

#21

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 16.12.2019

CRL.L.P.462/2019

STATE

..... Petitioner

versus

LAXMAN

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ravi Nayak, APP with Inspector Surya Prakash, PS- Kirti Nagar
For the Respondent : None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE I.S. MEHTA

J U D G M E N T

SIDDHARTH MRIDUL, J (OPEN COURT)

1. The present leave to appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), has been instituted on behalf of the State, assailing the order of acquittal of the Solitary Respondent, Laxman (hereinafter referred to as 'Respondent') dated 27.05.2019, rendered by Ms. Nivedita Anil Sharma, Additional Sessions Judge-01, West, Tis Hazari Courts, Delhi in case FIR No.120/2014, Police Station- Kirti Nagar, for the charges framed against him for the commission

of offences under Sections 376/363/366 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and under Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act').

2. The brief facts, as are necessary for the effective adjudication of the present leave to appeal petition are that PW-3A Mr. Z, the father of the prosecutrix X, filed a complaint on 25.02.2014 to the effect that his daughter had gone missing from her parental house on 23.02.2014 without information. The subject FIR, was initially recorded under Section 363 IPC, in view of PW-3's allegations to the effect that Laxman (hereinafter referred to as the 'respondent') had allured his daughter away.

3. Later, on 03.05.2014, the prosecutrix X accompanied by her mother Ms. Y PW-5 reached the Police Station- Kirti Nagar, Delhi and informed Sub-Inspector Ashok Kumar PW-6 vide DD No.20B that, the former had left home of her own free will and accord with the respondent, since she was in love with the latter and wanted to marry him, which relationship was opposed by her parents.

4. Sub-Inspector Ashok Kumar PW-6 is stated to have recorded the statement of the prosecutrix X under Section 161 Cr.P.C. and thereafter she was taken to Deen Dayal Upadhyay Hospital on 04.05.2014 for her medical

examination.

5. Subsequent thereto, the statement of the prosecutrix X under Section 164 Cr.P.C. Ex.PW-1/B was recorded before the Competent Magistrate on 08.05.2014.

6. The solitary respondent was arrested on 23.06.2014 by the police in the subject FIR, and after completion of the investigation he was challaned for committing offences punishable under Sections 363/366/376 IPC and Sections 3/4 of POCSO Act, as aforestated.

7. The trial court, vide order dated 29.05.2015, framed charges against the respondent under the aforesaid Sections; to which the latter pleaded not guilty and claimed trial.

8. To prove its case against the respondent, the prosecution examined six witnesses, amongst whom, the critical evidence lead on their behalf was the statements and testimony of the prosecutrix X as PW-1; her father, Mr. Z—who was the complainant—as PW-3A; and her mother Ms. Y, as PW-5.

9. Mr. Ravi Nayak, learned APP appearing in support of the leave to appeal petition, would firstly urge that the impugned judgment failed to appreciate that, the initial statement of the prosecutrix X PW-1 under Section 161 Cr.P.C., does not stand entirely effaced, as was effectuated by the trial

court, merely because of her contrary statement under Section 164 Cr.PC. Ex.PW-1/B and her hostile testimony, recorded in Court. Then it would be urged on behalf of the State that, the trial court failed to consider the FSL report ExPW.3/A, which clearly reflected that, at the time of her medico legal examination Ex.PW.1/A, the respondent was opined to be the biological father of the fetus carried by the prosecutrix X. Lastly, it is urged on behalf of the State that, the learned trial court fell into error in ignoring the circumstance that the prosecutrix X was a minor, at the time of the commission of the offence.

10. In order to appreciate the contentions raised on behalf of the State, it is considered necessary to examine and appreciate the statements and testimony of the prosecutrix X, as well as her parents; predicated on which the trial court returned the finding of 'not guilty', in favour of the respondent.

