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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : 01st February, 2019

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CRL.LP. 532/2018

STATE (GOVT.OF NCT OF DELHI)

....Appellant

Through: Mr Ravi Nayak, APP for the State
with SI Nidhi Malik, PS Seelampur,
Delhi.

Versus

MAQBOOL KHAN

...Respondent

Through: Mr. M. N. Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT:

SANGITA DHINGRA SEHGAL, J

1. By the present Leave Petition filed under Section 378 (1) of the Code of Criminal Procedure, (hereinafter referred as 'Cr.P.C.') the State seeks leave to appeal against the judgment dated 25.04.2018 passed by the learned Trial Court in Session Case No. 45036/15, whereby the respondent (accused before the Trial Court) was acquitted of the charges punishable under Section 363/366A/354B/376 of the Indian Penal Code (hereinafter referred as 'IPC') and Section 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO').

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

“(i) That DD No. 24-A was registered on receiving a Call from the control room at Police Station Seelampur on 03.04.2015 at about 11.37p.m, in receipt of the information that a girl child has been confined in a room for the last 3 hours at Shastri Park, Near Buland Masjid and the alleged offender has been apprehended by the victim’s father, the said DD was marked to ASI Data Ram, and accordingly ASI Data Ram along with Constable(Ct.) Nareshveer(PW-8) arrived at the spot i.e. H.No.403, Shastri Park, Near Buland Masjid, Delhi and consequently brought accused Maqbool Khan, along with the victim and her parents to Police Station Seelampur. The statement of the victim was recorded by Sub-Inspector (SI) Sarita (PW-19) and respectively the victim along with her parents were taken to Jag Pravesh Chandra (JPC) Hospital for her medical examination, along with Ct. Babita (PW-4) and W/H Ct. Rajesh(PW-3).

(ii) Based on her statement recorded by SI Sarita (PW-19) and the contents of her MLC No. A-5103/15, FIR No. 249/15 was registered under Section 342/354/354B/363 of the Indian Penal Code and Section 10 of the POCSO Act. On the same day, accused Maqbool Khan was arrested vide arrest memo (Ex.PW8/A) and his disclosure statement was recorded vide (Ex.PW8/C), thereafter the accused was medically examined vide MLC No. A-5104/15 and was further referred for Potency Test Examination.

(iii) On the next day, the accused was produced before the concerned court and was remanded to the Judicial Custody. The statement of the victim U/s 164 Cr.P.C was recorded on 15.04.2015, wherein the victim purported allegations of penetrative sexual assault, subsequent to which, Section 376 of the Indian Penal Code and Section 6 of the POCSO act were added, and the victim was again medically examined on 17.04.2015, wherein the internal medical examination of the victim was also conducted.

(iv) After committal, arguments on the point of charge were heard and on 14.08.2015, charges u/s 363/366A/354B/376 IPC and u/s 6 of the POCSO Act 2012 (hereinafter referred to as the "Act"), were framed against the accused, to which he pleaded not guilty and claimed trial."

3. To bring home the guilt of the respondent, the prosecution has examined 19 witnesses in all. Statement of the respondent was recorded under Section 313 of Cr.P.C. wherein he denied the charges framed against him and claimed to be falsely implicated in the case and examined two witnesses in his defence.
4. After hearing the counsels for both sides and on appreciation of entire evidence available on record, the learned Trial Court acquitted the accused for the charged offences.
5. Mr. Nayak, learned counsel appearing for the State contended that the impugned judgment dated 25.04.2018 is based on conjectures, surmises and the learned Trial Court has not appreciated the testimony of the prosecutrix in its right perspective ignoring the well-settled

proposition of law that the sole testimony of the victim of sexual offence is sufficient to base conviction of the accused.

