

#11

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On : 28.11.2019

CRL.L.P.508/2019

STATE

.... Petitioner

Versus

LALA RAM @ MUKESH

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Dutta, APP for State with SI Ravi Kumar,
PS- Karawal Nagar.

For the Respondent : Mr. Ashutosh Dubey, Advocate (Amicus Curiae).

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. There is no gainsaying the legal position that the question whether the conviction of an accused can be based on the sole testimony of the victim in cases of sexual assault/rape, is no longer *res integra*. It has been held by the Supreme Court, as well as by this Court, in a catena of judgments that, the sole testimony of the prosecutrix, who is a victim of sexual assault, if it is found to be of sterling quality, reliable and inspires confidence, is by itself sufficient

to convict an accused. [Reference: Jitendra Sharma vs. State, Criminal Appeal 1241/2018, decided by this Court on 29.04.2019]

2. In the present case, however, as would be elaborated, hereinafter, we are of the considered view that neither the testimony of the prosecutrix is creditworthy by itself, nor has it found substantive corroboration from the testimony of the other relevant witnesses and the medical evidence on record.

3. The case of the prosecution against the solitary respondent before us was that Mahender Singh (PW-2), the father of the victim lodged a complaint with the Police that the latter, who was aged about 15 years, had been missing from their residential accommodation in House No.A-306, Gali No.5, Prem Vihar, Shiv Vihar, Karawal Nagar, Delhi, since 18th July, 2017, although the complaint itself was belatedly made on 20th July, 2017.

4. On these allegations, the subject FIR under Section 363 of the Indian Penal Code Act, 1860 (hereinafter referred as “IPC”) came to be registered.

5. Subsequently, on 25th July, 2017, PW-2, the father of the victim informed the Police, that the latter was currently at Janta Colony, Welcome, Delhi.

6. Predicated on this information ASI Devender Singh and WCt. Deepika went to House No.E-49, -15, Mazdoor Janta Colony, Shahdara; from where the victim was recovered and the accused/respondent hereinafter “Respondent”, was allegedly arrested.

7. The victim was medically examined and after completion of the investigation, charge-sheet was filed against the respondent, under Sections 363/376 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act').

8. The learned Trial Court framed charges against the respondent under the aforesaid Sections on 11th October, 2017, to which, the latter pleaded not guilty and claimed Trial.

9. In order to establish its case against the respondent beyond doubt, the prosecution examined ten witnesses before the learned Trial Court.

10. Subsequent thereto, the respondent's statement under Section 313 Cr.P.C. was recorded, and he claimed his right to lead evidence in his defence, by thereafter examining Dinesh, his brother as DW-1.

11. Having heard learned counsel appearing on behalf of the parties and having perused the evidence on record, the learned Trial Court vide the judgment and order dated 2nd May, 2019, assailed by way of the present leave petition on behalf of the State, found that the prosecution had failed to prove its case against the respondent beyond all reasonable doubt and acquitted the latter of all charges framed against him.

12. Aggrieved by the impugned judgment and order dated 2nd May, 2019; the State has instituted the present leave petition under Section

378 (1) Cr.P.C. seeking leave to appeal *inter alia* on the following grounds:

“i. That the impugned judgment of acquittal dated 2.5.2019 is erroneous as it is beset with conjectures and surmises rather than cogent and legally admissible evidence.

ii. That the Ld. Trial Court failed to appreciate the material fact that the prosecutrix examined as PW-1 had fully supported the case and hence the acquittal of respondent has caused grave miscarriage of justice.

iii. That the Ld. trial court erred in not appreciating the fact that as per Naresh Pal Singh, Principal, Alok Kunj Secondary School, Karawal Nagar, who was examined as PW-3 had deposed that on 9.4.2012, vide admission no. 14065, victim was admitted in class VI in their school. As per the records the date of birth of the victim was 10.1.2002 and the victim was admitted in their school on the basis of school leaving certificate of previous school. The copy of the admission form was proved by him as Ex PW-3/1.

iv. The Ld. trial court failed to appreciate that the prosecutrix of the sexual offence cannot be put at par with the accomplice. She is a victim of sexual crime against her and her statement inspires confidence.