11. The prosecutrix X in her statement dated 08.05.2014, recorded by the concerned Metropolitan Magistrate and proved as Ex.PW.1/B, stated as follows:-

“Statement of ‘prosecutrix X’ (sic) d/o Mr. Z (sic), r/o F-275, Kamla Nehru Camp, Kirti Nagar, Delhi, Aged abt 17 years.

On SA.

मेरा नाम X (sic) है। मैं 23.02.14 को बिना किसी को कुछ बताये गुस्से में घर छोड़कर चली गयी थी। मैं रमेश नगर में किराए का

घर लेकर रह रही थी। मुझे किसी ने नहीं बहकाया था। मैं अपने आप गुस्से में घर छोड़कर चली गयी थी। मेरे किसी लक्ष्मण नाम के लड़के के साथ संबंध होने के कारण मेरे घरवाले मुझे ताने देते रहते थे। मैं उन तानों से परेशान होकर घर छोड़कर चली गयी थी। मैंने अपनी मरजी से घर छोड़ा था।

Sd/-
RO&AC

Sd/-
MM/West
THC, Delhi
08.05.14”

12. A plain reading of the above extracted statement completely belies the case of the prosecution and leaves no manner of doubt that the case sought to be made out against the Respondent, is unfounded and untenable.

13. Further, in her testimony before the learned trial court, the prosecutrix X categorically deposed as follows:-

“PW-1:- Statement of Ms. X (the identity of the victim is protected by not mentioning her actual name, parentage and address and the same are mentioned in the police file as well as Judicial File at sr. no. 01 in the list of prosecution witnesses. Ms. Shradha Vaid counsel from DCW is also present. Ms. Sheela, counsel from DLSA is also present as Support Person. Mr. Nitin Chadha, counsel for the prosecutrix is also present).

On S.A.

1. I am now aged about 21 years. My date of birth is 09.08.1997.

2. When the present case was registered, my age was about 16-17 years and was studying in class IX.

3. I do not remember the year but it may have been 2-3 years ago on 23rd February, I had left my house on my own I had differences with my family especially with my mother as I used to demand money from them for my expenses but they refused the same. Out of anger I left my house on 23rd February

and took room on rent at Ramesh Nagar and started living there alone. I started working privately in customer care unit of a company.

4. After 2-3 months, my father and my cousin who is the son of my paternal aunt/Bua had met me at my residence and there they had brought me home.

5. **At that time I was pregnant. I have got married subsequently to the same man from whom I had become pregnant. Now I am happily married and have two children. The fetus which I was carried at the time of my recovery by my father and cousin was got aborted. This fetus was also from my husband.**

6. Later on my parents took me to the police who also recorded my statement. I was got medically examined. I was kept in Nirmal Chhaya for 02-03 days. Then I was produced in the court where my statement was recorded by a lady Judge.

7. **I know accused Laxman as he lives near my house and he is my brother's friend. He is innocent and he has not committed any offence against me. He did not established physical relations with me at any point of time.**

8. **I have known my husband since I left my house and started living at Ramesh Nagar. I got married on 25.08.2014. the name of my husband is Mr. R (name is deposed by the witness and withheld to protect her identity).**

9. Police made enquires from me and I told everything. My statement/complaint was recorded by the police.

10. I was taken to the hospital where I was medically examined and my samples were taken by the doctor.

11. I was also produced at Tis Hazari Courts and my statement was recorded by a Lady Judge.

12. (At this stage, the judicial file is sent to the room where the witness is seated and she is shown the MLC and she is explained the same. After seeing the same, and it is also read over to her, she is further examined.)

13. After seeing the MLC, I say that I was medically examined. The MLC is now Exhibited as Ex.PW.1/A and it bears my thumb impressions at points A & B.

14. (At this stage, an envelop which is sealed with the seal of VA and bearing the particulars of the case, annexed in the judicial record, is taken out and opened. It contains the statement u/s 164 Cr.P.C. of the witness, application of the IO requesting for recording the statement u/s 164 Cr.P.C. and the application of the IO requesting for supply of copy of the

statement u/s 164 Cr.P.C. The statement u/s 164 Cr.P.C. is shown to her and she is explained the same. After she has seen and read the same and it is also read over to her, she is further examined.)

