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

Date of decision: 23.09.2019

+ CRL.L.P. 527/2019 & Crl. M.A. 36512/2019

STATE (NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP for the State
alongwith SI Sudeep, PS. Begumpur

versus

DEEPAK

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J (Oral)

CRL. M.A.36512/2019 (EXEMPTION)

Allowed, subject to all just exceptions.

Application stands disposed of.

CRL. L.P.527/2019

1. By this petition under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C'), the appellant/State seeks leave to appeal against the judgment dated 22.07.2019 passed by learned Additional Sessions Judge (North West)-01, Special Court, Rohini District Courts, Delhi in Sessions Case bearing no. 104/2014 whereby the accused/respondent was acquitted of the charges under Sections 363/366/376/420 of the

Indian Penal Code, 1860 (hereinafter referred to as 'IPC') in FIR No.60/2014 registered at Police Station Begumpur.

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

“ DD no. 70B dated 20.01.2014 at 9:55 p.m was recorded on a PCR call regarding daughter of the caller missing since noon. The IO reached the house of the complainant L, who reported that his fourth born child daughter S aged about 17 years is missing since 12:00 noon, who had gone by saying that she is going to a tailor but did not return. On his statement, this FIR u/s 363 was registered.

On 28.3.2014, the missing girl S was recovered from the house of accused Deepak from Shamli (U.P) and the statement of the victim u/s 161 Cr.P.C was recorded wherein she stated that she knew accused since last one year and used to like him. On 20.01.2014, she left her home and went with Deepak to his village Shamli and after marriage started living with him in a rented accommodation. At Shamli she came to know that Deepak is already married and had a child from his marriage. Police recovered her. Accused was formally arrested and was medically examined. Victim was also medically examined and was found to be pregnant. Pregnancy was terminated with the consent of family members of victim and the samples were seized and sent to FSL.

Statement of victim u/s 164 Cr.P.C was got recorded where she has stated that she left with accused of her own and married him and established physical relations. There was no age proof of the victim and her ossification test was conducted where she was found to be between 16 and a half years to 17 and a half years and after completion of

investigation, present chargesheet was filed against the accused.”

3. Charges for commission of offence punishable under Sections 363/366/420 IPC and section 6 of the POCSO Act or in the alternate Section 376(2)(n) of the IPC were framed against the accused on 17.07.2014 to which the Respondent pleaded not guilty and claimed trial.
4. In order to bring home the guilt of the accused, the prosecution examined 19 witnesses in all. Statement of the accused was recorded under Section 313 of Cr.P.C wherein he denied the allegations of the prosecution and stated that he is innocent and has been falsely implicated.
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 offences.
6. Learned APP for the State contended that there are no discrepancies in the testimonies of the prosecution witnesses who have deposed on the lines of the prosecution case, pointing towards the guilt of the accused; that the learned Trial Court failed to consider the testimony of PW-3 (Prosecutrix) in the correct perspective and based the acquittal of the accused on minor inconsistencies in the testimonies of prosecution witnesses; that the respondent was already married which is evident from the testimony of PW-11 and on the false pretext of marrying the prosecutrix, the respondent deceived and cheated the prosecutrix to gain sexual favours/advantages; that the respondent forcibly got married to the prosecutrix who was a minor

at the time of the alleged incident and was not in the capacity to give a valid consent. In support of his contentions, he placed reliance on the case of *Mukarrab etc. vs. State of U.P reported in IV(2016) CCR 308 (SC) and S. Vardarajan vs. State of Madras reported in AIR 1965 SC 94.*

7. We have heard the learned APP for the State at length and perused the available material on record.

Testimony of the prosecutrix

8. It is a settled principle of law that conviction in a case of rape can be based on the sole testimony of the prosecutrix of sexual assault without corroboration from any other evidence. Where the testimony of prosecutrix of sexual assault instills confidence in Court, the same can be relied upon 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 this regard, reference can be made to the dicta of the Apex Court in *State of Rajasthan vs. Babu Meena* reported at (2013) 4 SCC 206 wherein the Court has held that:

“9. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly

reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.