v. The Ld. trial court erred in not appreciating the fact that the age of the prosecutrix was proved to be 15 years at the time of incident which was on 18.7.2017. The evidence of a prosecutrix does not need any corroboration with other evidence since her statement is of sterling worth and on the basis of her statement and evidence, the respondent was wrongly acquitted.

vi. That the Ld. trial court did not appreciate the material fact that the testimony of the prosecutrix does not require corroboration on every aspect. In state of Himachal Pradesh Vs. Raghubir Singh, 1993 (2) SCC 622, the Hon'ble Supreme Court has held that there is no legal compulsion to

look for any other evidence to corroborate the evidence of the prosecutrix before recording the return of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix if her evidence inspires confidence.

vii. That the Ld. trial court failed to appreciate that the consent of the minor is no consent in the eyes of law.

viii. That the Ld. trial court erred in not appreciating the deposition and evidence of PW-1 and PW-2 being the prosecutrix and the father whose testimonies do not suffer from any material contradictions and hence they could be relied upon by the trial court.

ix. That the Ld. trial court has failed to appreciate the fact that the evidence of the prosecutrix corroborates the medical evidence brought on record by the prosecution.

x. That the reasoning given by Ld. trial court is not in consonance with the legal position and the settled law.

xi. That the Ld. Trial Court failed to proceed in accordance with the procedures established by law. It was improper for the trial court to acquit the respondent on minor discrepancies in the statements of witnesses which did not go to the root of the prosecution case. The Ld. Trial Court has erred in giving undue importance to minor contradictions and discrepancies which do not go to the root of the prosecution case. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the very root of the case and shake the basic version of the prosecution witness.

xii. That the Ld. trial court failed to appreciate that the prosecutrix was consistent in her statement from the very beginning that it was the accused who had taken her and during the period when the accused had kept the victim, he had forcible sexual intercourse with her. There was no material contradiction in her testimony. Her testimony is further corroborated by the fact that the victim was recovered from the custody of accused and it has been proved by the victim, her father and police officials. Hence the prosecution has proved its case beyond reasonable doubts.

xiii. That the judgment of acquittal dated 2.5.2019 has caused grave miscarriage of justice on account of erroneous view of law and the finding reached by the trial court is perverse.”

13. Mr. Ashish Dutta, learned APP appearing in support of the leave petition would urge that the learned Trial Court fell into error in not appreciating the fact that the victim, who was admittedly a minor at the time of the commission of the offence, was consistent in her statement/testimony, from the very beginning, to the effect that, it was the respondent alone who had taken her and that during the period when he had confined her against her wishes, he had forcible sexual intercourse with her. It was also urged that, although no corroboration was required for the testimony of the prosecutrix, which by itself in law, is sufficient for the conviction of the respondent, independent corroboration was provided by the circumstance that she was recovered from the custody of the respondent.

14. *Per contra* Mr. Ashutosh Dubey, learned Amicus Curiae appearing on behalf of the respondent, would support the findings arrived at by the learned Trial Court in their entirety, to urge that the

same were cogent, credible and founded on the evidence on record and did not warrant interference.

15. Before we proceed to consider the material on record and the submissions made on behalf of the parties, it would be germane to describe the legal position that obtains *qua* interference by the Appellate Court against an order rendered by the learned Trial Court acquitting the solitary accused in a sexual offence.

“The Apex Court in the case of **Ghurey Lal v. State of U.P.** reported in **2008 (10) SCC 450** has laid down the following principles before granting leave to appeal against an order of 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 enormous 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 is 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 declaration/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 much rule in favour of the accused.”*

16. In order to appreciate the submissions made on behalf of the counsel, it would be necessary and profitable to extract *in extenso* the findings arrived at by the learned Trial Court while acquitting the respondent of all charges and the same are accordingly reproduced as follows:

“29. It is correct that the victim has consistently stated that she was taken by accused Mukesh and he had established sexual relations with her. However, several inconsistencies and contradictions have emerged in the testimony of the victim.

