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

% *Date of Judgment: 31st July, 2017*

+ **CRL.L.P. 426/2017**

THE STATE GOVT OF NCT OF DELHI

..... Petitioner

Through : Mr.Rajat Katyal, APP for State

versus

PRAMOD

..... 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. 12189/2017 (Delay)

1. This is an application filed by the petitioner/State seeking condonation of 75 days' delay in filing the present leave to appeal.
2. Heard. For the reasons stated in the application, in the interest of justice, the delay in filing the leave to appeal is condoned.
3. Application stands disposed of.

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4. The present leave to appeal has been filed by the State under Section 378(3) of the Code of Criminal Procedure, 1973 ('Cr.P.C.') against the judgment dated 16.02.2017 passed by the Judge Special Court ('Trial Court') in SC 44621/2015 arising out of FIR 196/2015 registered at PS Bhajanpura, whereby the accused/respondent herein stands acquitted of all charges against him.
5. The case of the prosecution as noticed by the Trial Court is as under:

“1. On 17.02.2015, complainant Smt. Sunita made a complaint to the police stating that she had been residing at her house with her two minor daughters i.e. victim 'G' – aged about 7 years and victim 'S' – aged about 4 years. Her husband had expired about one-and-half year ago. She used to work in a hanger manufacturing factory. Whenever, she used to go for her work, her both daughters used to remain in the house alone. She alleged that on 15.02.2015 when she returned to her house after work, at about 5.00pm, her elder daughter (victim 'G') told her that Pramod uncle (accused) had disrobed her and committed wrong acts with her and that he also inserted his urinary organ into the urinating part of victim 'S' after applying saliva on it, as a result of which she was feeling burning and that he also threatened that if she disclosed his acts to anyone, he would beat her. The complainant further stated that the accused was known to her as they had resided as co-tenants in a house earlier.”

6. On the basis of above complaint, the present case was registered for the offences punishable under Section 376/354-B/506 of this Indian Penal Code, 1860 ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The accused was arrested. Statement of both the victims under Section 164 Cr.P.C. was also recorded.
7. After completion of investigation, chargesheet was filed against respondent before the Trial Court for the offences punishable under Section 376/354-B/506 IPC and Section 6 of the POCSO Act. On hearing the counsel for the parties, charges were framed against the respondent for the said offences, to which he pleaded not guilty and claimed trial.
8. To bring home the guilt of the respondent, the prosecution examined 14 witnesses in all. The statement of the respondent was recorded under Section 313 Cr.P.C., wherein he denied the incriminating circumstance put to him and pleaded innocence. He further stated that

he had lent Rs.1,500/- to the complainant/mother of the prosecutrixes and as he had demanded his dues, he was falsely implicated in the case by the complainant by tutoring her daughters.

9. The Trial Court found that there was a possibility of the FIR being *ante dated*, there were contradictions in the deposition of the two prosecutrixes (PW-7 and PW-8) and were inconsistent with other prosecution evidence, the forensic and medical evidence did not support the case of the prosecution and there was a possibility of the minor prosecutrixes being tutored and hence, acquitted the respondent/accused.
10. Mr.Katyal, learned counsel for the State, submitted that the impugned judgment is not premised on the evidence brought on record by the prosecution. Learned counsel submitted that the Trial Court had failed to consider the testimonies of the prime prosecution witnesses, i.e. PW-6, PW-7 and PW-8, in the right perspective. He submitted that there are no material contradictions in their testimonies and are consistent and trustworthy. The contradictions noticed by the Trial Court were minor in nature and do not go to the root of the matter. They are further justified having regard to the minor age of the prosecutrixes. Mr.Katyal submitted that the Trial Court has failed to consider that it is settled law that the sole testimony of the prosecutrix stands on a higher footing and corroboration is not necessary.
11. Learned counsel next contended that there was no possibility of the FIR being *ante dated* and the finding of the Trial Court on this ground is perverse and should be set-aside. The FIR was registered on 17.02.2015 at 9:05 PM, while the incident took place on 15.02.2015 and hence, the FIR cannot be *ante dated*. In respect of delay in lodging the FIR, Mr.Katyal submitted that the Trial Court has failed to

consider that in cases of sexual harassment and assault, the social stigma and the ignominy attached to the offence explains the delay. Neither of the instances raise a doubt on the case of the prosecution.

12. We have heard the learned counsel for the State and carefully examined the impugned judgment of the Trial Court.
13. Though there is no quarrel with the proposition that the sole testimony of the testimony of the prosecutrix can be relied upon to establish the guilt of the accused, however at the same time, such testimony should be of sterling quality consistent with other prosecution evidence leaving no shadow of doubt over its veracity. [***State v. Wasim*, 2017 SCC OnLine Del 8502** (paragraphs 19-21), ***Sudhanshu Sekhar Sahoo v. State of Orissa*, (2002) 10 SCC 743** (paragraph 18), ***Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130** (paragraphs 24 and 31) and ***State (Govt of NCT of Delhi) v. Jitender Kumar & Anr.*, 2017 SCC OnLine Del 9195** (paragraphs 28-32)].
14. The test of sterling quality was laid by the Apex Court in ***Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21** as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre 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 howsoever 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 every one 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 such similar tests to be applied, can it 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.”