10. In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony. In her evidence she had stated that she was subjected to rape at 12.00 noon when her sister Jitendra, the wife of the accused had gone to purchase milk. However, during the course of investigation she alleged that she was subjected to rape at 06.30 A.M. When confronted with the aforesaid contradiction in the cross-examination, she could not explain the aforesaid discrepancy. Her statement that she shouted for help when she was subjected to rape also does not find support from the evidence of Ramchandra Salvi (PW-11), the owner of the house where the incident is alleged to have taken place. Dr. Smt. Sushila (PW-12), has also not supported the allegation of rape as also the Forensic Science Laboratory Report. In the face of what we have observed above, the evidence of the prosecutrix cannot be said to be wholly reliable.”

9. Further reliance can be placed on ***Krishan Kumar Malik vs. State of Haryana*** reported at (2011) 7 SCC 130, wherein the Apex Court has held that:

“31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the Appellant guilty of the said offences. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (Code of Criminal Procedure), FIR and deposition in Court.”

10. It is vital to note that if the statement of the prosecutrix fails to inspire confidence or is not worthy of credence then the same should not be the basis for conviction. The same was reiterated in ***Sadashiv Ramrao Hadbe v. State of Maharashtra*** reported at (2006) 10 SCC 92, wherein the Supreme Court held that:

“9. It is true that in a rape case the Accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and believe the case set up by the prosecutrix, the

court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

11. At this stage, we deem it appropriate to peruse the testimony of the prosecutrix. The prosecutrix during her statement recorded under Section 164 Cr. P.C. deposed as under:-

*“Statement of Victim Suman d/o Sh. Lotan R/p H-82,
Raju Nagar, Budh Vihar, Delhi.*

Age 18 years, D/o Sh. Vinod

ON SA

Tell, what happened?

*Mai deepak se pyar karti hu. Dinank
20.01.2014 ko mai khud deepak ke sath shamli, U.P.
chali gyi thi. Mai ghar se bhag gayi thi kisi ko bina
btaye. Deepak aur Maine 21.01.2014 ko shamli ke
mandir mein shaadi ki thi aur hum dono vhi kiraye ke
ghar mai pati-patni ke jaise rhene lage. Humare
beech sharirik sambandh meri marzi se hi bane.
Deepak ne mere sath koi zabrdasti nhi ki. Deepak
mere pati hai. Bas yehi khena hai*

Q. Aur kuch khena chahati ho?

A. Nhi

RO & AC

”

12. The PW-3 (Prosecutrix) during her examination-in-chief deposed that:-

“One year prior to the incident, Dinesh, residing in our neighbourhood, introduced me with accused Deepak. Thereafter, Deepak became my friend. Deepak told me that he loves me and wants to marry me. He assured me that I will be happy with him. He enticed me and I eloped with him on 20.01.2014 without informing anyone. Accused Deepak took me to Shamli, UP, and thereafter he took me to a temple where he forcibly put vermilion on my head. Then we started living in a rented room at Shamli as husband and wife. Accused made physical relations with me with my consent. After sometime, I came to know that accused is already married and is having a child also. On one day, police along with my parents came to Shamli and they brought me as well as accused back to Delhi. Police took me to a hospital for my medical examination where I came to know that I was pregnant. I got my pregnancy terminated.

Earlier also I came to Court where my statement was recorded by the learned MM. It is correct that I came to know about the factum of marriage of accused after one month of my marriage with the accused at temple, and he told me that he will give divorce to his wife and thereafter he made physical relations with me without my consent.”

13. During cross-examination, the prosecutrix deposed as under:-

“It is wrong to suggest that I know from before that accused is married or that despite knowing this fact I eloped with the accused, it is wrong to suggest that accused did not have any physical relations with

*me as I had put a condition that he should take divorce from his first wife and then only I would have physical relations with him. I came to know the marriage status of accused at Shamli. **I do not remember who had informed me that accused is already married.** It is wrong to suggest that I am deposing falsely. ”*

14. From a plain reading of her statement recorded under Section 164 Cr. P.C., we find that the prosecutrix willingly joined the company of the Respondent and thereafter made physical relations with the appellant out of her own free will. However, during her examination-in-chief, she improved upon her statements recorded under Section 164 Cr. P.C. and deposed that ‘Deepak told me that he loves me and wants to marry me. He assured me that I will be happy with him. **He enticed me and I eloped with him on 20.01.2014 without informing anyone.**’ During her cross examination when she was asked as to how she came to know about the marriage of the accused, she failed to give any cogent reply and deposed that ‘**I do not remember who had informed me that accused is already married**’. The conduct of the prosecutrix shows that she was aware about the marital status of the accused/Respondent at all times and she was willfully residing with the accused/Respondent out of her own free will and also developed physical relations with the accused/Respondent without any force or threat.
15. It is further apparent from the testimony of PW-6 (father of the prosecutrix) that after two months when PW-6 (father of the prosecutrix) got to know about the whereabouts of her daughter and accused/Respondent, PW-6 (father of the prosecutrix) alongwith SI