15. The statement now shown to me is signed by me and I had told the same facts to the Lady Judge. The statement u/s 164 Cr.P.C. of the witness is now exhibited as Ex.PW.1/B and it bears my signatures at point A. I had given this statement to the Lady Judge with my free consent.

16. I can identify accused Laxman if shown to me.

17. (At this stage, the accused Laxman who is sitting in a separate enclosure is shown to the witness through the one way visibility window on her screen. After the witness has seen the accused Laxman, she is further examined.)

18. I have seen the accused Laxman on the screen. I identify him as Laxman who is my brother's friend. He is innocent. (witness has correctly identified accused Laxman.)

19. I pray that accused Laxman may be acquitted as he is innocent.

20. (At this stage the Addl. PP had sought permission to cross examine the witness as she has resiled from her earlier statement and is hostile. Considered. Allowed.)

XXXX by Ms. Nimmi Sisodia, Addl. PP for State

1. Accused Laxman resided near my house for 06-07 months prior to the registration of the present case. He work with my brother for manufacturing of furniture. He used to visit my house frequently. I was friends with accused Laxman. He has never visited me at any rented accommodation at Ramesh Nagar. My family including my mother had suspicion that accused Laxman had physical relations with me. However the suspicion was mis-founded as we did not have any physical relations.

2. I known my husband for many years as he used to drive a school van near my school. My family was not aware about my friendship with my husband who was then only a friend. I had told my parents about my friendship with my now husband and then they had got me married with him as he also wanted to marry him.

3. It is wrong to suggest that they were no friendship between me and my now husband prior to the registration of the present case. It is wrong to suggest that I had physical relations with accused Laxman and the fetus which was aborted was also from accused Laxman. (At this stage the

witness is told about the FSL report and thereafter she is questioned again regarding physical relations with the accused). I again say that the aborted fetus could not be from accused Laxman as we never had any physical relations.

4. It is wrong to suggest that as I have stated in my statement u/s 164 Cr.P.C. exhibit PW.1/B that my family used to taunt me for having relations with some boy name Laxman, I am deposing falsely today that I did not have any physical relations with the accused.

5. I was not aware on 23rd February when I had left my home that accused Laxman was already married and had two children. I became aware of this fact when the present case was registered as his wife and children had come to the PS.

6. I have been to Kamal Mandir as it is near my residence. It is wrong to suggest that on 25.04.2014, I got married with accused Laxman at Kamal Mandir. Accused Laxman had never proposed married to me.

7. (At this stage the judicial file is sent to the room of the prosecutrix and she is shown her statement dtd. 03.05.2014. She is explained the same. After the witness has read the same and it is also read over to her, she is further examined.)

8. After reading and hearing the statement dtd. 03.05.2014, I say that I had not made the same statement to the police. The statement dtd. 03.05.2014 of the prosecutrix is now marked as Mark "A". I have not told the fact mentioned in this statement to the police. It is wrong to suggest that I had made the statement mark A to the police and now I am deliberately denying the same in order to save the accused.

9. (At this stage the judicial file is sent to the room of the prosecutrix and she is shown her statement dtd. 15.05.2014. She is explained the same. After the witness has read the same and it is also read over to her, she is further examined.)

10. After reading and hearing the statement dtd. 15.05.2014, I say that I had not made the same statement to the police. The statement dtd. 15.05.2014 of the prosecutrix is now marked as Mark B. I have not told the fact mentioned in this statement to the police. It is wrong to suggest that I had made the statement Mark B to the police and now I am deliberately denying the same in order to save the accused.

11. It is wrong to suggest that accused Laxman had physical relations with me even prior to the registration of the present case which were not like not approved by my

family or that for this reason I left my house at the instance of accused Laxman and started living with him in a rented accommodation.

