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

+ **Crl. L.P.512/2017**

% Date of Decision: 6th September, 2017

STATE Petitioner

Through Mr. Avi Singh, ASC with Ms. Anaya
Singh, Advocate

Versus

ANAND KUMAR JHA Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE G. S. SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J. (ORAL)

CRL.M.A. 14642/2017(delay)

1. For the reasons stated in the application, delay of 99 days in filing of the petition is condoned.
2. The application stands disposed of.

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3. The petitioner, by way of this petition, is seeking leave to appeal against the impugned judgment of acquittal dated 21.02.2017 passed by Learned Additional Session Judge, Karkardooma Court, New Delhi in Sessions Case No. 44573/2015 arising out of FIR

No.22/2011 under Sections 376 IPC and 6 of POCSO Act registered at Police Station Khajuri Khas.

4. The case of the prosecution as noticed by the Trial Court is that on 05.01.2015 PW-7 Yasmeen, mother of the victim made a complaint to the police that she had been residing in a rented house with her husband and children. She was a housewife and her husband Rahis used to work as a labourer. On 02.01.2015, her daughter, the victim aged about 6 years, student of class first, was playing outside the house at 06:00 p.m. After playing the victim returned to her house and at that time she was having a packet of *namkeen* in her hand. When PW-7 complainant asked the victim about the packet the victim told her that it was given to her by one uncle, namely Anand Jha, the respondent and that he had taken her to a distant place where lot of vehicles were parked. There he took off victim's *pajami*, laid over her, he put off his pant and touched his urinating organ onto victim's urinating part. PW-7 further stated that she told all these facts to her husband. Thereafter, they started keeping eye upon the victim, whenever she used to play so that the respondent Anand Jha could be caught red-handed as he tries to coax and take away the victim again on the pretext of getting her *namkeen*, for committing wrong acts with her. PW-7 further stated that on 05.01.2015, at about 06:30 p.m., when the victim was playing in the *gali*, respondent came to her, caught her hand and tried to take her away. She informed her brother-in-law (PW-14) Ashu Qureshi, who chased the respondent and almost caught him before the respondent managed

to escape and that the victim informed her that he was the same Anand uncle, who had committed the above acts with her three days ago.

5. After registration of the complaint the respondent was apprehended.
6. By the order dated 31.03.2015, the Trial Court framed charges under Section 376 IPC and Section 6 of the POCSO Act against the respondent. The prosecution in order to prove its case examined 15 witnesses. The respondent herein did not lead any defence evidence. The statement of the respondent was recorded under Section 313 Cr.P.C. whereby he pleaded not guilty.
7. Learned ASC for the State submitted that the Trial Court has committed an error while acquitting the respondent and it failed to take into consideration, the age of the child-victim. The Trial Court has also failed to take into consideration that the statement of the victim is corroborated by the mother in her statements, both under Section 161 Cr.P.C. as well as Section 164 Cr.P.C. recorded before the Magistrate. However, no submission has been made with regard to the Trial Court's observation that the father of the victim has not been examined during the investigation as well as during the trial, despite having knowledge of the said incident.
8. It is further submitted by the learned ASC for the State that the Trial Court has failed to take into consideration the explanation for the delay in lodging of FIR on 05.01.2015 while the incident had taken place on 02.01.2015; that there is a gap between the date of the

incident and the date of lodging of the FIR because the parents wanted to nab the accused red handed.

9. Learned ASC for the State also submitted that a conviction in rape case can be made on the basis of sole testimony of the victim without any corroboration though, in this case, the statement of the victim was corroborated by her mother and all the facts on record prove the case of the prosecution beyond any doubt.
10. Now, let us examine the contentions raised by the learned ASC for the State in the light of evidence on record. The FIR Ex. PW-6/A was registered on the complaint of the PW-7, mother of the victim. She specifically named the respondent while providing other details of the incident. However, in her deposition before the Court, PW-7 did not name the respondent while submitting the facts as told to her by the victim regarding the alleged acts of the respondent. She has further testified that the respondent again tried to take away the victim on 05.01.2015 but he was followed by PW-14 Ashu Quareshi, uncle (*mausa*) of the victim and was caught by him before the respondent somehow managed to run away. However, they followed the respondent and reached his house. She called the PCR and then complaint vide Ex. PW-6/A was recorded in the Police Station. It is evident from the testimony of PW-7, mother of the victim that she had not named the respondent and it implies that the mother of the victim was not aware about the name of the respondent till that time. However, she identified the respondent in the Court and then deposed she came to know the name of the respondent in the Police Station