Mahavir and other police officials went to Shamli, Uttar Pradesh and got her daughter recovered, who was residing with the accused/Respondent. The testimony of PW-6 (father of the prosecutrix) reveals that the prosecutrix was residing with the accused/Respondent as his wife without any pressure and was not under any illegal confinement of the accused/Respondent. The case of the prosecution was that the accused/Respondent made physical relations with PW-3 (Prosecutrix) without her consent, however, the testimony of PW-3 (Prosecutrix) and the PW-6 (father of the prosecutrix) reveals that she was never under the illegal confinement of the accused/Respondent or his family members. Despite opportunity she neither tried to save herself from the clutches of the accused/Respondent nor tried to contact her family members through phone which proves that PW-3 (Prosecutrix) was willingly residing with the accused/Respondent and was aware about the previous marriage of the accused/Respondent with PW-11 (Sangeeta/wife of the accused/Respondent). Moreover, PW-11 (Sangeeta/wife of the accused/Respondent) during her cross-examination deposed that **‘I knew victim S prior to the date of incident as she used to visit my house by showing her relation with my husband as brother and sister. Victim S knew about my son, born out of my wedlock with accused Deepak. My husband had good relations with me’** which proves that the prosecutrix was throughout aware about the marriage of the accused/Respondent with PW-11 (Sangeeta) and her statement being unrebutted was treated to be accepted by the Prosecution. Hence, from the above, it emerges that the element of *Mens Rea*,

which is an essential ingredient of Sections 363/366/376/420 IPC is missing, therefore, this Court believes that the Respondent did not forcibly establish physical relations with the prosecutrix.

Determination of Age of PW-3

16. In order to determine the legal validity of the consent given by the prosecutrix as per the law, the focal point for discussion would be the age of the prosecutrix.
17. The trial Court while taking the Ossification report into consideration read with Rule 12(3)(b) of the Juvenile Justice Rules, 2007 has deemed the age of the prosecutrix to be more than 18 years as on 15.04.2014. The relevant portion of the trial Court judgment has been reproduced as under:

“7. As far as age of the victim is concerned there is no document on record to show the exact date of birth of the victim. She never went to school and therefore, her ossification test was conducted and the medical board gave its report Ex. PW 15/A where her bone age was determined between 16 and a half years to 17 and half years as on 15.04.2014. The dental bone age was 17+ 1 year and the x-ray examination report was between 16 and half years to 17 and half years, on that basis this opinion was given. As per Rule 12 of J.J Rules, 2007 in case the exact assessment of the age cannot be done the benefit to the child or juvenile may be given on the lower side within the margin of one year. As

per, the judgment of Hon'ble Delhi High Court Crl. Rev. P. No. 195/2018 titled as Shweta Gulati v. Govt. of NCT of Delhi, if the age of victim is found to be between 16 and half years and 17 and half years, then the same has to be read as 17 and half years in favour of the accused. In the present case, the age of the victim was determined between 16 and half years to 17 and half years and therefore same has to be read as 17 and half years and with a margin of one year as provided under Rule 12(3)(b) of J.J. Rules, 2007, the age of the victim has to be considered as more than eighteen years as on 15.04.2014 and in facts the victim was major at the time of alleged kidnapping as on 20.01.2014 and her consent becomes relevant. Further, her father said that he mentioned her age on estimation and her Aadhar Card shows the year of birth as 1996.”

18. The prosecutrix when put to cross-examination by the counsel for the accused as to her age at the time of incident, the prosecutrix (PW-3) deposed as under:

“ xxx By Sh. Harit Chhabra, leaarned counsel for accused.

“It is wrong to suggest that accused never enticed me to elope with him.

I do not know the distance between my house and the house of the accused. I do not know my date of birth. I am illiterate and have never been to school. My

parents have not got my date of birth registered with MCD, etc. My year of birth is mentioned as 1996 on Aadhar Card. I have brought my original Aadhar Card with me today. Photocopy of the same is now exhibited as Ex.PW-3/DA (OSR). I do not know how my year of birth has mentioned as 1996 in my Aadhar Card. It is correct that Aadhar Card is issued only to those applicants who make a written application for this purpose. My application form is filled by the officials who were preparing Aadhar Card. It is wrong to suggest that I have under mentioned my age in my complaint and in my testimony today. It is wrong to suggest that I know from before that accused is married or that despite knowing this fact I eloped with the accused, it is wrong to suggest that accused did not have any physical relations with me as I had out a condition that he should take divorce from his first wife and then only I would have physical relations with him. I came to know the marriage status of accused at Shamli. I do not remember who had informed me that accused is already married. It is wrong to suggest that I am deposing falsely.

