PW1/A had been given in Police Station at the instance of my relatives and police officials and the contents of the same had not been mentioned voluntarily by me. It is correct that statement recorded u/s 164 Cr.PC before ld. MM on dated [sic] 20.08.2014 was given by me at the instance of my relatives and police officials of PS Welcome and the said statement had not been given by me voluntarily. It is correct that statement given by me before this court earlier on 11.01.2016 was also given at the instance and tutoring of police officials and my relatives and the said statement was also not given voluntarily by me. It is correct that I have no complaint or grievances against the accused persons present in case today as they had not committed any offence with me and therefore, I do not want them to be punished. It is correct that I am giving the statement today voluntarily and free from any pressure and the statement [sic: statements] given by me earlier were under pressure of police and my relatives.”

(Emphasis Supplied)

11. In view of the foregoing deposition and the categorical denial of the incident by other public witnesses, we are of the view that there is no infirmity in the impugned judgment of the Trial Court. We may notice the judgment of the Apex Court in ***Prahlad Singh v. State of M.P., (1997) 8 SCC 515***, wherein the prosecutrix had admitted that she had been told to identify the accused/appellant therein by her father and the police officials. In this background, the Supreme Court found the order of conviction of the High Court to be based on *“surmises and conjectures without having an iota of acceptable evidence bringing complicity of the accused”* and accordingly acquitted the accused.

12. Accordingly, when the prosecutrix herself has given completely contradictory statements and exonerated the respondents/accused in her cross-examination, no conviction could be sustained on her testimony. No support can be drawn from the testimony of other public witnesses and as noticed by the Trial Court in paragraph 11 by the medical evidence.
13. 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); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].
14. Accordingly, we find no ground to interfere in the judgment of the Trial Court. The personal bonds and the sureties under Section 437-A Cr.P.C. are discharged.
15. The leave to appeal is dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

JULY 18, 2017 //