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

Date of Decision: 27th March, 2019

CRL.LP. 168/2018

STATE (GOVT.OF NCT OF DELHI)Appellant
Through: Mr. Tarang Srivastava, APP with ASI
Subhash Sharma, PS Mangol Puri.

Versus

PREM @ MANISH KUMARRespondent
Through: Mr. S. K. Bharti, Advocate.

SANGITA DHINGRA SEHGAL, J (ORAL)

1. By the present Leave Petition filed under Section 378 (3) of the Code of Criminal Procedure(hereinafter referred as '**Cr.P.C.**'), the State seeks leave to appeal against the judgment dated 20.11.2017 passed by the learned Trial Court in case FIR No. 884/2013, whereby the respondent (accused before the Trial Court) was acquitted of the charges punishable under Section 354D/509of the Indian Penal Code(hereinafter referred as '**IPC**') and Section 12 of the POCSO Act.
2. Brief facts of the case, as noticed by the Learned Trial Court, are as under: -

“i. The prosecutrix was taking tuition classes from the accused when she was in class 10th and the accused since then was stalking her and ultimately the prosecutrix made a complaint to the police on 27.12.2013 when she was stopped by the accused on her way from her school to her residence and prosecutrix and her sister apprehended the accused

and brought him to the police station. She lodged her complaint on which this FIR was registered. Accused was arrested and present charge-sheet for the offences punishable under Section 354(D)/509 IPC and Section 12 of POCSO Act was filed.

ii. Charges were framed against the accused on 01.04.2014 for the offence punishable under Section 11(i) & (iv) POCSO Act punishable under Section 12 of POCSO Act, alternatively under Section 509/354(D) of IPC. Accused pleaded not guilty and claimed trial.”

3. To bring home the guilt of the respondent, the prosecution examined 05 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. by the learned Trial Court wherein he pleaded not guilty and claimed to have been falsely implicated in the present case. The respondent chose not to lead any evidence in his defence.
4. Assailing the impugned judgment, Mr. Tarang Srivastava, APP for State contended that the same is based on presumptions, conjectures and surmises and is not sustainable; that the learned trial court failed to appreciate the testimony of the prosecutrix as well as other incriminating evidence in right perspective; that the learned Trial Court erroneously held that the prosecutrix and the respondent were in relationship from 2010-2013 without any evidence and no complaint was made by the prosecutrix during the said period; that the learned trial court wrongly disbelieved the arrest of the respondent.
5. Per contra, Mr. S. K. Bharti, learned counsel for the respondent supporting the impugned judgment contended that the Trial Court

after evaluating the material available on record, has fairly acquitted the respondent, hence, the same does not warrants any interference by this Court.

6. I have heard the learned counsel for the parties and perused the material on record.
7. The victim/prosecutrix in her statement recorded under Section 164 Cr.P.C alleged that she was taking tuitions from the respondent. When she remained alone in the class, respondent used to harass her and said "*Mein tumse pyar karta hoon aur agar tum nahimili to mar jaunga*". Respondent took her photograph on the pretext of filling up a form and later showed to others saying '*Ye meri girlfriend hai aur isse meri shaadi ho gayi hai*'. She narrated the entire facts to her mother who further told her brother, who in turn warned the respondent not to misbehave. Thereafter, she did not see him for two years but in the month of October, November and December, 2013, he started following her to the school. On 24.12.2013, respondent followed the prosecutrix and her friend Kashish to a bus stand. She called her father, who sent her sister to the bus stand. Her sister caught hold of respondent and took him to the nearest police station.
8. The victim/prosecutrix was examined as PW-1(A). In her examination-in-chief she deposed that:

"I used to get tuition classes from him with my sister when I was in 10th class and after completion of her course, she had left her tuition classes. I used to go alone to the tuition centre.

....

He tried to catch hold of my hand. I told this incident to my brother Digambar and thereafter I left tuition classes.

The accused started following me on my way to school and despite refusal, he used to give my bus fare.

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On 27.12.2013, when she I coming back from the school, the accused followed me and started commenting upon me by saying all nonsense. I called my father on his mobile phone from a nearby STD booth. My father sent my sister for taking me back to home.

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After getting fed up from the conduct of accused, I asked my sister Pooja that I wanted to get rid of accused and due to that reason, my sister took the accused to PS Mangolpuri on 27.12.2013.

9. The sister of the prosecutrix was examined as PW-2, who deposed that:

"On 27.12.2013, my father was admitted in hospital after an accident. He gave me a call at about 12:45 p.m. in the afternoon and told me that accused Manish was troubling/teasing my sister G. I was travelling in a bus going to Mangolpuri and got down at bus stop in front of PS Mangolpuri. I saw that accused was standing near the temple in front of PS-Mangolpuri. My sister G who was also behind him pointed at accused and I apprehended the accused and took him to PS."

10. From the bare perusal of the record it transpires that the victim was taking tuitions along with her sister from the respondent and soon after when PW-2 (Pooja) left the tuition the respondent started harassing the victim and thereafter on 27.12.2013 when she was

coming back from her school, the respondent came on his motorcycle and started harassing her. The victim called her father who sent PW-2 (Pooja) for bringing the victim back to the residence.

11. The conduct of victim (PW-1) appears to be doubtful. As per testimonies she was subjected to harassment by the respondent person from 2010 onwards but she failed to report the matter to the police authorities or to the principal of the school. The victim during her statement deposed that the victim used to follow her in bus also but she chose not to report the same to her family members or to the police. The arrest of the respondent is also doubtful as the victim and her sister (PW-2) deposed that they apprehended the respondent from the spot and took her to the police station. However, police record reveals that the respondent was arrested from the spot.
12. The Apex Court in ***Govindaraju @ Govinda Vs. State & Anr. (2012) 4 SCC 722***, court has discussed in detail the scope and power of the appellate court and reiterated that the presumption of innocence of an accused is reinforced by the order of acquittal. Relevant portion of the judgment reads as under: -

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

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

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

entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the Courts.

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

13. 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.

14. Having regard to the principles laid down by the Apex Court in the case of *Arulvelu (supra)*, *Govindaraju (supra)* and *Ghurey Lal (supra)*, I do not find that there is any infirmity in the impugned judgment and no grounds are made out to interfere in the impugned judgment passed by learned trial court. Accordingly, the present leave to appeal stands dismissed.
15. Trial Court record, if any be sent back.

SANGITA DHINGRA SEHGAL, J

MARCH 27, 2019

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