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

+ CRL.L.P. 552/2019

STATE

..... Petitioner

Through Ms.Aashaa Tiwari, APP for the State  
with SI Satish Kumar, PS Sarita  
Vihar.

versus

RAVI KUMAR & ANR.

..... Respondents

Through None

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Date of Decision: 11<sup>th</sup> October, 2019

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

### **J U D G M E N T**

**MANMOHAN, J (Oral):**

**Crl.M.A.No.37781/2019**

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**Crl.M.A.No.37782/2019**

Keeping in view the averments in the application, the same is allowed and the delay of 28 days in filing the present leave petition is condoned.

Accordingly, the application stands disposed of.

**Crl.L.P.No.552/2019**

1. Present Criminal Leave Petition has been filed on behalf of the State challenging the judgment and order of acquittal dated 29<sup>th</sup> May, 2019 passed by the Additional Sessions Judge – Special Fast Track Court, South East District, Saket Court, New Delhi in FIR No.363/2016 registered with Police Station Sarita Vihar, Delhi.

2. The Trial Court in the impugned judgment while acquitting respondent-accused No.1 under Sections 376/342/506/34 IPC and respondent-accused No. 2 under Sections 376/342/34 IPC has held as under:-

*“ 38. PW 10 Ms. Nisha Khurana is an independent public witness who has not supported the version of the prosecutrix in any manner. She was the first person to whom the prosecutrix has narrated the incident of rape because as per the testimony of the victim. Prosecutrix did not narrate the incident of rape to her mother or family members on the date of incident and narrated the incident to her employer Ms. Nisha Khurana for the first time on the next day of incident. **Ms.Nisha Khurana had not supported her and rather deposed that the prosecutrix and the accused had married each other on 15.3.2016 as informed by the prosecutrix to her. ....** At this juncture, it is necessary to refer to the complaint marked PW1/X made by prosecutrix in the police station prior to present FIR. Though, this complaint was not admitted by prosecutrix to be made by her but she has admitted her signatures on the same in the cross examination and stated that her signatures were obtained by Rakesh on the same. It is not her statement that the contents of the same are false or she was made to sign the same forcibly by police nor she made any complaint alleging that her signatures on Mark PW1/X were obtained by Rakesh forcibly. On the other hand, the making of this complaint is proved by PW8 SI Rakesh who stated that on 05.07.2016 when he was posted as SI at PS Sarita Vihar the complaint marked PW1/X was assigned to him and during enquiry it came out that the family members of the prosecutrix and the accused*

*Ravi were talking to each other regarding settlement and during enquiry it was also told to him by the prosecutrix that she wants to go to her matrimonial house but the parents of the accused Ravi were not accepting her and so he filed the complaint in view of the compromise talks. Hence, PW8, own witness of prosecution, proves the filing of this complaint in the police station and the contents of this complaint are in consonance with the statement of PW Ms. Nisha Khurana on the point that the accused Ravi and the prosecutrix had married each other in Kalkaji Mandir. In this complaint the prosecutrix has admitted to be making relations with the accused like husband and wife and stated that his family members were not accepting her as it is stated by SI Rakesh/PW8 in his statement before the court. Hence, this witness of the prosecution is deposing in contradiction to the testimony of the prosecutrix.*

*39. The other material witness examined by the prosecution is the mother of the prosecutrix. She has also turned hostile and has not supported the case of the prosecution. She denied that her daughter told her on 16.04.2016 that the accused had taken her on 15.04.2016 to the house of his friend Rahul where Rahul bolted the door from outside and Ravi Committed sexual intercourse with her forcibly. .... She has also deposed and confirmed about the talks of marriage between the families of the accused and the prosecutrix. .... She also stated that her daughter and accused used to talk to each other. Hence, the testimony of the mother of the prosecutrix also does not support the prosecution story.*

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*43. So far as defence of the accused Ravi is concerned, he has admitted to be in relationship with prosecutrix for last 4 years. He has produced aunt of prosecutrix in his defence who also stated that prosecutrix also disclosed to her that she and accused married at Kalkaji Mandir. Later she informed her about the refusal of accused Ravi to reside with her.....*

44. *The incident had happened on 15.04.2016 but FIR was registered on 25.07.2016 when the complaint was made on 25.07.2016 by the prosecutrix. There is an inordinate long delay in lodging of the FIR which is inadequately explained by the prosecutrix.....*