12. It is wrong to suggest that accused Laxman has committed the alleged offences as I have told the same facts to the Doctor in my MLC Ex.PW.1/A.

13. It is wrong to suggest that due to my physical relations with the accused Laxman I became pregnant. It is wrong to suggest that when I informed accused Laxman about my pregnancy and ask him to perform marriage with me, then on 25.04.2014 he performed marriage with me at Kamal Mandir. It is wrong to suggest that accused Laxman left me after 25.04.2014 by saying that he was just passing time with me. It is wrong to suggest that now the matter is settled between me and the accused Laxman and for this reason I am denying that my aborted fetus was accused Laxman. It is wrong to suggest that now I am deposing falsely in order to save the accused.....”

14. The clear and unequivocal testimony of the prosecutrix X, unravels the case of the prosecution in its entirety and indubitably demolishes the stratum of the charge against the respondent. According to the prosecutrix X, although she knew the respondent, since the latter was a friend of her brother, no physical relation had been established between them at any point of time. The prosecutrix X statedly got married on 25.08.2014 with her husband and the couple have two children from the wedlock. It was further stated by the Prosecutrix X that, the fetus she was carrying at the time of her medical examination, was also from her husband and not the respondent. The respondent, according to her, had never visited her rented accommodation at Ramesh Nagar and although, the family including her

mother suspected her of having physical relations with the respondent, the same were baseless and without foundation. It was furthermore deposed by the prosecutrix X that the reason for her to leave her parental home was not her relationship with the respondent but the result of her serious differences with her family, especially her mother on the issue of demands for money to meet her expenses, which the mother continuously declined.

15. The above extracted statement and deposition of the prosecutrix finds support and corroboration in the following testimony of her father Mr. Z, examined as PW-3A, who deposed as follows:-

“PW-3 Mr. Z, Father of the prosecutrix (name, parentage, address etc. of the witness are mentioned in the judicial file and police file at sr. no.3 and have been stated by the witness but the same are withheld and are not being mentioned herein as the identify of the victim is to be protected.)

On SA.

1. Prosecutrix is my daughter and at the time of incident, she was about 18 and half month old. I do not know her exact date of birth. She was born at my house and not in the hospital.

2. Prosecutrix had left the house without telling us anything and I do not remember before how many years she left the house. I lodge the complaint regarding the incident to the police and the said complaint is now exhibited as Ex.PW.3/A and it bears my signatures at point A.

3. I had suspicion that accused Laxman had taken away my daughter/prosecutrix. On the basis of suspicions, I mentioned the name of Laxman as culprit in Ex.PW.3/A.

4. Accused Laxman is present in the Court today and I identify him. (witness has correctly identified accused Laxman).

5. After return, my daughter told me that she was residing with some Mr. Rajeev.

6. My daughter was studied in school at Moti Nagar. Before Moti Nagar school she was studying in Govt. Girls Sr. Secondary school, Kirti Nagar, Delhi. I went along got admitted my daughter/prosecutrix in MCD, Kirti Nagar school. At that time, Mr. Sahu, my neighbor accompanied me and he got admitted my daughter in school.

7. Accused Laxman was arrested in my presence vide memo already exhibited as Ex.PX5, which bears my signatures at point B. The personal search of accused was conducted vide memo already Ex.PX6 which bears my signature at point B. The disclosure statement of accused is also exhibited as Ex.PX7 and it bears my signature at point B.

FURTHER EXAMINATION IN CHIEF IS DEFERRED ON REQUEST OF THE WITNESS AS HE IS NOT FEELING WELL.

RO&AC

Nivedita Anil Sharma
Additional Sessions Judge-01, West,
Special Court under POCSO Act,
THC, Delhi. 08.10.2018.”

08.04.2019

PW3A Mr. Z father of the prosecutrix (recalled for further examination in chief from dated 08.10.2018)

ON S.A.

