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

+ **Crl. L.P.556/2017**

% Date of Decision: 20th September, 2017

STATE Petitioner

Through Mr. Rajat Katyal, APP

Versus

SACHIN Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

CRL.M.A. 15771/2017(exemption)

1. Allowed, subject to all just exceptions.

CRL.M.A. 15770/2017(delay)

2. For the reasons stated in the application, delay of 71 days in filing of the petition is condoned.

3. The application stands disposed of.

Crl. L.P.556/2017

4. The present leave to appeal has been filed by the State under Section 378(1) of the Code of Criminal Procedure, 1973 (Cr.PC) against the judgment dated 16.03.2017 by the Court of Additional Session Judge-01 &

Special Judge Shahdara District, Karkardooma Courts, Delhi in SC No. 224/16, titled State Vs. Sachin under Sections 376(2)/506 Indian Penal Code (IPC), 1860 and Section 4 of the POCSO Act, whereby the accused Sachin was acquitted of the charges framed against him.

5. The case of the prosecution, as noticed by the Trial Court, is that, on 28.04.2013, the complainant/victim girl, aged 13 years alongwith her mother Smt. Sapna came at PS Jyoti Nagar and gave a written complaint to SI Gunjan regarding commission of rape upon her by accused Sachin. In her complaint addressed to SHO, PS Jyoti Nagar, Complainant/Prosecutrix stated as follows:

“I am a student of class 6th. My father is a Mistry and my mother works in a factory. We are six brothers and sisters. A boy namely Sachin resides in the neighborhood who had been talking to me for last on month and used to say that he loves me. On 22.04.2013, Sachin came to her house when I was alone as my parents had gone for work and my brothers-sisters were in school and at that time, Sachin removed my Salwar and Kachchi (underwear) too and by pressing my mouth, he raped me and by showing a knife, threatened to kill me if I disclosed the incident to anyone. Since I was scared, I did not tell about this incident to anyone. On 27.04.2003 at about 12.40 p.m., outside my school, he again threatened me but after coming home, I disclosed the whole incident to my mother. Yesterday, we had gone at PS Gokalpuri but at that time I did not disclose the incident of rape and made complaint regarding chhedchhad only. In the morning, I disclosed the incident of rap to my mother who took me to PS Jyoti Nagar. I am giving my complaint to SI Gunjan in the presence of Smt. Dinesh Panchal, NGO Disha Jan

Kalyan, Sachin has raped me, legal action be taken against him.”

6. On the basis of the written complaint of the victim charges for the offences under Sections 376(2)/506 IPC and under Section 4 POSCO Act was registered against the accused to which he pleaded not guilty. To bring home the guilt of the accused herein, the prosecution examined as many as 14 witnesses. The statement of the accused was recorded under Section 313 Cr.PC where he pleaded false implication.

7. We have heard learned APP for the State and have carefully examined the record of the Trial Court.

8. Learned APP for the State has submitted that the learned Trial Court has failed to take into consideration the evidence in its correct perspective and the impugned judgment is based on conjectures and surmises and is also against the facts as well as the law. The learned APP has also submitted that the learned Trial Court has failed to appreciate that the testimony of PW-3, victim, is consistent with her statement recorded under Section 164 Cr. PC and also to the statement given to PW-6, Dr. Tarun Bansal, who conducted her medical examination on 29.04.2013. It is also argued that the learned Trial Court erred in observing that the victim, in her statement given to the police, had stated that she was unable to recall the exact date on which the respondent had committed rape on her. However, it is argued that the act of commission of rape was 5-6 days before 28.4.2013. The testimony of the victim must be appreciated in the background of the

entire case and if for some reason, the Court finds it difficult to place implicit reliance, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. Learned APP also submitted that the victim had duly explained the reasons for not disclosing the present incident at the time of the first instance, i.e., lodging of the FIR. She had stated that she was scared of the threats given by the respondent that he would kill her if she would tell anyone about the incident. Thus, she did not disclose the incident at the first instance.

9. In this case, on consideration of the evidence, the material placed on record, and after considering the arguments advanced, we have found the following circumstances relied upon by the Trial Court to acquit the accused:-

- (a) Accused deposed that his brother-in-law Sunil Kumar was running a mobile shop and a quarrel had taken place between his brother and the father of the victim on 27.04.2013, due to which he had been falsely implicated.
- (b) Victim had falsely implicated the accused in another case FIR NO. 172/13 u/s 341/452/376 IPC and 4/8 POCSO Act, in which he was acquitted vide judgment dated 30.09.2016.
- (c) The Victim had deposed that she had not gone to school on 22.04.2013, however, her school attendance register showed that she was present in school on 22.04.2013.
- (d) The Victim also deposed that on 27.04.2013 she was eve-teased, however, the attendance register showed that she was absent on 27.04.2013 from school.

