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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. L.P. 153/2019

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Judgment reserved on: 28th March, 2019
Judgment pronounced on: 10th April, 2019

STATE OF NCT OF DELHI

....Appellant

Through: Mr.Tarang Srivastava, APP for State with
SI Suresh Chand, PS Kirti Nagar

Versus

JEEVAN SINGH

....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. By this petition under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter as '**Cr.P.C**'), the appellant/State seeks leave to appeal against the judgment dated 30.10.2018 passed by the learned Additional Sessions Judge - 01, Special Court, Tis Hazari Court, Delhi whereby the respondent was acquitted of the charge under Section 376 of the Indian Penal Code, 1860 (hereinafter as '**IPC**') in FIR No.248/2012, Police Station Kirti Nagar.

2. Brief facts of the case, as noticed by the Learned Trial Court, are as under:-

“i. Prosecution case unveils with DD No. 37A dated 20.08.2012 being recorded regarding wrong act with the prosecutrix. Ms.X, the prosecutrix and Mr.Vicky Maggo came to the police station and informed about the incident.

ii. At the time of incident, the prosecutrix was working as a maid in the same house where accused Mr.Jeewan Singh was also working as a cook. The prosecutrix further informed that on 20.08.2012 at about 3.30 pm, she had been raped by the accused and DD No. 37A was lodged in this regard.

iii. IO W/SI Vandana prepared rukka and handed over the same to the duty officer for registration of the FIR. An FIR No.248/12 was registered on 21.08.2012.

iv. The prosecutrix was produced before the learned Metropolitan Magistrate for recording her statement under Section 164 Cr.P.C.

3. After the completion of the investigation, a charge sheet was filed. Charge was framed against the accused for the offence punishable under Section 376 of the IPC to which he pleaded not guilty and claimed trial. In order to bring home the guilt of the accused persons, the prosecution has examined 23 witnesses in all.
4. Statement of the accused was recorded under Section 313 of Cr.P.C wherein he stated that he has been falsely implicated in the present case and claimed to be innocent.

5. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court acquitted the accused for the charged offence.
6. Mr. Tarang Srivastava, APP appearing for the appellant State contended that the learned trial court failed to appreciate that the prosecutrix has duly supported the case of the prosecution and she specifically stated the act of the accused which was covered under the provisions in which the accused was facing trial. She clearly and unequivocally deposed that the accused pulled her inside the room while she was going to put the duster in the balcony for drying and forcibly raped her. The learned APP further contended that the contradictions in the deposition of said witnesses are minor and not in material particulars which are bound to occur during the course of trial. In addition to that he contended that the trial court did not appreciate the evidence of PW-13, Smt. Asha Maggo, who stated that her son is aged about 10 years is physically challenged and he would not have intervened in the commission of rape. Further, the deposition of the grandmother-in-law clearly establishes that the keys of the room where the offence was committed were with the accused. The APP further contended that the learned trial court failed to appreciate that there were no material contradictions that have come on record which goes to the root of the case.
7. I have heard the learned counsel for the State and perused the material on record.
8. The prosecutrix was examined as PW-1 and she stated that she was employed in the house of Mr. Vicky Maggo as a maid. Her Mausi

(maternal aunt) placed her in house no. 20/7 in Mansarovar Garden in Kirti Nagar. She further deposed that apart from her, four other employees were also employed in the same house, one of whom is the accused in the present case. Further, she narrated the entire incident that on 20.08.2018 at about 3.00 pm, when she was working on the second floor of the house, one of the other employees of the house i.e. Jeewan came to the second floor grabbed her and dragged her into the bedroom where he made sexual intercourse with her. The said act of sexual intercourse was without her consent. Further, she deposed that she tried to push him away and kept on shouting but no one came to her rescue. In addition to that, the accused told her not to disclose this to anyone and insisted that he will arrange a ticket for her village. At about 3:30 pm, when her employer came back to the house, she told her about the alleged incident. She further deposed that her employer along with her husband took her to the police station where she gave her statement.

