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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 61/2019 & CrI. M. A.1090/2019**
STATE

..... Petitioner

Through: Ms.Aashaa Tiwari, APP for State.
SI. Rajender Singh, P. S. Malviya
Nagar.

versus

MANOJ

..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

18.01.2019

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1. The present petition has been preferred by the State against the judgement dated 25th September, 2018 passed by the learned Addl. Sessions Judge (Special Court, POCSO), acquitting the respondent for the offence under Section 376 IPC in CIS-SC No. 7015/2016, arising out of FIR No.522/2012, P.S. Malviya Nagar, Delhi.

2. The case as set out by the prosecution is that the accused had raped the prosecutrix sometime in March, 2012 when she was 16 years and 3 months old, but her parents came to know that she was pregnant only in December, 2012 when they approached the AIIMS hospital duly accompanied by the IO and the prosecutrix was medically examined. The accused was known to the prosecutrix as he was residing in the same

neighbourhood since childhood and they were both friends. It was the version of the respondent that he had not committed any sexual assault on the prosecutrix and that both of them were friends and were going around together. In his statement recorded under Section 313 Cr.PC, the respondent had clarified that he used to accompany the prosecutrix daily from her tuition at Savitri Nagar, to Panchsheel park. On the date of the incident, before he had dropped her at her house, they had sexual intercourse. But she did not make any complaint in this regard.

3. While rejecting the case of the prosecution, the Trial Court has observed that the prosecutrix had taken contradictory stands and improved the statements made by her as recorded under Section 164 Cr.PC and as also in the examination-in-chief conducted before the Court. This has been recorded in para-44 of the impugned judgment. We may state that in her testimony, the prosecutrix had stated that she had resumed normal talks with the accused after some days of the incident and there was no further physical relationship between the parties. This conduct is quite unnatural and lends credence to the defence taken by the respondent. The prosecutrix was aware of the aftermath of entering into relationship with the accused and had deliberately withheld these facts from her parents, to avoid a show down. The Trial Court has also observed that there was an unreasonable delay in lodging the FIR even after the periods of the prosecutrix had stopped. She had admitted in her testimony that she felt foetal movement in her body. The other circumstance which persuaded the Trial Court to acquit the accused of the offence have been set out in paras 42 & 43 of the impugned judgment which takes note of the fact that the prosecutrix had gone to the place of the

incident with the respondent, of her own free will. After they had established a physical relationship, the prosecutrix had continued with her interaction with the respondent within a few days of the incident. It was only when she did not get medical treatment that the matter was reported by her parents to the Police and the respondent was implicated in the case. Thus, the respondent was able to satisfactorily dispel the presumption under Section 114A of the Evidence Act and prove that there was a consensual sexual relationship between him and the prosecutrix.

4. The burden of proving its case beyond reasonable doubt lies on the prosecution. Reliance is placed on *Harbeer Singh vs. Sheeshpal* (2016) 16 SCC 418. It is a well settled law that the appellate court may interfere against a judgment on acquittal only when there are substantial and compelling reasons to do so. Reliance is placed on *Chandrappa vs. State of Karnataka* (2007) 4 SCC 415 and *Muralidhar vs. State of Karnataka* (2014) 5 SCC 730.

5. Having gone through the testimonies of the witnesses and on examining the impugned judgment, we do not find any illegality, perversity or infirmity therein for interference. We decline to grant leave to the State. The present petition is accordingly dismissed along with the pending application.

HIMA KOHLI, J

MANOJ KUMAR OHRI, J

JANUARY 18, 2019/j/dc
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