(e) The MLC and FSL report also does not support the case of the Victim.

(f) The said incident took place on 22.04.2013, she had all the opportunity to disclose the same to the police/family, however she did not raise any alarm when the incident took place.

10. On perusal of testimony of PW-3 victim, it is seen that on 27.04.2013, victim alongwith her parents had gone to PS Gokalpuri and got registered a case against the same accused Sachin vide FIR No. 172/13, wherein she did not utter a single word, regarding the incident of rape dated 22.04.2013 allegedly committed by the same accused, either to her parents or to the police, on the basis of which, the present case has been registered. It is also seen that from 23.04.2013 till 27.04.2013, PW-3 victim had attended her school but did not disclose the incident of rape, either to her classmates or to any school teacher. The victim had deposed that she had not gone to school on 22.04.2013 i.e., the day of the incident but in her cross-examination her attendance register of her school showing her to be present in the school on 22.04.2013, she had no answer to the same, which proves the fact that PW-3 victim had made false statement. She further deposed that on 27.04.2013 when the incident of eve-teasing happened, she was going back from her school but her attendance register showed that she was absent on the very same day.

11. The FSL report also does not support the allegations of the victim, and goes in favour of the accused thereby creating doubt on the story of the prosecution. There is nothing in the MLC of the victim to corroborate the

commission of alleged rape as the opinion was taken after seven days of the alleged rape. The victim, in her complaint dated 27.04.2013, stated that, at about 12.40 p.m., the accused came outside her school and threatened her and in her examination-in chief, she deposed that when she was going to her school on 27.04.2013, the accused met her on the way at petrol pump near her school and threatened her, and in her cross-examination she again changed her version that the time of incident on 27.04.2013 was after 12.40 noon when the school was over, which clearly demonstrates that the victim has deposed falsely about the place of alleged threat.

12. In **Appabhai And Anr. Vs State of Gujarat, AIR 1988 SC 696**, the Supreme Court held that “The Court, however, must bear in mind that witnesses to a serious crime may not react in a normal manner, nor do they react uniformly. The horror stricken witnesses at a dastardly crime or an act of egregious nature may react differently. Their course of conduct may not be of ordinary type in the normal circumstances. The Court, therefore, cannot reject their evidence merely because they have behaved or reacted in an unusual manner”.

13. However, the Supreme Court, in the matter of **Suraj Mal Vs. The State, AIR 1979 SC 1408**, has held that “where witness make two inconsistent statements in their evidence either at one stage or at two stages, the testimony of such witness becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witness”.

14. The Supreme Court, in the matter of **Govindraju @ Govinda vs. State, 2012 (3) JCC 1714**, has observed that “the golden thread which runs through cases in that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted”.

15. There are various unexplained contradictions, inconsistencies and discrepancies in the prosecution’s evidence, which the prosecution has failed to explain, which factually strike at the very root of the prosecutions story and cannot be ignored. There are also contradictions regarding the time of the incident. The MLC or the FSL report does not support the case of the prosecution. There is nothing on record that the victim, at the time of the alleged offence, raised any alarm. The testimonies of the prosecutrix and the other witnesses have failed to inspire confidence and are on the whole improbable. Hence, in the absence of any corroboration of medical or forensic evidence, in our view, the learned Trial Court has correctly held that the prosecution has failed to prove its case against the accused beyond reasonable doubt and accordingly acquitted the respondent of the offences charged against him. In view of the law laid down in the matter of **Suraj Mal Vs. The State** (supra) as well as taking into consideration the ratio of the judgment in the matter of **Govindraju @ Govinda vs. State** (supra), wherein it is held that if two views are possible on the evidence adduced in a case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted, hence, we do not find any flaw or infirmity in the judgment of the Trial Court.

16. 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 (paragraphs 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 420; **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)].

17. Accordingly, we find no ground to interfere in the judgment dated 16.03.2017 of the Trial Court. The personal bonds and the sureties under Section 437-A Cr.PC are discharged.

18. The leave to appeal is dismissed.

CHANDER SHEKHAR, J

G.S.SISTANI, J

SEPTEMBER 20, 2017