1. Accused Laxman had been arrested as I has suspicion that he had kidnapped my daughter. However, he is innocent as my daughter had eloped with another boy with whom she is now married and living happily and has two children.

2. I pray that accused Laxman may be acquitted as he had not committed any offence against my daughter.

FURTHER EXAMINATION IN CHIEF OF THIS WITNESS IS DEFERRED ON THE REQUEST OF SUBSTITUTE ADDL. PP WHO HAS REQUESTED THAT HIS FURTHER EXAMINATION IN CHIEF MAY BE CONCLUDED IN THE PRESENCE OF REGULAR ADDL. PP AS HE IS FULLY CONVERSANT WITH THE FACTS

OF THE CASE.

RO&AC

Nivedita Anil Sharma
Additional Sessions Judge-01, West,
Special Court under POCSO Act,
THC, Delhi. 08.04.2019.

27.05.2019.

PW3A-Mr. Z father of the prosecutrix (recalled for the further examination in chief from dated 08.04.2019)

ON S.A.

1. (At this stage, the Addl. PP has requested for permission to cross-examine the witness as she is hostile and has retracted from her earlier statement. Considered. Allowed.).

XXXX by Mr. Ravi Shekhar Mangal Murti, Additional Public Prosecutor for the State.

1. The police had not recorded my statement. The police has not made any enquiry from me, they simple asked me to sign the document and I put my signatures accordingly.

2. At this stage, the statement dated 23.06.2014 has been read over and explained to the witness to which he denied in toto by saying that he had not such made any statement to the police. The said statement is marked as Mark C.

3. It is wrong to suggest that I had made the statement Mark C and the same was read over to me by the police. It is wrong to suggest that accused Laxman has been cheating my daughter on the pretext of love for about one year. It is wrong to suggest that accused Laxman has established physical relationship with my daughter on the pretext of false marriage due to which she became pregnant. I had not accompanied my daughter to the hospital at the time of her medical examination.

4. It is wrong to suggest that I deliberately suppressed true facts in order to save the accused as the matter is settled between me and accused Laxman. It is wrong to suggest that as the matter has been settled between me and accused, I am denying that the aborted foetus was of accused Laxman. It is wrong to suggest that I am deposing falsely.

XXXX by Mr. Lalit Kumar, counsel for accused Laxman.

1. I am not certain about the exact date of birth of my daughter Ms. X but she was aged about 18 and half years at the time of alleged incident.
2. It is correct that I have not seen the accused committing any offence against my daughter. It is correct that I do not have any grievance against the accused. It is correct that accused is innocent and has not committed any offences against my daughter.

RO&AC

Nivedita Anil Sharma
Additional Sessions Judge-01, West,
Special Court under POCSO Act,
THC, Delhi. 27.05.2019.”

16. The mother of the prosecutrix Ms. Y, examined as PW-5, also failed to depose anything incriminating against the respondent; and upon being declared hostile by the prosecution, was subjected to cross-examined by the Public Prosecutor. In her cross-examination on behalf of the accused, she admitted that *"It is correct that I have not seen the accused committing any offence against my daughter. It is correct that I do not have any grievance against the accused. It is correct that accused is innocent and has not committed any offences against my daughter."*

17. *Inter alia*, in view of the foregoing testimonies, learned trial court vide judgment dated 27.05.2019 returned the following findings:-

“14. The most material prosecution witness i.e. the prosecutrix Ms. X as PW-1 has not deposed an iota of evidence of accused Mr. Laxman that he committed the offence of kidnapping, of compelling her to marry against her

will or forced her to do illicit intercourse, of committing penetrative sexual assault and of committing rape upon Ms. X, the prosecutrix.