(Emphasis Supplied)

15. In the present case, the testimonies of the victims, i.e. ‘G’ (PW-7) and ‘S’ (PW-8), was found to be plagued with contradictions and also inconsistent with other prosecution evidence on record. We deem it appropriate to extract the judgment of the Trial Court in extenso in this regard:

“8. The allegations appearing against the accused are that he had sexually assaulted both the daughters of the complainant, who were then aged about 7 year and 4 year respectively. However, the manner in which he had committed the act had been differently stated by both the victims and even the complainant to whom they reported the incident.

9. In her complaint Ex.PW6/A, the complainant stated that on 15.02.2015 when she returned back from her work, her younger daughter, victim 'G' told her that the accused had taken off her clothes and did wrong act with her and he had also inserted his urinating organ into the urinating part of her

younger sister, victim 'S' after applying his saliva. She further alleged that she then went to the house of the accused but could not find him and again on 16.02.2015, she kept searching for the accused for the entire day but could not find him. Again, on 17.02.2015, when she returned from her work and went to search the accused at his house, she found him there and when she confronted the accused about the incident, he started yelling at her and then she called the police.

...

11. In her deposition before the Court, PW-6 deposed that on 15.02.2015, when she returned from her work at 5.00pm, her elder daughter, victim 'G' informed her that the accused came to their house, took off her clothes, put saliva on her private parts of urination and thereafter, he put his male organ in her private part. She further deposed that both her daughters informed her that accused had put his hand in the mouth of her younger daughter victim 'S' and threatened her not to raise alarm. She also deposed that when she came out of her room, her neighbours also informed her that the accused had come to her room under influence of liquor and had committed the incident. Thus, she never deposed before the Court that the accused had also sexually assaulted the younger victim 'S'. According to her, she was also informed by her neighbours about the incident which fact was never stated by her in her complaint Ex.PW6/A. It also means that her neighbours had witnessed the incident, but none of the neighbours were examined during the investigation nor their statements were recorded nor they were cited as witnesses in this case. In her cross examination, she deposed that about 15-20 public persons had gathered, who had informed her about the incident when she had returned from work on the day of incident but she was unable to disclose the name of any of them. She also deposed that she had searched for the accused for three-four days after the incident. She was confronted with her previous statement Ex.PW6/A when she deposed that she had informed the fact to the police about the neighbours having informed her about the incident. Thus, she had deviated from her previous statement and had also put up a new case.

12. Similarly, there are contradictions in the deposition of the two victims regarding the incident though they both were allegedly present at the same time and at the same place when the incident took place. PW-7 victim 'G' deposed that on the

day of incident, the accused came to their house at about 8.00pm. This time is contrary to the deposition of PW-6 who had deposed that when she returned from work at 5.00pm, the incident had already taken place. Thus, there is a clear contradiction regarding the time of incident. PW-7 further deposed that the accused knocked at the door and when she opened it, he came inside and bolted it from inside. She further deposed that the accused then caught her, took off her underwear and then tried to insert his urinating organ into her urinating part; that when she felt pain and cried, the accused caught her younger sister and repeated the same act with her, who also cried. She further deposed that on hearing their cries, her maternal grandmother, who resided on the upper floor came down, broke open the door with a danda and when she saw the acts of the accused, she gave beatings to him but the accused freed himself and ran away. According to PW-7, the accused was caught by the police on the same day. In her cross-examination, she deposed the name of her grandmother as Smt. Simpi. She also deposed that she never visited the police station. In her further cross-examination, she deposed that the accused was wearing clothes when she came to their house on that day and was also wearing clothes when her grandmother came to their house.

13. This deposition is quite contrary to the statement made by her under Section 164 CrPC, Ex.PW7/A wherein she stated that while she was lying in her house, the accused came, closed the gate from inside and asked her younger sister victim 'S' to go out but she did not and then he gave beatings to her. Thereafter, the accused told PW-7 that your mother would make you a prostitute and that she should go with him and he would buy her good clothes but she refused and thereafter, accused put saliva and had intercourse with her. She further stated that the accused was beaten by her maternal grandparents. Thus, she made clear improvements in her deposition before the Court wherein she also alleged that the accused committed sexual act with her younger sister. In her statement Ex.PW7/A, she stated that the accused came inside while she was lying, meaning thereby that the gate was open while in her deposition she deposed that the accused knocked at the door and she answered the call. In Ex.PW7/A, she stated that the accused had told her that her mother wanted to make her a prostitute and that she should go with him while these

things were not deposed by the victim in her deposition in the Court. She had deposed in the Court that her maternal grandmother came and broke the door with the danda and gave beatings to the accused while in her previous statement, Ex.PW7/A she named both her maternal grandparents stating that they had given beatings to the accused. It is worthwhile to mention that the maternal grandparents of the victims were never mentioned by the complainant in her complaint nor they were examined during the investigation nor their names and particulars were revealed nor they were cited as witnesses although according to the testimony of PW-7 and her statement Ex.PW7/A, they become vital witnesses or rather eye-witnesses.