6. Learned counsel for the State further contended that the learned Trial Court has placed undue weightage on the minor discrepancies in the statements of the prosecutrix (PW-5) and her maternal Aunt (PW-16), contrary to which both the statements are consistent and corroborative in nature and there are no major omissions and contradictions in their testimonies. He further contended that the learned Trial Court has erred in disregarding the second MLC of the victim, which categorically reveals that the victim was subjected to sexual assault. He further contended that on the intervening night of 04.04.2015, her mother accompanied the victim to the JPC Hospital for her first medical examination and no internal examination was conducted. He further contended that victim was internally examined at the time of second medical examination, wherein it was opined that the hymen is torn and ruptured, which eventually sustains the fact that the victim was exposed to penetrative sexual assault.
7. Per contra, Mr. M. N. Dudeja, learned counsel for the respondent contended that there is no infirmity in the impugned judgment passed by the learned Trial Court and no interference is called for from this Court. He further contended that the testimony of prosecutrix is bristled with a lot of contradictions, inconsistencies and improvements. She has given different versions in her statements recorded at different stages. Counsel admitted that it is true that sole testimony of the prosecutrix in a case of rape can be based for conviction of the accused subject to same inspires confidence of the

Court, but in instant case, the sole testimony of the prosecutrix is not sufficient to establish the case of rape against the respondent as the medical evidence does not corroborate with the oral testimony of the prosecutrix and the above alleged case is based on the foundation of malicious slandering the respondent.

8. We have heard the learned counsel for the parties and perused the material available on record.
9. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence. The statement of the victim is more reliable than any other witness. Where the testimony of victim of sexual assault installs the 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 victim is not a requirement of law but a guidance to prudence under the given circumstances.
10. In **Mohd. Ali @ Guddu Vs. State of Uttar Pradesh**, reported in **(2015) 7 SCC 272**, the Apex Court has observed as under:-

"29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach.

The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. *True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not un-reproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and*

the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same."

11. Returning to the facts of the present case, the moot point involved for consideration in present leave petition is whether evidence adduced by the prosecution on rape, particularly the testimony of the victim (PW-5) is trustworthy, credible and worthy of reliance.
12. The learned Trial Court has pointed out that there are material contradictions in the testimony of the victim recorded by the police and the statement recorded under Section 164 of the Cr.P.C. As per her initial statement recorded by the police, she has categorically stated that at around 02.00pm, she was playing in front of her house and apparently, the accused took her to his room, on the pretext that he will be giving her some money. However, when her statement was recorded under Section 164 of the Cr.P.C, she has altered her version and has stated that the accused has asked her to buy roti for him and consequently when she delivered the roti to his room, the accused knotted her hands and feet and sexually assaulted her. It is also to be given a vital concern, that in her initial complaint, there are no specific allegations of penetrative sexual assault against the accused, but in her statement recorded under Section 164 Cr.P.C, she has stated that the accused has forcibly penetrated her vagina with his fingers.
13. The prosecutrix was examined as PW-5 and during her examination-in-chief dated 21.03.2016, she deposed as under: -

"I was playing with the daughter of my landlord and other friends in the gali. At that time one old uncle, whose name I do not know, called me and

asked me to bring roti from the hotel and gave money for the purpose. I purchased the roti and went to the room of the uncle upstairs. He then closed the door and tied my hands and feet. Again said, he tied my hands and mouth. Thereafter he took off my clothes and then he also took off his clothes. The uncle then made me lie on the floor and laid over me. He then inserted his toilet wala object into my toilet wali place (peshab wali jagah)."

14. Further, during her cross-examination dated 05.04.2017 the prosecutrix has deposed that she was not aware about the identity of the accused prior to the alleged incident. Relevant portion of the cross-examination dated 05.04.2017 reads as under: -

"I had gone to the first floor to supply roti to the accused. Other children were also playing with me when I was playing in the gali. The accused has only called me for brining roti. I was not knowing the accused since earlier."

Court Question: Had you seen him earlier?