30. It is to be seen that there are two statements of victim u/s 161 Cr.P.C that were recorded on 26.07.2017. In one of these, she stated that accused had enticed her, taken her to a temple and got married with her and then he had taken her to Tughlakabad. In the other statement, she stated that initially he took her to India Gate and from there, he took her to Tughlakabad. So in the other statement, a new place i.e. India Gate is added and the fact mentioned in the earlier statement, that accused had married her, is missing. In the statement u/s 164 Cr.P.C, the victim stated that accused took her to India Gate and then enticed her to Tughlakabad and also added that accused had given her some stupefying substance. When she appeared as PW1, she narrated a different fact and stated that accused had not enticed her to India Gate or Tughlakabad but had made her open the gate by knocking at her gate, forcibly pulled her from her house and then had taken her to India Gate. The victim was then asked as to why she opened the door at 11.00 pm at night rather than waking up her parents and she stated that she thought accused Mukesh might have come for some work with her father. However, as in her examination in chief she had stated that on hearing the knocks, she first went upstairs and saw that the accused standing outside her house, she was then asked that because she would not have known that it was

accused who was knocking at the door, why she did not inform her parents and victim did not answer this question.

31. Then comes the victim's alleged journey from her house to India Gate. She stated that throughout the journey, she had shouted for help but nobody could hear her. However, she admitted that it was a season where the *Kanwaris* would be travelling on the road and there were *kanwar* camps and police men on the road. This clearly reflects that at that time, the road must be alive. So if the victim was being kidnapped on a motorcycle and she was shouting for help, someone must have heard it and therefore, this far the testimony of the victim regarding the accused knocking at the door, forcibly pulling her along and then taking her to India Gate is not credible.

32. Coming onto what happened at India Gate. The victim states that at India Gate also, there were police men but she did not shout or cry out for help. When she was asked why she did not cry out for help, she stated that she did not shout for help because she had been threatened by the accused. This explanation was further tested during her cross examination when she was asked that whether the accused had threatened her when she shouted for help on her way to India Gate? She answered in negative. So first of all, there was no statement in the examination in chief of the victim that accused had ever threatened her. Secondly, it seems highly improbable that when the accused did not care for her shouts earlier, he would threaten her at India Gate and ask her not to shout. Therefore, it is an improvement made by the victim to explain why she did not shout for help at India Gate.

33. It is further to be observed that according to the victim, at India Gate accused left her alone when he had gone to get something to eat. The victim was asked about this situation that at that time, she had an opportunity to seek help but why she did not seek any help? She stated that she did not seek help because no one was there. Here again, it is to be seen that in the earlier part of her cross examination, she admitted that at India Gate, police men were present. Therefore, her explanation that she did not seek help because no one was there is not acceptable. She then deposed that she did not try to run away because she was afraid. However, once the accused had removed himself from her presence, the fear, if any, would not have existed.

34. Then there is the question about how the victim reached at Tughlakabad? In her examination in chief, the victim stated that at India Gate accused gave her something to eat which was laced with some stupefying substance and then she lost consciousness. When she regained consciousness, she found herself at

Tughlakabad. During her cross examination, she deposed that from India Gate to Tughlakabad, they had gone on a bike and she was pillion rider. She further stated that they reached there at around 3.00 p.m. It is to be seen that on the one hand, the victim states that she lost consciousness and on regaining consciousness, she found herself at Tughlakabad but on the other hand, she states that from India Gate to Tughlakabad, they had gone on a motorcycle and she was pillion rider. She also states about the time of their arrival at Tughlakabad. Therefore a specific question was asked to her that this meant that when she reached at Tughlakabad, she was conscious. She replied that she was semi-conscious and contradicting her stand, that they had gone on a bike and she was pillion rider, she stated that she did not know how the accused had taken her to Tughlakabad.