15. Ms. Yasmin Vashist (PW-2) has only produced the school record of the prosecutrix to show that her date of birth is 09.08.1997 and her evidence is insufficient for incriminating the accused. Ms. Sashi Bala Pahuja (PW-3) has prepared the FSL reports (Ex.PW.3/A and Ex.PW.3/B which are also insufficient for convicting the accused, especially as Ms. X, the prosecutrix (PW-1) has turned hostile. Even, Mr. Z, the father (PW-3A) of the prosecutrix and Ms.Y, the mother of (PW-5) of the prosecutrix have also not deposed anything incriminating against accused. The parents of the prosecutrix have no grievance against accused Laxman and have also turned hostile. SI Ashok Kumar (PW-6) is the Investigating Officer of the case and his evidence is insufficient for convicting the accused.

16. In the circumstances, as the prosecutrix Ms. X (PW-1), who is the star witness, has turned hostile and has not supported the prosecution case and more importantly has not assigned any criminal role to the accused as well as Mr. Z and Ms. Y, parents of the prosecutrix (PW-3A and PW-5) have not deposed anything incriminating against him, the prosecution evidence is closed, declining the request of the Additional Public Prosecutor for leading further evidence, as it shall be futile to record the testimonies of other witnesses, who are formal or official in nature. The precious court time should not be wasted in recording the evidence of formal or official witnesses when the prosecutrix Ms. X (PW-1), Mr. Z, her father (PW-3A) and Ms. Y, her mother (PW-5) who are the star witnesses and the most material witnesses of the prosecution, have not supported the prosecution case.

17. The statement under section 313 of the Criminal Procedure Code (hereinafter referred to as the Cr.P.C.) of the accused Mr. Laxman is dispensed with as there is nothing incriminating against him as prosecutrix Ms. X (PW-1) is hostile and nothing material has come forth for the prosecution in her cross examination by the Additional Public Prosecutor for the State and her parents (PW-3A and PW-5) have also not deposed anything incriminating against the accused.

XXXX	XXXX	XXXX	XXXX
XXXX	XXXX	XXXX	XXXX

23. Crucially, the materials and evidence on record do not bridge the gap between “may be true” and “must be true” so essential for a court to cross, while finding the guilty of an accused, particularly in cases where once the witnesses have themselves not deposed anything incriminating against accused Mr. Laxman. Even otherwise, no useful purpose would be served by adopting any hyper technical approach to the issue.

24. Consequently, no inference can be drawn that the accused Mr. Laxman is guilty of the charged offences under sections 363/366 of the IPC and under section 6 of the POCSO Act and in the alternate under section 376 of the IPC.

25. There is no material on record to show that on 23.02.2014 at about 09.00 p.m., accused Mr. Laxman had kidnapped the prosecutrix aged about 17 years; he had kidnapped the prosecutrix with the intention to compel her to marry against her will, to force her to do illicit intercourse; he had kidnapped the prosecutrix and took her to Ramesh Nagar and in a rented accommodation, he had committed penetrative sexual assault on her; and he had kidnapped the prosecutrix and took her at Ramesh Nagar in a rented accommodation, he had committed rape on her.

26. From the above discussion, it is clear that the claim of the prosecution is neither reliable nor believable and is not trustworthy and the prosecution has failed to establish the offences against accused Mr. Laxman for the offences of kidnapping Ms. X, prosecutrix, of kidnapping her to compel her to marry against her will or force her to do illicit intercourse, of committing penetrative sexual assault and of committing rape upon her. The witnesses have not deposed an iota of evidence that accused Mr. Laxman has committed any of the charged offences.

27. Therefore, in view of the above discussion, the conscience of this Court is completely satisfied that the prosecution has failed to bring home the charge against accused Mr. Laxman for the offences under sections 363/366 of the IPC and under section 6 of the POCSO Act. The prosecution has also failed to prove the alternate charge for the offence under section 376 of the IPC.”

18. Resultantly, the trial court acquitted the respondent of the charges framed against him, for the commission of offences of kidnapping the

prosecutrix X; of kidnapping her to compel her to marry against her will or force her to do illicit intercourse; of committing penetrative sexual assault; and of committing rape upon her, punishable under Sections 363/366 of the IPC and under Section 6 of the POCSO Act. The trial court also acquitted the respondent for the alternate charge under Section 376 of the IPC.