where he was brought and arrested in this case. She clarified in her cross examination that she did not know the name of the respondent till her statement was recorded in the Police Station and further she came to know the name of the respondent in the Police Station when he was brought there, which means that she did not know the name of the respondent when she gave her complaint to the PW-6 Lady Constable Sharmila. Whereas, the name of the respondent finds mentioned in her complaint Ex.PW-6/A which implies that the respondent was firstly apprehended only then complaint Ex.PW-6/A was written or that name of the respondent was already known to the mother of the victim. PW-8 HC Rajesh also deposed that the complainant disclosed the name of the respondent when he first met her, again contrary to the version of PW-7.

11. In the MLC of the victim Ex. PW-5/A, in the alleged history, which was narrated by the PW-7 complainant, the name of the respondent was not mentioned. The victim was taken to medical examination on 05.01.2015 and she was examined on 06.01.2015 at about 03:05 a.m. PW-5 the doctor who had prepared the MLC submitted in her cross examination that alleged history was given by the mother of the victim but the name of the respondent is not recorded therein and that she had verified the facts from the victim as well. PW-5 further deposed that the name of the respondent was not disclosed by the mother of the victim despite her asking about the same.
12. It has come on record that incident took place on 02.01.2015 and the victim disclosed about it to her mother PW-7 on the same night.

However, she did not inform the Police; explanation is that, she waited to catch the respondent red handed till 05.01.2015. It is alleged against the respondent that he tried to take away the victim once again.

13. The father of victim has not been examined though in the complaint Ex-6/A, the complainant submitted that she had disclosed about the incident to her husband and then they both started keeping an eye on the victim. However, the father as noted above has not been examined by the prosecution.
14. The complainant named the respondent in her complaint Ex.PW-6/A wherein the name of the respondent finds mentioned. However, according to PW-14 Ashu Quareshee uncle (*mausa*) of the victim, he specifically admitted the fact that the victim did not know the name of the respondent, prior to 05.01.2015 which is contrary to the victim naming the respondent in her statement under Section 161 Cr.P.C. recorded on 05.01.2015. If the complainant was not aware about the name of the respondent till he was arrested, as observed by the Trial Court, it cannot be expected by the victim who was then about six years old to know about the name of the respondent. It certainly suggests that the victim was tutored regarding the name of the respondent as well as his identity. The arrest of the respondent as held is highly doubtful and we do agree with the finding of the Trial Court as held as under:-

“16.....According to PW-7 the accused was brought at the police station on 05.01.2015 itself after about 30 minutes of recording of her statement. According to PW-11 Ct. Suraj Pal, PW-12 IO and PW-14 Ashu Qureshi, the accused was arrested on 06.01.2015, PW-12 deposed that on 06.01.2015 at about 07:00 p.m., information was given by PW-14 Ashu Qureshi about the presence of accused in his house and thereafter, he was arrested from there and on apprehension disclosed his name as Anand Kumar Jha. The arrest memo of the accused, Ex. PW-11/A also mentions his date of arrest as 06.01.2015 and time as 08:00 p.m. If the testimony of PW-7 is to be believed, the accused was apprehended on 05.01.2015 and therefore, all his arrest documents have been planted and ante-dated. Thus, there is serious doubt regarding the identity of the accused and it is apparent that he has been planted after due deliberations and after making preparations for it or in the alternative all the documents are ante-dated timed and therefore cannot be relied upon.”

15. We also find that the site plan of the incident Ex.PW-12/B which was prepared by the Investigating Officer does not bear the signature of the complainant, despite being prepared at her instance. In this regard, the Investigating Officer deposed that he had prepared the site plan at the instance of the mother of the victim but on the other hand PW-7 the mother of the victim, in her cross examination stated that she had not visited the place of the incident but later on she had shown the said place to the Police. If the mother had not visited the said place, then there was no question to point out the same to the Police. In the manner, the site plan has been prepared, the observation of the Trial Court is correct that it was hit by the provisions of Section 162 of the Cr.P.C. The place of incident is also

