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

+ CRL.L.P. 303/2019

THE STATE, GOVT. OF NCT OF DELHI Petitioner
Through: Ms. Aashaa Tiwari, APP for State
with SI Sonu Ram,
PS Subhash Place.

versus

TUFAIL Respondent
Through: None.

% Date of Decision: 16th July, 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)

1. Present criminal leave petition has been filed under Section 378(1) Cr.P.C. by the State, against the judgment and order dated 14th January, 2019 passed by Additional Sessions Judge-01, (North-West), Special Court (POCSO), Rohini Courts, in Sessions Case No.25/2016 arising out of FIR No.1020/2015 registered with Police Station Subhash Place under Sections 363/354/376 IPC and Section 4 POCSO Act whereby the learned trial Court convicted the accused under Sections 363 and 506 IPC, but acquitted him under Section 6 POCSO Act.

2. Ms. Aashaa Tiwari, learned APP for State submits that the trial Court failed to appreciate that the testimony of the victim is sufficient for conviction of an accused and even if there are some minor contradictions, they cannot be the reason for acquittal of the accused as the victim is a minor and evidence was recorded after more than one year.

3. She emphasises that the victim had identified the accused and it was observed by the Court that after identification of the accused, the face of the victim turned white and she had put her face down.

4. 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. 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.

5. 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)

6. 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)

7. Upon a perusal of the paper book, this Court finds that the victim, at different stages, had given contradictory versions as far as incident of sexual assault is concerned. While in the rukka Ex.PW4/A, it was mentioned that the victim had told her mother that the accused had moved his hand all over the body of the victim after removing her clothes, yet in Section 164 Cr.P.C. statement, the victim had stated that the accused had removed her undergarment and inserted his penis in her. Subsequently, in her deposition before the Court, the victim had stated that the accused had inserted his penis in her mouth.

8. The medical evidence also does not corroborate the statement of the victim as neither any internal or external injury was found on the victim nor any semen was found on any of the exhibits. Consequently, no DNA examination was conducted.

9. In the opinion of this Court, the trial Court in the impugned order has correctly concluded as under:-

“10.The mother of victim in rukka stated that accused moved his hand all over the body of victim but in court stated that accused touched private part of victim. Considering these material variations and contradictions in the testimony of the victim, her mother and the eye witness, the prosecution failed to prove beyond reasonable doubt that accused sexually assaulted or penetratively sexually assaulted the victim. There is no independent corroboration to the testimony of the victim which varied on material points as far as sexual assault is concerned. The other girl K who was with victim at the time of incident was not inquired nor cited as a witness in this case. The prosecution failed to prove the offence punishable u/s 6 read with Section 5(m) of POCSO Act and accused is acquitted from these charges.”

(emphasis supplied)

10. Consequently, this Court does not find any reason to interfere with the reasoning adopted by the trial court. Accordingly, the present leave petition, being bereft of merit, is dismissed.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

JULY 16, 2019

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