Ans. *I had seen him as he resided nearby and used to pass through our street.*

I have passed class V and have entered in class VI. I had not attended the school on the date of the incident. I had not seen the house of the accused. The accused came downstairs to give money to me for purchasing roti and when I returned back from the hotel, he called me from upstairs and asked me to come there. The accused had given me Rs. 10/- for purchasing roti."

15. Auxiliary, the most substantial testimony is of Smt. Ranjita (PW-16), maternal aunt of the victim as the same supports the case of the

prosecution. PW-16 Smt. Ranjita in her deposition before the Court has stated that she got recovered the victim from the house of the accused in a completely naked condition. Relevant portion from her statement recorded on 11.10.2017 reads as under:-

“I know the victim. She is the daughter of my sister-in-law(nanad) Arifa.

On 03.04.2015, at around 8:00 am, my sister-in-law left the house for her work. She left her children in my care. After sometime, I found other children crying. I asked the reason from them and they said that the victim had gone outside. I went out to search the victim. I kept searching for her but for around one hour, I could not find her. Then I made enquires from the children in the street. They told me that the victim had gone with Maqbool Khan. I reached his house. Three times I knocked at his door but nobody responded. I returned home and enquired from the children at my house and they told me that still the victim had not returned. I again went to the house of Maqbool Khan. I again knocked at his door. I asked him whether the victim was at his house and he replied in negative. I proceeded towards my house and when I had gone three/four paces. I heard a cry from victim. I returned to the house of Maqbool Khan and asked him to open the door. When he opened the door, I saw that the victim was completely naked and in that condition, while crying, she came out of his house. I covered her with my scarf(dupatta) and brought her home. I alongwith victim returned home at around 4:30pm”

16. Further, during her cross-examination dated 11.10.2017, directed on behalf of the learned APP for the State, she has stated that when the

victim was not revealing about the alleged incident, her sister-in-law Arifa had slapped her and thereafter the victim had narrated the happening of the aforesaid incident. Relevant portion from her cross examination dated 11.10.2017 directed on behalf of the learned APP for the State is reproduced below:

“It is correct that when the victim was not disclosing anything, her mother slapped her and thereafter she disclosed to her mother and me as to what had been done by the accused to her.”

17. Accordingly, from the aforesaid testimony, it can be established that the possibility of the victim, being a child witness, subjected to tutoring cannot be ruled out, as such, her testimony does not find any corroboration on material aspects. Further the most crucial part for consideration is that, during her cross-examination directed on behalf of the learned Counsel for the respondent, she was confronted with her initial statement recorded under Section 161 Cr.P.C. (Ex.PW16/D-1). Relevant portion from her Cross examination dated 11.10.2017 directed on behalf of the learned Counsel for the accused is reproduced below:

“The house of my sister-in-law Arifa is, at a distance of around 2 Kms. from my house. The street in which the house of accused is situated is around 4 or 5 feet wide. His house is surrounded by other houses. The house of accused was on first floor. The ground floor of the house was occupied by the landlord. The second floor also had tenanat. The girl, who had told me that Maqbool had taken the victim was name Madia. She was residing in the nieghbourhood of my sister-in-law.

I had not stated to the police that Madia had given me information about Maqbool taking the victim. It is wrong to suggest that I had not stated to the police about Madia because Madia had not given any such information to me.

*When I had initially returned after knocking at Maqbool Khan's door, I stayed at my house for around one hour and then I again went to his house. I had stated to the police that when on my initial visit no one responded from Maqbool Khan's house. I returned to my house and then I again went to the house of Maqbool Khan. **(Confronted with statement under Section 161 Cr.P.C.Ex.PW16/D-1 where it is not recorded).***

*I had stated to police that when accused opened the door. **I saw that the victim was completely naked** or that I had put her my dupatta around her and brought her back home. **(Confronted with statement under Section 161 Cr.P.C.Ex.PW16/D-1 where it is not recorded).** On seeing the condition of the victim, I did not raise any hue or cry and I also did not make any complaint to his landlord. It is wrong to suggest that I had never gone to the house of accused, or that I had not found the victim at his house."*