35. Coming onto the testimony of the victim regarding their stay at Tughlakabad.

36. The victim deposed that at Tughlakabad, accused had kept her for a period of one week. She came to know that she was in Tughlakabad because it was informed to her by the people at that place that it was Tughlakabad. There the accused would keep her locked in a room and would not allow her to handle a mobile phone. After one week, accused told her that it was not a safe place as police could arrive and therefore, he removed her to Shahdara at his friend's house at Janta Colony. During her cross examination on this point, she deposed that she had not sought any help from people, who according to her, had told her that it was Tughlakabad. She did not put forward any explanation for not doing so. Whenever accused would forcibly establish sexual relations with her, she did not shout for help and volunteered, that accused would keep her intoxicated by mixing something in milk. She as then confronted with her statement u/s 164 Cr.P.C and she deposed that she had not stated either to the police to the MM that accused would establish physical relations with her after intoxicating her. She denied that she had made deliberate improvement on this account to explain her conduct. She denied that accused had never taken her to Tughlakabad and she had concocted a story. Here again, the victim made deliberate improvements in her cross examination in order to explain why she could not seek help at Tughlakabad because on one hand, she stated that she had an occasion to talk to the people there and on the other hand, she stated that she was kept intoxicated by accused. This fact of intoxicating the victim at Tughlakabad had come for the first time during the cross examination of the victim. Here another important fact to be noticed is, that according to the victim, accused did not allow her to handle a mobile phone whereas her father had stated

that during that period, the victim had 3-4 telephonic conversation with him. Therefore, the victim's father had an opportunity to know where the victim was. On this point, it has to be observed that according to the victim's father, victim had told him that she was in Shahdara. It is not only about the day when the victim was recovered that the father of the victim was speaking of. I say so because as per his testimony, on the day he came to know about the presence of victim at Shahdara, he went to Shahdara and victim was recovered. He stated that the next day, after the lodging of FIR, accused made him to talk to his daughter. Two or three more times, he had received calls from accused where accused made her to talk to his daughter but he and victim were not allowed to talk too much. During his cross examination, he deposed that he had inquired from the victim regarding the place she was and she stated that she did not know the place where she was but the place was near railway station, Shahdara.

37. It is to be noticed that the father of victim had enough time to inquire from the victim where she was but the victim did not state that the place was Tughlakabad.

38. In view of my above discussion, it is very much clear that the victim had made many deliberate improvements. There are many contradictions which have appeared in the testimony of the victim and the improbabilities of the circumstances for kidnapping the victim has been established. Therefore, it will be highly unsafe to rely upon the sole testimony of the victim without there being any corroboration.

39. Coming onto the recovery of the victim, which according to the Ld. Addl. PP is a corroborative fact.

40. The victim in her statement u/s 161 Cr.P.C. had stated that from Tughlakabad, they had gone to Welcome in order to look for a room. In her other statement u/s 161 Cr.P.C also, she stated that they had come to Welcome to look for a room where the police caught and brought them to the police station. In her statement u/s 164 Cr.P.C, she does not state how she was recovered Therefore, in the first statement recorded of the victim, she had not stated that the accused had taken her to Janta Colony at the house of his friend and rather she had stated that they were looking for a room at Welcome where the police caught them. When she appeared as PW1, she deposed that after one week, accused said to her that it was not safe there as the police could arrive and therefore, he removed her to Shahdara at his friend's house in Janta Colony. In the evening police reached there and they were apprehended. At that time, friend of accused and his (friend's) wife were also present.

41. During her cross examination, she deposed that when she was brought at Shahdara, accused had brought her on a bike and she was conscious. They had reached Shahdara at around 6/7.00 p.m.. She did not shout for help either on the way to Shahdara or on reaching Shahdara. She had not explanation for doing so. She denied that accused had never taken her to Shahdara.

42. The other witness of the recovery of victim is her father. He deposed that after the victim was kidnapped, he had 2-3 telephonic conversations with the victim. During one such conversation, victim had told him that she was in Shahdara. Thereafter, he, his employer Neeraj Garg and brother of accused went to Shahdara at a house where the accused used to stay earlier. There they found accused and victim. They called the police and thereafter, they were taken to police station.

43. So according to the father of the victim, victim informed him through telephone that they were at Shahdara. However, according to the victim, she was not even allowed to have any telephonic conversation with her father. Therefore, the first question which comes to my mind is, how the victim's father could have known where the victim was.

44. It is also to be noticed that according to the initial statement of victim, they had gone out to look for a room but later she stated that she was taken by accused to his friend's house at Janta Colony.