9. Mrs. Archana Maggo was examined as PW-13 and she deposed that on the day of the alleged incident, she was away from home and had gone to a temple in Chattarpur. On returning to her house, she called for the prosecutrix but she did not come. She then sent Jeewan i.e. the accused to check on her who in return informed her that the prosecutrix is sitting on the stairs leading to the servants quarter. She further deposed that she asked the prosecutrix about what had happened but she did not speak a word and it was then

that she made a call to the Aunt of the prosecutrix. It was after that when the prosecutrix told her about the alleged incident.

10. The Aunt who is also the owner of the placement agency through which the prosecutrix was placed in the house of PW-13 (Archana Maggo) was examined as PW-12 who deposed that the prosecutrix had made a telephonic call to her and she was weeping at that time. On asking as to what has happened, the prosecutrix told her that one of the other servants of the house i.e. Jeewan had committed 'Galat Kaam' on her. She further deposed that she went to the place of incident and thereafter, she along with Vicky Maggo (Employer), Prosecutrix and Vishal (Cousin of Employer) went to the police station to lodge the report.
11. "Rape" or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. "Rape" not only lowers the dignity of a woman but also mars her reputation. The plight of the woman and shock suffered by the victim can be well visualized. The victim of rape grows with traumatic experience and an unforgettable shame haunted by the memory of the disaster forcing her to a state of terrifying melancholia. The torment on the victim has the potentiality to corrode the poise and equanimity of any civilized society. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The offence of "Rape" is grave by its nature, which warrants a strong deterrent by judicial hand.

In ***Shyam Narian Vs. The State of NCT Delhi : (2013) 7 SCC 77***, the Hon'ble Supreme Court has elaborately dealt the issue as discussed in ***Madan Gopal Kaakar Vs. Naval Dubey and Anr. : (1992) 3 SCC 204***, ***State of Andhra Pradesh Vs. Bodem Sundra Rao : AIR 1996 SC 530*** and ***State of Karnataka Vs. Krishnappa : (2000) 4 SCC 75*** and has held that :

“It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed.”

and in ***Jugendra Singh Vs. State of UP : (2012) 6 SCC 297***, Hon'ble Apex Court has held :

“Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large.

When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law.”

12. In ***Lillu @ Rajesh & Ors. Vs. State of Haryana : (2013) 14 SCC 643***, the Hon’ble Apex Court has observed that :

“11. In State of Punjab v. Ramdev Singh : AIR 2004 SC 1290, this Court dealt with the issue and held that rape is violative of victim's fundamental right under Article 21 of the Constitution. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman, i.e. her dignity, honour, reputation and chastity. Rape is not only an offence against the person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also

violates the most cherished fundamental right guaranteed under Article 21 of the Constitution.”

13. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence. The statement of the prosecutrix is more reliable than any other witness and if the testimony of victim of sexual assault installs confidence in court, the same can be relied for conviction of the accused. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance to prudence under the given circumstances. In ***Vijay @ Chinee v. State of Madhya Pradesh : (2010) 8 SCC 191***, the Hon’ble Apex Court has dealt with the issue and held that :

“Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix if found to be worthy of credence and reliable, requires no corroboration. The Court may convict the accused on the sole testimony of the prosecutrix.”

It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons, which necessitate the court for corroboration of her statement. Corroboration of testimony of the

prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances.

14. There are catena of judgments passed by the Hon'ble Apex Court wherein it has been held that only the deposition of the prosecution by itself is also sufficient to record conviction for the offence of rape if that testimony inspires confidence and has complete link of truth. In ***Md. Ali Vs. State of UP : 2015 (3) SCALE 274***, the Hon'ble Apex Court has held that

“Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based.”

and in ***Mohd. Iqbal v. State of Jharkhand reported in (2013) 14 SCC 481***, the Hon'ble Apex Court has held that

“There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.”

15. Returning to the facts of the present case, the moot point involved for consideration in this leave petition is whether the evidence adduced by the prosecution of rape, particularly the testimony of the prosecutrix is trustworthy, credible and worthy of reliance?
16. In order to test the veracity of the deposition of the Prosecutrix, it needs to be discussed meticulously. It is seen that the prosecutrix

in her complaint narrated an incident on the basis of which the present FIR was registered. In addition to the aforesaid incident, she deposed about another incident which took place few days prior to the alleged incident in her statement under section 164 of the Cr.P.C. Finally in her examination-in-chief, she deposed about only one incident dated 20.08.2012.