not properly identified during the trial as firstly, the victim deposed that the respondent took her to a place where many vehicles were parked where he committed the alleged act inside a 'gaadi' (car). The victim did not specifically state the place either in her statement under Section 161 or 164 of Cr.P.C. There is nothing on record to suggest that the victim led either the complainant or the Police to the said place. As already observed hereinabove, PW-7 victim's mother deposed that she had not visited the place of incident after the victim told her about it. If the testimony of the victim is to be believed, the place of incident was a car parking. However, the site plan Ex.PW-12/A depicts the place of incident to be Gali No.5, A-Block, Sonia Vihar, no such parking place has been shown therein. On the contrary, PW-8 HC Rajesh who was the first to reach the spot deposed that the complainant had pointed out to the room where the alleged incident took place and which was inspected by PW-12 Investigating Officer. Thus, according to him the incident took place in a room, contrary to the version of the victim. However, PW-12 never deposed about any room as the place of the incident. He also deposed that the respondent had led to the place of incident and pointed it out, upon which he prepared the pointing out memo. However, in the cross examination, the IO admitted that the said pointing out memo was never enclosed with the report under Section 173 Cr.P.C. Thus, the place of the incident itself could not be identified and is totally unknown.

16. The respondent had taken a defence that no such incident ever took place on 02.01.2015 and he had been falsely implicated in this case. In his examination, under Section 313 Cr.P.C., he took the plea that on 02.01.2015 at about 02:00 p.m., he was carrying household articles in his rickshaw on which the mother of the victim was sitting and when he reached in the *gali*, children were playing there including the victim and cautioned them by ringing the bell of the rickshaw but accidentally victim sustained some injuries on which a quarrel took place between him and the family members of the victim. Though, some neighbours tried to pacify the matter, the victim's mother lodged a false complaint against him after three days. The appreciation of the evidence as aforesaid and the lacunae appearing in the prosecution case makes the story of the respondent quite plausible. It is also gathered from his statement that some public persons had also witnessed the incident i.e. the alleged quarrel between him and victim's mother as stated by the respondent. In this regard, PW-12 in his cross examination deposed that he had made inquiries from the neighbours but none of them gave any statement regarding the incident. He also deposed that the neighbours had disclosed that they had no knowledge about the alleged incident.
17. The victim has made specific allegations against the respondent and maintained her version before the Court as stated in her statement under Section 164 Cr.P.C. alleging that the respondent took her to a place where he had put off her *pajami*, rubbed himself against her and then threw the seminal discharge. PW-3, the victim, deposed in

the Court that one boy gave her *namkeen* and took her to a place where many vehicles were parked, made her sit there, took off her *pajami* and also his pant half down. She has further deposed that he made her stand, hugged her, touched his male organ to her private parts and then took out mucus from his male organ and threw it away. A close scrutiny of her deposition, as held by the learned Trial Court, would show that the positions, in which she and the respondent were, are not compatible. Firstly, she deposed that the respondent made her sit and took her *pajami* and then put his pant off half down when they were inside a car. She then deposed that the respondent made her stand while he himself was sitting and then he hugged her and touched his male organ with her private parts, which is not reconcilable.

18. The case of the prosecution further stands weakened as the mother of the victim refused for the internal medical examination of the victim and no external injuries were found. Since there were no external injuries, MLC is also of no help.
19. The husband of the complainant despite being informed regarding the incident on 02.01.2015 was not examined by the prosecution. Time of arrest of the respondent is also doubtful. Site plan is unreliable. Place of incident is also doubtful as discussed herein above. The discussions also demonstrate that there was prior knowledge regarding the name of the respondent and that is evident from the consistent testimonies of PW-5, PW-6 and PW-7. There is contradiction regarding time of arrest of the respondent, in view of

the testimonies given by PW-7, PW-11, PW-12 and PW-14. PW-3 stated that incident took place in the 'gaadi' (car) whereas PW-18 deposed that PW-7 pointed out a room in Gali No.5, A-Block, Sonia Vihar. According to the statement of the respondent recorded under Section 313 Cr.P.C., the quarrel had taken place between him and the family members of the victim on the ground that respondent was riding a Rickshaw and victim along with other children was playing in the gali and the respondent ringed the bell but somehow the victim sustained some injuries on which quarrel took place and that is why the mother of the victim falsely implicated the respondent.

20. In the light of the above discussions, we hold that the prosecution has failed to prove its case beyond any shadow of doubt against the respondent and we are in agreement with the conclusion arrived at by the learned Trial Court, consequently the leave to appeal is held to be devoid of any merit.
21. 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)].

22. 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.
23. The leave to appeal is dismissed.

**(CHANDER SHEKHAR)
JUDGE**

**(G. S. SISTANI)
JUDGE**

September 06, 2017/b