18. Having discussed the testimony of the victim and other prosecution witnesses in detail, it is significant to examine whether the medical evidence adduced by the prosecution finds support from the oral testimony of the victim. Dr. Meghna Kelkar (PW-12) CMO, JPC Hospital, examined the victim on 04.04.2015 and has proved her report as Ex.PW12/A and opined that no external injuries were present on the victim. The relevant portion from her statement recorded on 10.02.2017 is reproduced below:

“On 04.04.2015, I was posted as above. On that day, at about 3:29pm. The victim D/o Mohd. Shakeel, female 10 years old was brought at the hospital by her mother Arifa and lady Ct. Babita of PS Seelampur for medical examination with the alleged history of person having locked the victim with himself in a room and disrobed her and took off his clothes and tried to lay over her at around 02:30pm and touched her genitals by hands, as told by the child herself. In the local examination, no external fresh injuries were found present on the person of the victim by naked eye examination.”

19. The statement of the victim under Section 164 Cr.P.C was recorded on 15.04.2015, wherein the victim purported allegation of penetrative sexual assault, subsequent to which, Section 376 of IPC and Section 6 of POCSO Act were supplemented, and the victim was again medically examined on 17.04.2015. During the second medical examination, it was observed that the Hymen of the victim is ruptured, but the fact that the hymen of the victim was not ruptured at the time of the first medical examination cannot be ignored.
20. Accordingly, the learned trial court has precisely taken the view that the medical evidence does not correlates with the version of the prosecution because the first medical examination categorically states that ***no external injury*** was present on the date of the incident, and it is not technically possible that the hymen which was found to be intact on the date of the incident is revealed to be ruptured during the second medical examination. Thereupon, even the FSL report does not

corroborates with the version of the prosecution because the FSL report was concluded with the following datum:

“Semen could not be detected on exhibits ‘1b’ ‘1d’ ‘1f1’ ‘1f2’ ‘1g’ ‘1h’ ‘1i’ ‘1j1’ ‘1j2’ & ‘3a’.”

21. Thus, the medical examination report also does not lend any support to evidence of the prosecutrix. There is no other evidence available on record which could support the offence of rape having been committed upon her. In a case of rape, the onus is always on the prosecution to prove each ingredient of the offence alleged against the accused and such onus never shifts on the accused. There is no dispute with the proposition sought to be urged by counsel for the State that there is no bar in law to convict the accused on the basis of the sole testimony of the victim, however, the Court must be satisfied that the testimony of the victim is of sterling quality and inspires confidence.
22. In a recent case, the Hon’ble Apex court in ***Criminal Appeal No. 544 Of 2018***, titled as ***Sham Singh Vs The State Of Haryana***, decided on **21.08.2018** has laid down the observation which needs to be taken into consideration while analysing the elements of false allegations in the case of rape because the same can cause equal distress, humiliation and damage to the accused. Relevant portion from the aforesaid judgment is extracted below:

“8. It is also relevant to note the following observations of this Court in the case of *Raju vs. State of M.P.* (2008) 15 SCC 133, which read thus:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of

a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration..”

23. Further, the Division Bench of this Court in ***Crl. A. 660/1990*** titled as ***Rohit Bansal Vs State*** decided on 29.05.2015, has discussed that there is no hesitation in establishing that rape causes great suffering and embarrassment to the prosecutrix, contrarily false implication of committing a rape also results in defaming the reputation and social

dignity of the accused. The germane portion of **Rohit Bansal (Supra)** is extracted below:

*“47. There is no doubt that rape causes great distress and humiliation to the victim of rape but at the same time false allegation of committing a rape also causes humiliation and damage to the accused. An accused has also rights which are to be protected and the possibility of false implication has to be ruled out. The Supreme Court in **Radhu vs. State of Madhya Pradesh reported in 2007 Cri. LJ 4704** had in this context noted as follows:*

“The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.”

and in **Abbas Ahmed Choudhary Vs. State of Assam : (2010) 12 SCC 115**, the Hon'ble Supreme Court has held that:

“We are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration, but, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.”