45. It is also to be noticed that according to the father of the victim, he alongwith his employer and brother of accused had gone to that house and found victim and accused and it is thereafter that the call was made to the police. However, according to the police witnesses i.e. PW4 and PW10, on receiving the information they reached at Janta Colony where they met victim's father who informed them that victim might be at a house in Gali no 4. Therefore, as per the testimonies of the police witnesses, it is only after the arrival of police that the victim was recovered and her location was found but as per the victim's father, before arrival of the police, they had already located the victim.

46. According to the victim's father, his employer Neeraj Garg was with him. Therefore, at this stage, the police had an opportunity to join an independent public witness who could at least show that the victim had been recovered from the possession of the accused but the police did not join him as an independent witness.

47. It is also to be noticed that IO despite having opportunities did not join any public witness though he gave an explanation that nobody agreed to join the investigation. However, it being a residential area and there being residential house around, he should have given a written notice to show his bonafide that he had at least made an effort to join public witnesses but he did not do so. This raises doubts about the recovery of the victim in the manner as stated by the police.

48. It is also to be noticed that according to the police witnesses, at the time of recovery of the victim from the alleged house, the victim, accused and one Sonu accused's friend, were present there whereas according to the victim, wife of that friend was also present in that house.

49. It is also to be noticed that according to the victim, they reached that house at around 6/7.00 p.m.. However, according to PW4 LCt. Deepika, in order to join the investigation, she was instructed to reach DCP Office where ASI Devender Kumar met her. During her cross examination, she deposed that she did not remember the exact time but it was around 4.00 p.m when she had received instructions to reach DCP Office. Meaning thereby, that by 4.00p.m., police had received information that victim was at Shahdara.

50. ASI Devender Kumar, who is the IO of this case, deposed that on 25.07.2017, complainant provided him the mobile number of the accused and on the same day, the complainant had informed him that the victim and accused were seen by the complainant in Mazdoor Janta Colony Welcome.

51. During his cross examination, he deposed that on 25.07.2017 at about 04.00 p.m., complainant had given the telephonic information regarding the whereabouts of the victim and accused.

52. Therefore, on the one hand, according to the victim, she and accused reached Janta Colony, Shahdara at about 6/7.00 p.m. and on the other hand, the police witnesses have stated that the information regarding the victim and accused was given to them by the complainant at around 04.00 p.m.

53. In the circumstances of the recovery discussed above, a corroboration of these testimonies through independent witness was required. As discussed earlier, according to the father of the victim, an independent witness in the form of Neeraj Garg was with them but for the reasons best known to the IO and the

prosecution, he has not been cited as a witness. IO has also failed to join any public witness despite it being a residential area.

54. The only public witness who has been joined, is the person from whose house the victim and accused were allegedly recovered. That person is PW6 Chander Prakash @ Sonu. He deposed that he knew accused. In the year 2017, on 25th day of a month, accused had come to his house. He made a call to the brother of accused. After around 15-20 minutes, two policemen alongwith brother of accused came to his house and they took them to PS Karawal Nagar. He was cross examined by Id. Addl.PP.

55. During his cross examination by Id. Addl.PP, he admitted that on 25.07.2017, accused had come to his house. He denied that on that day, accused had told him that accused had got married and after some time, he brought a girl to his house or that thereafter, the accused and the girl entered his house. He denied that he had stated these facts to the police. He was confronted with his statement mark PW6/A where these facts were recorded. He denied that after sometime, police and father of victim came to his house and father of victim identified the victim and accused. He denied that he had stated these facts to the police. He was confronted with his statement mark PW6/A where these facts were recorded. He denied that police had recorded his statement mark PW6/A and volunteered, that police had obtained his signatures on some blank papers.

56. Now this witness has not supported the case of the prosecution at all. On the contrary, what he has stated is, that after the accused had come to his house, he had called the brother of accused, who then reached there with the police. The prosecution's version is completely silent about the presence of brother of the accused. However, credence to this person's testimony, that brother of accused had accompanied the police, is given by the father of the victim, who had deposed that on receiving the information about the presence of victim at Janta Colony, he alongwith his employer Neeraj Garg and brother of accused went there and found accused and the victim. Therefore, the father of the victim and this person i.e. PW6 are confirming each other to the extent of the presence of the brother of the accused. If the father of the victim had received an information from the victim about her location, and had given it to the police then, where was the occasion to call the brother of the accused has not been explained. This again raises doubts about the story of the prosecution regarding the recovery of the victim.