*..... There is discrepancy in the statement of the prosecutrix on the point that in her statement Ex. PW 1/A she has stated that she was having acquaintance with the accused since few days whereas in the statement under Section 164 Cr. P.C. she has stated that she knew the accused Ravi for the last 1-1 ½ years.*

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46. *The statement of the prosecutrix does not inspire confidence and the incident does not appear to have happened in the manner it has been narrated by the prosecutrix. Her statement is not of sterling quality. The evidence leads to the irresistible conclusion that the accused Ravi and the prosecutrix were friends and wanted to marry each other.”*

(emphasis supplied)

3. Ms. Aashaa Tiwari, learned APP for State states that the Trial Court erred in coming to the conclusion that no reasonable explanation was given by the prosecutrix for the delay in filing the FIR. She submits that the Supreme Court has repeatedly held that in such matters, near relations of the prosecutrix take time to decide as to what course of action to adopt and therefore, delay is bound to occur. She relies upon the judgment of Supreme Court in **Satpal Singh vs. State of Haryana, 2010 (7) SCALE 322**.

4. Learned APP for the State states that as per the testimony of the prosecutrix she had told the incident to her employer Nisha Khurana (PW-10) on the next day of the incident and her employer had further told the incident to her mother (PW-2) on the same day.

5. She further states that the Trial Court has failed to appreciate the testimony of the only material witness i.e. the prosecutrix. She submits that the respondent-accused Nos.1 and 2 can be convicted on the basis of sole testimony of the prosecutrix.

6. Having heard learned APP for the State, this Court is of the view that it is essential to first outline the relevant facts.

7. In the present case, on 25<sup>th</sup> July 2016, the prosecutrix made a complaint against respondent-accused Nos. 1 & 2 wherein she alleged that on 15<sup>th</sup> April, 2016, respondent-accused No. 1 had come to her place of work and taken her to a room in Jasola, where respondent-accused No. 2 was already present. She alleged that respondent-accused No.2 had left the room and locked it from outside. Thereafter, respondent-accused No. 1 raped her and took objectionable photos of her while she was confined in that locked room. She had also stated that respondent-accused No. 1 had threatened to release the said photos if she told anyone about the incident. The prosecutrix testified that she had informed her employer Nisha (PW-10) about the incident on the very next day i.e. 15<sup>th</sup> April, 2016.

8. The prosecutrix was medically examined. However, due to the time gap between the incident and the complaint, no medical exhibits were collected. On 26<sup>th</sup> July, 2016, her statement under Section 164 Cr.P.C. was recorded.

9. Perusal of the impugned judgment reveals that two material witnesses to whom the prosecutrix had allegedly told about the incident i.e. her employer Nisha (PW-10) and her mother had turned hostile and had not supported the case of the prosecution. They both denied being informed about the incident of rape as alleged by the prosecutrix. In fact, Nisha (PW-

10) had deposed contrary to the prosecution's case and stated that the prosecutrix had married respondent-accused No. 1 before the alleged incident on 15<sup>th</sup> March, 2016.

10. An aunt of the prosecutrix was produced as a defence witness by respondent-accused No. 1 and she had deposed that the prosecutrix had informed her about her marriage with respondent-accused No.1 and that the respondent-accused No.1 was subsequently refusing to reside with her.

11. The Trial Court has noted that the prosecutrix had filed another complaint prior to the present complaint, which was proved by SI Rakesh (PW-8). The prosecutrix in the said complaint had admitted that she had married respondent-accused No.1 and consensually made physical relations with him. She had also stated that she had filed the said complaint as the parents of the respondent-accused No.1 were not accepting her. During inquiry of the said complaint, it was revealed that families of both the persons i.e. the prosecutrix and the respondent-accused No.1 were discussing a possible settlement. This fact has even been admitted by the mother of the prosecutrix in her deposition.

12. The judgment in *Satpal Singh* (supra) has no application to the present case as the prosecutrix admittedly had consensual physical relationship with the respondent-accused No.1 and even their families were discussing the prospect of their marriage.