19. The father of the prosecutrix was also examined as PW-6 who deposed as under:

“xxxx xxxx xxxx xxxx

Thereafter, I went to PS and my statement was recorded, same is Ex. PW6/A, bearing my signatures at point A. I had told the police the age of my daughter is about 17 years.

xxxx xxxx xxxx xxxx ”

In his cross-examination, he further deposed that:

“Now, my daughter victim S is married. It is wrong to suggest that as on the date of incident, the age of my daughter as more than 18 years. I had mentioned the DOB of my daughter on the basis of my memory and there was no documentary proof to this effect. It is wrong to suggest that my daughter eloped with the accused of her own. It is wrong to suggest that accused has been falsely implicated in the present case. It is wrong to suggest that I have deposed falsely.”

20. On the failure of the prosecution to provide any valid proof of age of the prosecutrix, the Learned Trial Court referred the prosecutrix for an ossification test to determine her age. The prosecutrix underwent the bone ossification test at the SGM Hospital, Mangol Puri, Delhi. As per the report of the Medical Board (Exhibit PW-15/A), the age of the prosecutrix was determined as 16 ½ - 17 ½ years at the time of her medical examination.
21. Further, in order to prove the report on record, the CMO of SGM Hospital, Mangol Puri, Delhi was examined as PW-15 who deposed as under:

“xxxx xxxx xxxx xxxx

The members of the Medical Board conducted radiological, medical and dental examination of patient R and opined her bone age between 16-1/2 to 17-1/2 years as on the date of examination i.e. 15.04.2014. The report of the medical board is Ex. PW-15/A and bears my signature at point “A”.

xxxx xxxx xxxx xxxx”

22. However, the report of the medical board cannot be considered in isolation and needs to be read alongwith the law settled by this Court

as well as the Apex Court in series of pronouncements. In ***Jaya Mala vs. Home Secretary, Government of Jammu & Kashmir*** reported in ***AIR 1982 SC 1297***, the Court has held as under:

“9. Detenu was arrested and detained on October 18, 1981. The report by the expert is dated May 3, 1982, that is nearly seven months after the date of detention; Growing in age day by day is an involuntary process and the anatomical changes in the structure of the body continuously occur. Even on normal calculation, if seven months are deducted from the approximate age opined by the expert in October, 1981 detenu was around 17 years of age, consequently the statement made in the petition turns out to be wholly true. However, it is notorious and one can take judicial notice that the margin of error in age ascertained by radiological examination is two years on either side. Undoubtedly, therefore, the detenu was a young school going boy. It equally appears that there was some upheaval in the educational institutions. This, young school going boy may be enthusiastic about the students' rights and on two different dates he marginally crossed the bounds of law. It passes comprehension to believe that he can be visited with drastic measure of preventive detention. One cannot treat young people, may be immature, may be even slightly misdirected, may be a little more enthusiastic, with a sledge hammer. In our opinion, in the facts and circumstances of this case the detention order was wholly unwarranted and deserved to be quashed.”

23. Moreover, in ***Rajak Mohammad vs. The State of Himachal Pradesh*** reported in ***(2018) 9 SCC 248*** while dealing with the benefit of doubt to the accused in cases of age determination by ossification test, the Apex Court has observed:

“5. In this regard, we have considered the evidence and materials on record. The age of the prosecutrix has been

sought to be proved by the prosecution by bringing on record the School Admission Form (Exhibit PW5/A) and the certificate (Exhibit PW5/B) issued by one Jasdeep Kaur (P.W. 5), JBT Teacher of Government School Dungi Plate. P.W. 5 in her deposition has stated that the writings in the School Admission Form (Exhibit PW5/A) are in her handwriting and the signature affixed is that of the mother of the prosecutrix.

In cross-examination, P.W. 5 had stated that the details mentioned in Exhibit PW5/A have been obtained from the School Leaving Certificate issued by the Government Primary School, Tambol. The certificate issued by the Government Primary School Tambol on the basis of which the details in the Admission form (Exhibit PW5/A) was filled up by P.W. 5 has not been exhibited by the prosecution.