17. Further, the prosecutrix in her complaint deposed that when PW-13 (Archana Maggo) came back, she made a phone call to PW-12 (Pushpa) from the mobile phone of her employer and told her about the entire incident but when she was cross examined by the counsel for the accused, she deposed that the phone call was made by her employer and then only she spoke to PW-12 (Pushpa). In addition to this, further contradictions to the alleged phone call can be found in the testimony of her Aunt i.e. PW-12 (Pushpa) who deposed that it was PW-13 (Archana Maggo) who made a call to her and told her about the entire alleged incident.
18. During her cross-examination, the prosecutrix admitted use of physical force upon the accused and deposed that:

*“MENE HAATH BHI MAARE THE AUR LEG BHI MARI
THI AUR APNE HAATHO SE USE NOCHA BHI THA”*

But there is no corroboration of the said marks can be found in the MLC which was got conducted by the Investigation Agency. This puts the testimony of the prosecutrix in doubt as to whether the accused actually used force upon her.

19. Major contradictions have arisen in the testimonies of the prosecution witnesses as to whether the police arrived at the place of the alleged incident or was the report lodged in the police station itself. Further contradictions have arisen as to who all were the person that actually went to the police station to lodge the complaint. The prosecutrix in her complaint to the police stated that she along with her employer i.e. PW-19 (Vicky Maggo) and her Aunt i.e. PW-12 (Pushpa) went to the police station to lodge the complaint. Further, in her statement under section 164 of the Cr.P.C, she deposed that she told Archana i.e. PW-13 about the incident and then PW-13 told her husband i.e. PW-19 about the incident. It was PW-19 (Vicky Maggo) who told the police about the alleged incident. Again in her examination-in-chief, she deposed that:

“At about 3:30 pm, Ms. Archana returned and I told her about the incident. She along with her husband took me to the PS where I gave my statement to the police.”

From the above it is noteworthy that the prosecutrix deposed facts which varied, creating ambiguity in her versions. In addition to that, the prosecution witnesses have given different versions as to the aforesaid contention. PW-13 (Archana Maggo) deposed that the police came to the house where the alleged incident took place and the prosecutrix along with the accused, PW-12 (Pushpa) and PW-19 (Vicky Maggo) went to the police station. PW-15(Meena Maggo) deposed that she does not know the exact time as to when

but the police came to their house and that the police took the accused as well as Sangeeta and her family members to the Police Station. PW-19 (Vicky Magoo) deposed that the matter was reported to the police at police station and that he along with the Prosecutrix, PW-12 (Pushpa) and the Accused went to the police station. PW-12 (Pushpa) deposed that she along with PW-19 (Vicky Magoo), Prosecutrix & the cousin brother of PW-19 went to the police station to lodge the report. The IO who was examined as PW-23 deposed that she was posted at PS Kirti Nagar and at 9:30 pm, the Prosecutrix along with PW-19 (Vicky Magoo) came to the police station. There are inherent contradictions in the testimonies of the prosecution witnesses.

20. PW-13 i.e. Archana Maggo deposed in her examination-in-chief that when she was leaving for the Ashram, she had locked the premises of her second floor and asked the prosecutrix to remain on the ground floor where her mother-in-law resided. Further, in her cross examination, she deposed that while leaving, she handed over the keys of the second floor to her mother-in-law on the ground floor. She further deposed that the servants were given the keys only for the sole purpose of transferring the same to some other family member and the keys were not entrusted to the servants. Further, some clarity can be obtained from the examination-in-chief of PW-15 (Meena Maggo) who deposed that when she was leaving for the cremation ground, she locked the ground floor and handed over the keys to the Prosecutrix and also