13. Consequently, the statement of the prosecutrix is unreliable and there is evidence on record contrary to her statement. This Court is in agreement with the finding of the Trial Court that the prosecutrix has failed to explain why there was an inordinate delay in filing of the FIR and that the prosecutrix and respondent-accused No.1 were friends and wanted to marry

each other. Further, the present complaint/FIR was filed at a belated stage after the relationship had gone sour.

14. Also, the phone of the respondent-accused No. 1 was sent for FSL examination but the result was negative and no obscene photos were recovered. Consequently, the statement of the prosecutrix that respondent-accused No.1 clicked nude photos of her and threatened to release them is not proved. Even the medical evidence in the present case reveals nothing material as there was considerable time lapse between the medical examination and the incident.

15. It is settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. Further, the power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. In similar circumstances, in *State v. Kaishar Ali [CRL.L.P. 188/2018, decided on 30<sup>th</sup> August, 2019]*, we have held as under:-

*“13. The Apex Court in Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450 has held as under:-*

*“69. The following principles emerge from the cases above:*

*1. The appellate court may review the evidence in appeals against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. Its power of reviewing evidence is wide and the appellate court can reappreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law.*

*2. The accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*

***3. Due or proper weight and consideration must be given to the trial court's decision. This is especially true when a witness' credibility is at issue. It is not enough for the High Court to take a different view of the evidence. There must also be substantial and compelling reasons for holding that the trial court was wrong.***

*70. In light of the above, the High Court and other appellate courts should follow the well-settled principles crystallised by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal:*

***1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has “very substantial and compelling reasons” for doing so.***

*A number of instances arise in which the appellate court would have “very substantial and compelling reasons” to discard the trial court's decision. “Very substantial and compelling reasons” exist when:*

*(i) The trial court's conclusion with regard to the facts is palpably wrong;*

*(ii) The trial court's decision was based on an erroneous view of law;*

*(iii) The trial court's judgment is likely to result in “grave miscarriage of justice”;*

*(iv) The entire approach of the trial court in dealing with the evidence was patently illegal;*

*(v) The trial court's judgment was manifestly unjust and unreasonable;*

*(vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the ballistic expert, etc.*

(vii) *This list is intended to be illustrative, not exhaustive.*

*2. The appellate court must always give proper weight and consideration to the findings of the trial court.*

*3. If two reasonable views can be reached—one that leads to acquittal, the other to conviction—the High Courts/appellate courts must rule in favour of the accused.*

*71. Had the well-settled principles been followed by the High Court, the accused would have been set free long ago. **Though the appellate court's power is wide and extensive, it must be used with great care and caution.***”

*(emphasis supplied)*

*14. One of us, (Manmohan, J) in **Niraj vs. Ramesh Pratap Singh, 2012, SCC OnLine Del 3813** has held as under:-*

*“6. It is also well settled that the Appellate court should reverse an acquittal only for very substantial and compelling reasons. In the event, two views are possible on the evidence adduced before the trial Court and the view taken by the trial Court is a plausible view, the Appellate Court should not interfere and substitute its own view against the plausible view taken by the trial Court. In fact, the Supreme Court in **Chandrappa & Ors. Vs. State of Karnataka, (2007) 4 SCC 415** while referring to previous cases laid down the following general principles regarding the powers of appellate court while dealing an appeal against an order of acquittal:-*

*“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*

*(1) **An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;***

*(2) **The Code of Criminal Procedure, 1973 puts no***

*limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*

*(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*

*(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”*

7. The Supreme Court in a subsequent judgment in *Arulvelu & Anr. Vs. State Represented by the Public Prosecutor & Anr., (2009) 10 SCC 206* has held as under:-

*“40. Unquestionably, the Appellate Court has power to review and re-appreciate the entire evidence on record. The appellate court would be justified in reversing the judgment of acquittal only if there are substantial and compelling reasons and when the judgment of the trial court is found to be perverse judgment. Interfering in a routine manner where other view is possible is contrary to the settled legal position*

*crystallized by aforementioned judgments of this Court. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. This fundamental principle must be kept in view while dealing with the judgments of acquittal passed by the trial court."*

*(emphasis supplied)*

16. For the abovementioned reasons, this Court does not find any reason to interfere with the impugned judgment.

17. Accordingly, the present leave petition, being bereft of merit, is dismissed.

**MANMOHAN, J**

**SANGITA DHINGRA SEHGAL, J**

**OCTOBER 11, 2019  
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