57. The brother of the accused had also appeared as DW1. He deposed that on 25.07.2017, he received a call from the police

station and he was called at the police station. Police inquired about Lala Ram from him. He told the police officials that accused was at home and at around 03.30 p.m., accused had gone for some work from the house. He made a call to Lala Ram but Lala Ram could not be contacted. Thereafter, he called Sonu, a friend of Lala Ram who informed him that Lala Ram was not with him. After some time, he received a call from Sonu, who informed him that Lala Ram would be going to him. Then he, alongwith two police officials, went to Janta Colony at the house of Sonu where Lala Ram met them. Police officials apprehended Lala Ram and took him to police station. He and Sonu had also accompanied the police. In the police station, he came to know that Lala Ram had been falsely implicated.

58. During his cross examination, he deposed that after the arrest of accused, he had stated these facts to the police. He denied that he had not stated these facts to the police and he was stating it for the first time. He had not given these facts in writing to the police or to higher police officials.

59. This witness's presence at the time of apprehension of accused Lala Ram is established by the father of the victim and the prosecution witness PW6, who according to the prosecution, has turned hostile. This testimony cannot be discarded just on the ground that he was the brother of accused especially when it stands established that at the time of apprehension of accused, this witness was present and his presence has been concealed by the police. I accordingly find that this witness's testimony finds corroboration from the prosecution witnesses' testimonies and cannot be discarded completely.

60. In view of my above discussion, I find that even regarding the recovery of victim, there are certain contradictions which have been emerged and have been discussed above. The prosecution beyond all reasonable doubt has failed to prove that victim was recovered from the custody of the accused when he was apprehended."

17. We have examined the evidence on record including the critical testimony of the prosecutrix and find ourselves in complete agreement with the findings arrived at by the learned Trial Court.

18. Broadly encapsulated the testimony of the prosecutrix is beset with major contradictions, which we highlight as follows:

(a) Two statements of the victim under Section 161 Cr.P.C. were admittedly recorded on 26th July, 2017; whereas in one of these the victim PW-1 stated that the accused had enticed her, taken her to a temple and got married with her and then taken her to Tughlakabad, in the other she stated that initially he took her to India Gate and from there he took her to Tughlakabad.

(b) It is evident from the above that a new place, namely, India Gate is added in the second contemporaneous statement and that the critical material fact, that the respondent had first married her, mentioned in the earlier statement is conspicuous by its absence, in the second one.

19. In her statement recorded under Section 164 Cr.P.C., the victim PW-1 went on to further embellish her testimony to state, that the accused had taken her to India Gate and then enticed her to Tughlakabad, after administering a stupefying substance. When the victim appeared as PW-1 she narrated an entirely new and different fact, by deposing that the accused had not enticed her to India Gate or Tughlakabad but had made her open the gate of her house by knocking thereon, and then forcibly taking her away to India Gate when she opened it. In response to a query as to why she had opened the door of the house at 11:00 PM at night rather than waking up her parents, she stated that she believed that the respondent must have come for some work with her father. However, as in her examination in chief she stated that on hearing the knocks she first went upstairs and saw the respondent standing outside her house; she was then cross-examined further and asked that, because she would not have known it

was the respondent who was knocking at the door, why did she not inform her parents, to which query she did not respond at all.

20. Insofar as the victim's alleged journey from her house to India Gate is concerned, she testifies that although she shouted for help but nobody could hear her. However, she admitted that it was the season when *kanwarias* were travelling on the road and that there were camps and Policemen all along the route. This leads to but one inescapable conclusion that although the roads were crowded at the time of her alleged abduction, the victim did not raise an alarm, denting the truthfulness and credibility of her testimony, irreparably.

21. Further her testimony with regard to what transpired at India Gate does not inspire any confidence at all. The victim categorically states that although there were Policemen at India Gate, she did not shout or try to cry out for help. However, she makes a further improvement in her earlier testimony by adding for the first time that, she did not raise an alarm because she had been threatened not to do so by the respondent. When this explanation was subjected to further cross-examination and she was asked whether the respondent had threatened her when she allegedly shouted for help on her way to India Gate, she answered in the negative.