14. Similarly, the younger victim 'S', PW-8 made further contradictions not only to her previous statement but to the version of PW-7. In her statement under Section 164 CrPC, Ex.PW8/A she stated that accused came under intoxication and asked for her mother on which she asked him to go but he sat in the house, forced her out of the house and closed the door while her sister, PW-7 was inside. Thereafter, the accused had intercourse with PW-7 after putting saliva. She also stated that the accused did similar acts with her. She also stated that the incident was seen by their aunt i.e. mother of Khushbu.

15. In her deposition before the Court, she deposed that on the day of incident, she was alone with her elder sister as her mother had gone for her duty, again contrary to the version of PW-7, who deposed that her mother had gone to the market at that time as it was 8.00pm. She further deposed that the accused came inside on false pretext and bolted the door from inside and did 'Gandi Cheez' with her and her sister. She further stated that she had not seen the act with her sister as she had laid down after taking over a blanket as she was frightened. She also deposed that her maternal grandparents had seen the acts of the accused from the window and they came inside when she opened the door and gave beatings to the accused. Thus, according to her she had not seen the acts of the accused as she had taken over the blanket and laid down. If that is so, how could she depose what the accused did with her sister. She never deposed that the accused asked her to go out of house as deposed by PW-7. She also introduced the presence of her maternal grandparents who, as observed

above, have never been cited or mentioned in the entire investigation. However, the manner of their alleged entry by the two victims has been deposed differently.”

16. In view of the foregoing, the testimonies of the prosecutrices could, by no means, be called to be of a sterling quality and hence, supporting evidence was required. Now the younger victim was never subjected to medical examination for reasons best known to the prosecution. Further, nothing came in the medical examination of victim ‘G’, even though she had alleged that the respondent had attempted to insert his male organ into her urinating part. The gynecological examination report (Ex.PW11/B) does not show any marks of injury, bleeding or discharge on her private parts and her hymen was also not torn. We have already held in ***State v. Kishan Lal, 2017 SCC OnLine Del 9337*** (paragraph 31) that even though rupturing of hymen is not necessary in all cases, but no support can be drawn from such medical evidence. Similarly, the DNA fingerprinting report also exonerates the respondent as no traces of semen or blood were found from the exhibits taken from victim ‘G’.
17. To conclude, the ocular evidence could not have been solely relied upon and in the absence of any support from the medical or forensic evidence, the Trial Court rightly acquitted the respondent.
18. We proceed to analyse the second limb of the argument of Mr.Katyal pertaining to the *ante dating* and delay in lodging the FIR. The complainant (PW-6) had stated in her cross-examination that she found the respondent/accused in his room at about 4-5 PM and made a call to PCR. Two policemen came after 15-20 minutes and within 15 minutes they reached the police station. Allowing for all variations, they must have reached the police station latest by 5:35 PM. On the other hand, the investigating officer (PW-10) deposed that he received

a call at 9 PM; he then brought the complainant and the respondent to the police station, called the counsellor and after counselling, recorded the statement of the complainant on which she prepared the *rukka* and gave it to the duty officer. The whole process must have taken at least an hour. This is in divergence from the testimony of the duty officer (PW-1), who deposed that he had received the *rukka* at 9 PM. This clearly raised a doubt as to the veracity of the statements of both the complainant (PW-6) and the duty officer (PW-1) and thus, there was clearly a possibility of the FIR being *ante dated*.

19. Similarly, the delay in registration of the FIR was explained by the complainant (PW-6) as that she was searching for the accused/respondent on her own volition for two days. We find no merit in the explanation. There was no reason for a mother of two daughters to have searched for the accused for two days prior to approaching the authorities. No purpose would have been served by such an exercise. The explanation is unbelievable and thus, the delay remains unexplained. This coupled with the possibility of the *ante dating* of the FIR, raises a serious doubt on the case of the prosecution. Accordingly, we find no infirmity in the judgment of the Trial Court on this count as well.
20. 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); *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)].

21. Accordingly, we find no ground to interfere in the judgment of the Trial Court.
22. We notice that the respondent had furnished bail bond with one surety under Section 437-A for a period of six months from 15.10.2016. The bail bond and the surety under Section 437-A Cr.P.C. are discharged if not already expired/discharged.
23. The leave to appeal is dismissed.

G. S. SISTANI, J.

CHANDER SHEKHAR, J.

JULY 31, 2017

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