19. Coming to the submissions made on behalf of the State, we observe that prosecutrix X, who is their Star Witness, has turned hostile and has not supported the prosecution's case and most significantly did not assign any role to the respondent. The testimony of Mr. Z and Ms. Y, the parents of the prosecutrix, also completely negates the case of the prosecution, insofar as they urge that the prosecutrix X was a minor on the date of the commission of the offence or that the respondent had any role or that the respondent had committed any offence, leaves alone the offences with which he was charged, against their daughter.

20. On the contrary, the statement of the prosecutrix X, recorded under Section 164 Cr.P.C., as well as her testimony in Court, above extracted, leaves no manner of doubt that according to the relevant prosecution witnesses, the respondent was innocent of all charges since he had not committed any offence against the prosecutrix X. It is further observed that by way of the present leave to appeal, the State rely on the medical evidence,

including the report of the FSL to seek reversal of the finding of acquittal, returned by the trial court. In this behalf, we must observe that the medical reports relied upon by the prosecution are merely corroborative evidence; whereas the oral evidence, as available on record in the present case, which indubitably is substantive evidence, completely negates the case against the respondent.

21. It is trite to state that the settled legal position is that when two views are plausible, the appellate court should not reverse a judgment of acquittal by the trial court, merely because another view is possible. [Reference: **K. Prakashan vs. P.K. Surenderan**, reported as (2008) 1 SCC 258].

22. In that case, the Supreme Court held that where two views are reasonable possible from the very same evidence, the prosecution cannot be said to have proved its case beyond reasonable doubt [Reference: **T. Subramanian vs. State of Tamil Nadu**, reported as (2006) 1 SCC 401].

23. If the High Court on reappraisal of the evidence considers the possibility of another view being reasonably be plausible, then the view which favours the accused should be adopted unless the High Court returns a definite conclusion that the findings recorded by the trial court are perverse and against the weight of the evidence on record. [Reference: **Ghurey Lal vs. State of U.P.**, reported as 2008 (10) SCC 450].

24. It is thus a well settled legal position that, the presumption of innocence that obtains in favour of an accused person is further strengthened by the order of acquittal, passed in his favour by the trial court. It is further observed that the appellate court is generally loath to interfere with the findings of fact recorded by the trial court a fortiori because the latter has had the advantage of examining in the first person the demeanor of the witnesses. Therefore, when the trial court takes a plausible view of the facts of the case, interference by the appellate court, with the judgment of acquittal, is neither warranted nor justified. It is only when the conclusion arrived at by the trial court is palpably wrong and against the weight of evidence or predicated on an erroneous view of law, which would result in grave injustice, that the appellate court would interfere with the findings returned. [Reference: 1) **Muralidhar @ Gidda and Another vs. State of Karnataka** reported as (2014) 5 SCC 730 2) **Mallikarjun Kodaqali (Dead) represented through Legal Representatives vs. State of Karnataka & Ors.** reported as AIR 2018 SC 5206].

25. It is, thus a rudimentary principle of jurisprudence that, the innocence of an accused such as the respondent in the present case, who has been acquitted by the trial court after an elaborate trial; the presumption of his innocence is strengthened.

26. Having examined the testimony of the prosecutrix X, which completely exculpate the respondent and which testimony is corroborated by the testimonies of her parents, Mr. Z (father) and Ms. Y (mother), we find ourselves in agreement with the findings returned by the trial court to the effect that the prosecution has failed to establish the charges against the respondent.

27. In view of the foregoing discussion, we are of the view that the present leave petition is devoid of merit. The same is accordingly dismissed.

SIDDHARTH MRIDUL
(JUDGE)

I.S. MEHTA
(JUDGE)

DECEMBER 16, 2019

dn