22. A perusal of this testimony clearly reflects that first of all there was no statement or testimony earlier that the accused had ever threatened her; and secondly, it is highly improbable that when the respondent did not care for her screaming earlier, he would threaten her only after they had reached India Gate. This improvement made by the victim PW-1 is irreconcilable.

23. It must furthermore be observed that the victim's own testimony was that the respondent left her alone at India Gate in order to bring her something to eat and the former failed to utilize that opportunity to get away from the latter, or seek help from the Policemen, who were admittedly present at the location. This makes her testimony unworthy of acceptance.

24. We go on to observe that, in relation to how the victim PW-1 reached Tughlakabad, it was her deposition that the accused administered the stupefying substance to her in the food he forced upon her at India Gate, after ingesting which she fell unconscious, and found herself in Tughlakabad when she regained consciousness. It is pertinent to point out that during her cross-examination the victim PW-1 deposed that from India Gate to Tughlakabad, they had gone on a motorcycle and that she was riding pillion. She further stated that they reached Tughlakabad at about 3:00 PM. In this regard it is relevant to note that on the one hand the victim PW-1 states that she lost consciousness and on regaining consciousness she found herself at Tughlakabad, but on the other she states that from India Gate to Tughlakabad they had gone on a motorcycle and she was the pillion rider. When victim was further cross examined on whether at the time of their arrival in Tughlakabad she was unconscious, she responded that she was semi-conscious, completely contradicting her earlier testimony. The testimony of the prosecutrix with regard to the forced stay at Tughlakabad also does not pass muster. The victim PW-1 testified that the accused would keep her locked in a room and would not allow her access to a mobile phone. However, it is an admitted

position that the respondent is alleged to have facilitated the conversation between the victim and her father on three or four occasions, prior to and leading upto her recovery from the Janta Colony on 25th July, 2017. It is further an admitted position that it is only as a consequence of those telephone conversations, according to the testimony of PW-2, that the father of the victim became aware of her presence at Janta Colony. She further testified that after a week of residing in Tughlakabad, the respondent told her that it was not a safe place as the Police could arrive at anytime and thereafter removed her to a friend's house at Janta Colony in Shahdara, from where she was eventually recovered. During her cross-examination on this point, the victim deposed that she had not sought any help from the people who according to her had told her that she was in Tughlakabad. She also did not put forward any explanation for not doing so. It is further evident that she did not shout for help when the respondent allegedly forced himself upon her sexually, but now volunteered the testimony that it was because she was kept intoxicated by the latter, by repeatedly putting something in the milk. When the victim was confronted with her previous statement under Section 164 Cr.P.C. where she had not deposed that the respondent would establish physical relations with her after intoxicating her, she baldly denied that she had made a deliberate improvement on this account in order to explain her conduct.

25. The victim then went on in the cross-examination to make deliberate improvements, in order to explain why she did not seek any

help at Tughlakabad by saying that it was because she was kept intoxicated.

26. Proceeding further, the recovery of the victim from the abode of PW-6 is itself in doubt for the reason that a minute examination of the latter's testimony recorded, which is extracted hereinbelow, completely belies and contradicts the testimony of other prosecution witnesses, *in toto*:

“ I know accused Lala Ram @ Mukesh, who is present in Court today, as several years ago, he had resided in front of my house and he also used to visit my house.

In the year 2017, on 25th day of a month, accused came to my house. I made a call to his brother. After around 15 to 20 minutes, two policemen came to my house alongwith brother of accused and took us to PS Karawal Nagar along with accused. At around 12.00 midnight, I was relieved by police.”

27. It would also be relevant to observe that DW-1, examined on behalf of the respondent clearly and unequivocally ascribed a reason for the latter's false implication, by testifying as follows:

“ I have been residing at the above said address with my family members for about 15 years. Accused Lala Ram is my brother. He used to work as a salesman.