Nothing hinges on the document exhibited by the prosecution as Exhibit PW5/B as that is the consequential certificate issued on the basis of the entries in Exhibit PW5/A. The mother of the prosecutrix who had allegedly signed Exhibit PW5/A has not been examined by the prosecution.

6. On the other hand, we have on record the evidence of Dr. Neelam Gupta (P.W. 8) a Radiologist working in the Civil Hospital, Nalagarh who had given an opinion that the age of the prosecutrix was between 17 to 18 years.

7. While it is correct that the age determined on the basis of a radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, yet the totality of the facts stated above read with the report of the radiological examination leaves room for ample doubt with regard to the correct age of

the prosecutrix. The benefit of the aforesaid doubt, naturally, must go in favour of the Accused.”

24. From the perusal of the case of ***Jaya Mala (supra)***, it is clear that the margin of error in age ascertained by the radiological examination is two years on either side. It is also apparent from the decision of the Apex Court in the case of ***Rajak Mohammad (supra)*** that the determination of age on the basis of radiological examination may not be an accurate determination and sufficient margin either way has to be allowed, as such the benefit of doubt must go in favour of the accused.
25. Applying the law as laid down in ***Jaya Mala (Supra)*** to the facts of the present case, we find that the margin of two years is to be considered on the higher side giving the benefit of doubt to the accused, which brings out the age of the prosecutrix to be 18 ½ - 19 ½ years. More so, the record reflects that the medical examination of the Prosecutrix was conducted within three months from the occurrence of the alleged offence, as such, we are of the view, that the prosecutrix was above 18 years of age at the time of the commission of the alleged offence. Hence, it is evident that the prosecutrix was a major and fully competent to give her consent at the time of making sexual relations with the respondent.
26. Accordingly, there exists no cogent reason to intervene in the findings of the Learned Trial Court in relation to determination of age of the Prosecutrix and we are of the opinion that the Prosecutrix at the time of the incident had attained majority.

Conclusion

27. On carefully scrutinizing the testimony of PW-3, as demonstrated above, the same does not appear to be a case of cheating and sexual intercourse against the will of the prosecutrix rather it appears that the prosecutrix was a consenting party. Further, the Learned Trial Court aptly concluded that the prosecutrix was a major at the time of the incident on the basis of the ossification test read along the relevant provisions of law.
28. The law with regard to grant of leave is well settled by a catena of judgments. Leave to appeal can be granted only where it is shown that the conclusions arrived at by the Trial Court are perverse or there is misapplication of law or any legal principle. The High Court cannot entertain a petition merely because another view is possible or that another view is more conceivable.
29. In ***Govindaraju @ Govinda vs State by Srirampuram P.S. and Anr.*** reported at (2012) 4 SCC 722 the Apex Court discussed the law while dealing with appeals against acquittal in the following words:

"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."

30. It is a settled law that while deciding a leave to appeal petition filed by the State, in case two views are possible, the High Court must not grant leave, if the trial court has taken one of the plausible views, in contrast thereto in an appeal filed against acquittal. In **Arulvelu and Anr. vs. State represented by the Public Prosecutor and Anr.,** reported in **2009 (10) SCC 206**, while referring with approval the

earlier judgment in *Ghurey Lal vs. State of Uttar Pradesh*, reported in (2008) 10 SCC 450, the Supreme Court reiterated the principles which must be kept in mind by the High Court while entertaining an Appeal against acquittal. The principles are:-

“1. 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.

2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.

3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.

4. 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.

5. If two reasonable or possible 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.

6. Careful scrutiny of all these judgments lead to the definite conclusion that the appellant court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment cannot be set aside because the

appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either 'perverse' or wholly unsustainable in law."

31. Having regard to the principles laid down by the Apex Court in the case of Arulvelu (supra), Govindaraju (supra) and Ghurey Lal (supra), we are of the opinion that the present leave petition holds no merit and we see no compelling and substantial reason to interfere with the order passed by the learned Trial Court in the present case and therefore, upon overall analysis of the facts and position of law, we are of the view that the present leave petition preferred by the State being meritless deserves to be dismissed.
32. Accordingly, the present leave petition being devoid of merit is dismissed.

SANGITA DHINGRA SEHGAL, J.

MANMOHAN, J.

SEPTEMBER 23, 2019/gr