asked her to remain on the first floor. It is clear from the aforesaid facts that there is no way that the accused could have got access to the second floor on his own where the incident has been alleged to take place. Further, the situation is elucidated by the deposition of PW-15 (Meena Maggo) who deposed that when she locked her floor, she gave the keys to the prosecutrix and asked her to remain present on the first floor. It is crystal clear from the aforesaid testimonies that the prosecutrix was entrusted with the keys of the second floor and she was the only one having access to the place of the alleged incident. In addition to that, similar contradictions relating to the place of alleged incident can be ascertained from the statement of the prosecutrix under section 164 Cr.P.C wherein she deposed that the accused took her to 2nd floor by holding her and she kept on protesting but all was in vain. However in her examination-in-chief she deposes that:

“On 20.08.2012 at about 3:00 pm, I was working on the second floor of the house. My employer Mr. Vicky Maggo and his wife Ms. Archana were not at home at that time and the other servants on the first floor. Accused Jeewan who is present in the court today (correctly identified by witness) came to the secod floor.”

From the above, it is clear that the prosecutrix failed to tell the true picture about the alleged incident which creates a doubt on her testimony.

21. The major contradiction that creates a shadow of doubt on the prosecution's case is the deposition by the prosecutrix in her cross-examination where she deposed that:

“ Q. Whether at time of the alleged occurrence, son of Vicky was also present at the second floor in the room of the children in the said house?

A. YES. VICKY MAGGO KA LADKA USI KAMRE MEIN THA JAHAN MERA BALATKAAR HUYA AUR MERA BALATKAR VICKY MAGGO KE BETE SAAMNE HUYA.”

However to the contrary the mother of the child i.e. PW-13 (Archana Maggo) in her cross-examination deposed that on the day of incident, she took her son Aryan to Guruji's Aashram at Chaturpur. Contradictions like these put the prosecution version under grave doubt and the veracity of the prosecutrix is also shaken due to the same.

22. The prosecutrix was cross-examined by the Learned APP for the state wherein she deposed that the accused was arrested near the Mayapuri Flyover. She affirms the same statement in her cross-examination by the accused. However, contradictory versions to the above said statement can be found in the examination-in-chief of PW-13 (Archana Maggo), PW-15 (Meena Maggo), and PW-19 (Vicky Maggo) all of whom have deposed that the accused was taken by the police from the place of alleged

incident. Interestingly, the aunt of the prosecutrix i.e. PW-12 deposed an altogether new picture that:

“Thereafter, police me as well as Sangeeta and her employer Vicky Maggo went in search of accused. Accused Jeewan Singh today present in the court (correctly identified) was apprehended by the police on the pointing out of Sangeeta from Mayapuri Flyover.”

However, in the cross-examination of PW-12 (Pushpa), new variations emerge as to the present issue wherein she deposes that when she reached Mansarovar Garden, she saw the police with Accused and the prosecutrix in the police van at about 6pm.

Further, PW-23 (Investigation Officer) deposed that the secret informer informed that accused was present at mayapuri and the accused was found present under Mayapuri flyover from where he was arrested. the inconsistencies in the prosecution witnesses can be discarded where the accusations levelled are of a heinous offence such as rape.

23. The prosecutrix had been confronted with her statements recorded under Section 161 and 164 of the Code of Criminal Procedure on several issues/facts contrary to her deposition in court, wherein she admitted the following facts which have not been recorded in her statements under Section 161 and 164 of Code of Criminal Procedure.
24. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A

prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

25. On careful analysis of the testimony of the prosecutrix, we find a large number of contradictions, inconsistencies, concealment, improvements and exaggerations in her statement which as noted above, casts a shadow of doubt and it is difficult to rely upon her version. Moreover, no corroboration can be found by any other evidence which has been adduced by the prosecution on record to support the version of the prosecutrix.
26. The version of the said witness should remain intact on the core spectrum of the crime 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. In ***Rai Sandeep @ Deepu Vs State of NCT of Delhi : (2012) 8 SCC 21***, the Hon'ble Apex Court has held that .

“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 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 everyone 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 similar such tests to be applied, it can 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.”

27. In **Narender Kumar Vs. State (NCT of Delhi) : 2012 (7) SCC 171**, it has been observed :

16. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the Court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix is a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be

appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony.