On 25.07.17, I received a call from the Police Station and police called me at the Police Station. They inquired me about the accused Lala Ram. I told the police officials that he was at home and that at about 3.30 p.m, he had gone for some work from the house. He used to go for his work at about 8.30 a.m and used to return home at about 8.00 p.m. I made call to Lala Ram but he could not be contacted. Thereafter, I made call to Sonu, friend of Lala Ram, who informed me that Lala Ram was not present there. After some time, I received call of Sonu. He informed me that Lala Ram was coming to him. Thereafter, I alongwith two police officials reached at Janta Colony at the house of Sonu. Lala Ram met us there. Police officials apprehended him and took him to police station. I along with Sonu also accompanied them.

In the Police Station, we came to know that accused Lala Ram was implicated in a case of kidnapping of the daughter of Mahender. Mahender was known to me as Mahender also used to go to Satsang, where my mother also used to go. Mahender and his wife also used to visit our house. Mahender had taken Rs. 25,000/- from my Mother in my presence. Accused Lala Ram was also present at that time. Mahender had not returned us the said money. Whenever, I and Lala Ram went to his house to demand the said money, he threatened us to implicate in a false case. Mahender falsely implicated the accused Lala Ram in this case.”

28. Lastly, it is observed that the medical examination of the victim, immediately pursuant to her recovery also does not support the case of the prosecution, as the victim admittedly refused the medical examination at the Jag Pravesh Chandra Hospital, Shastri Park, Delhi, as recorded in the MLC Ex.PW9/1. This is further corroborated by the testimony of PW-9, the examining doctor Dr. Neetu Singh to the following effect:-

“On 26.07.2017, I was posted as above. On that day, victim d/o Mahender, female, aged 15 years was brought at the hospital by W Ct. Deepika for medical examination. I examined the victim and prepared MLC No.118/17. I have seen MLC dated 26.07.2017. It bears my signatures at point A. The MLC is now Ex.PW9/1.

On per speculum examination, I found bleeding present as the LMP was found dated 24.07.2017. Vaginal examination could not be conducted as the victim refused for her international examination.”

29. It is trite to state that the settled legal position is that even when two views are possible, the appellate court should not reverse a judgment of acquittal, merely because another view was possible [Ref: **K. Prakashan vs. P.K. Surenderan**, reported as (2008) 1 SCC 258]. It was held that where two views are reasonably possible from the very same evidence, the prosecution cannot said to have proved its case beyond reasonable doubt [Ref: **T. Subramanian vs. State of**

Tamil Nadu reported as (2006) 1 SCC 401]. 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 [Ref: Ghurey Lal vs. State of U.P., reported as 2008 (10) SCC 450].

30. It is well settled legal position that, the presumption of innocence obtained 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 finding of fact recorded by the trial court a fortiori because the latter has had an 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 are palpably wrong against the weight of evidence or predicated on an erroneous view of law and would result in grave injustice that the appellate court would interfere with the findings returned.

31. The Hon'ble Supreme Court of India in the case Muralidhar @ Gidda And Another vs. State of Karnataka, reported as (2014) 5 SCC 730, observed as follows:

“12..... It is not necessary to deal with these cases individually. Suffice it to say that this Court has consistently held that in dealing with appeals against acquittal, the appellate court must bear in mind the following:

(i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the power of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on re-appreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court.”

32. It is, thus the 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. [Ref: *Mallikarjun Kodagali (Dead) represented through Legal Representatives vs. State of Karnataka & Ors.*, reported as AIR 2018 SC 5206].

33. We are, therefore, of the considered view that the testimony of the victim is riddled with contradictions and thus agree with the

findings returned by the trial court to the effect that, it will be highly unsafe to rely upon her sole testimony to convict the respondent in the absence of any independent corroboration. We are further of the view that qua her recovery as well, there is no evidence *aliunde* and the solitary independent witness in the form of Neeraj Garg, who was available, was not examined by the prosecution for the reasons best known only to the Investigating Officer. The only public witness, who has been joined, is Chander Prakash *alias* Sonu PW-6, who does not support the case of the prosecution at all, in relation to the recovery of the victim from the respondent. Lastly, as abovenoticed, the medical evidence on record, too does not corroborate the testimony of the prosecutrix.

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

SIDDHARTH MRIDUL
(JUDGE)

I.S. MEHTA
(JUDGE)

NOVEMBER 28, 2019
nd/dn