28. The creditworthiness of the testimony of the prosecutrix has already been discussed in the earlier part of the judgment. The prosecutrix when put to the test as laid down in ***Rai Sandeep @ Deepu (Supra)*** fails the test of being sterling witness of a high quality and caliber whose version should therefore be unassailable and such quality should be in a position to accept it on face value without any hesitation.
29. There is no doubt that rape cause's great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. The accused also has rights which are to be protected and the possibility of false implication has to be ruled out. The Supreme Court in ***Radhu vs. State of Madhya Pradesh reported in 2007 Cri. LJ 4704*** had in this context noted as follows:

“The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to

take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

30. In ***Raju v. State of Madhya Pradesh (2008) 15 SCC 133***, the Hon'ble Supreme Court has held that testimony of the victim of a rape cannot be presumed to be a gospel truth and observed that false allegations of rape can cause equal distress, humiliation and damage to the accused as well, in para 11, the supreme Court echoed the sentiments as under:-

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

31. Keeping in mind the above cited judgments, the testimony of prosecutrix has to be consistent and natural in line with the case of the prosecution and free from infirmities which inspire confidence

in the Court. It cannot be presumed that the statement of the prosecutrix is always true or without any embellishment.

32. In the instant case, the testimony of the prosecutrix is not natural and consistent with the case of the prosecution. Her version has no correlation with other supporting material being medical, scientific and expert evidence. After rescanning the entire case in its right perspective, I am of the firm view that if the evidence of the prosecutrix is read and considered in totality of the circumstances alongwith the other evidence on record, in which the offence is alleged to have been committed, I am of the view that her deposition does not inspire confidence. The version of the prosecutrix has not been corroborated with the testimonies of other witnesses as well as the medical evidence and has not disclosed the true genesis of the crime.
33. The Apex Court in ***Govindaraju @ Govinda Vs. State &Anr. (2012) 4 SCC 722***, court has discussed in detail the scope and power of the appellate court and reiterated that the presumption of innocence of an accused is reinforced by the order of acquittal. Relevant portion of the judgment reads as under:-

"11. Besides the rules regarding appreciation of evidence, the Court has to keep in mind certain significant principles of law under the Indian Criminal Jurisprudence, i.e. right to fair trial and presumption of innocence, which are the twin essentials of administration of criminal justice. A person is

presumed to be innocent till proven guilty and once held to be not guilty of a criminal charge, he enjoys the benefits of such presumption which could be interfered with by the courts only for compelling reasons and not merely because another view was possible on appreciation of evidence. The element of perversity should be traceable in the findings recorded by the Court, either of law or of appreciation of evidence.

12. The Legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 Cr.P.C. This is an indication that appeal from acquittal is placed at a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 Cr.P.C. has been introduced as an additional stage between the order of acquittal and consideration of the judgment by the appellate Court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-sections (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite

value to the judgment of acquittal cannot be ignored by the Courts.

13. Under the scheme of the Cr.P.C., acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the Appellate Court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

34. In the case of ***State of Madhya Pradesh Vs. Dal Singh &Ors., reported at JT 2013 (8) SC 625***, the Supreme Court has held that the appellate court while considering the appeal against the judgment of acquittal shall interfere only when there are compelling and substantial reasons for doing so and if the judgment is unreasonable and relevant material have been unjustifiably ignored, it would be a compelling reason for interference. In the case of ***Rukia Begum Vs. State of Karnataka AIR 2011 SC 1585*** the Apex Court has held that in case two views are possible and the trial court has taken the view favouring acquittal, the High Court should not disturb the finding.
35. Having regard to the principles laid down by the Apex Court in the case of ***Govindaraju (supra), State of Madhya Pradesh (supra)***

and *Rukia Begum (supra)*, we do not find that there is any infirmity in the impugned judgment. Accordingly, no grounds are made out to interfere in the impugned judgment passed by learned trial court and the leave to appeal petition is dismissed.

SANGITA DHINGRA SEHGAL, J

APRIL 10th, 2019

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