24. Therefore, the testimony of the prosecutrix has to be consistent in line with the case of the prosecution, as it cannot be always presumed that the statement of the prosecutrix is always true and without any embellishment. Therefore, the courts should, at the same time, should bear in mind that false charges of rape are not uncommon. There have also been rare instances where a person has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability.
25. Accordingly, we have assessed the entire material on record to satisfy our conscience once again, keeping in mind the aforementioned set principles in such matters. Subsequently, in the statement recorded under Section 313 Cr.P.C., the accused (respondent herein), Maqbool Khan denied all the allegations made against him and has stated that the incident is a false implication because of the family enmity that existed between the victim's family and his family. Relevant Portion from his statement dated 13.02.2018 recorded under Section 313 Cr.PC is reproduced below:

“Q.59 Do you want to say anything else?”

Ans. I am innocent. I was residing as a tenant at the relevant time in Shastri Park at first floor. I had only one room of 6X8 feet in which my son Asif, my daughter Shabnam, my wife, my grand daughter Shobi were also living with me in the said tenanted premises. There were two other tenants residing in other two adjoining rooms and on the ground floor of the aforesaid house some other tenants were also residing on the day of alleged incident. There was a public hydrant near my house from where nearby locality people including my family used to take

water. On the day of alleged incident, my daughter Shabnam had gone to public hydrant at around 6.00pm and had put her bucket to take water. However, Arifa, mother of alleged victim and started abusing Shabnam and had told her that she would get water first and she threw the bucket of my daughter and put her utensils below the water tap. On this, an altercation took place and husband of Arila, PW Azimul Haq and another person came there and they misbehaved with my daughter and one of them had torn the clothes of my daughter. On hearing cries of my daughter, I came downstairs and rushed there where I was also manhandled by the aforesaid persons. Number of public persons gathered there. One of them called the PCR. After sometime, PCR officials came and took me, husband of Arifa, namely Shakeel i.e. father of victim, PW Azimul Haq and their third associate to PS Seelampur. After some period, my daughter Shabnam also came there. Police officials on confirming facts from Shabnam and myself had put Shakeel, Azimul and their third associate in lockup. However, subsequently I was falsely implicated in this case by the police, who had colluded with the family members of the victim and they had let off Shakeel, Azimul Haq and third associate.”

26. From the aforesaid disclosure statement, it has been emerged that the residential house (one room of 6X8 feet) of the respondent is located in a populous locality wherein all the inmates of the house including his wife, son, granddaughter was living, with two other tenants residing in the two adjoining rooms, such a brutal offence of rape could not have been executed without attracting the attention of

anyone at that point of time. Accordingly, we do not have any hesitation to conclude that there is every possibility of false implication of the accused (respondent herein) in this matter to take revenge against his family because of the longstanding disputes *inter se* between the two families.

27. From the material available on record, we find that the testimony of victim fails to inspire confidence and the same cannot be relied for the conviction of the respondent. Her testimony is full of inconsistencies, concealment, improvements and exaggerations, which casts a shadow of doubt and has led us to find it difficult to rely upon, consequently the same does not corroborate with the medical evidence. Therefore, the prosecution has failed to establish the charges against the respondent punishable under the Indian Penal Code and consequently the charges punishable under the POCSO Act.
28. It is settled law that the Appellate Court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so. In *Muralidhar and Ors. Versus State of Karnataka* reported at (2014) 5 SCC 730, it has been held that:

12. The approach of the appellate court in the appeal against acquittal has been dealt with by this Court in Tulsiram Kanu v. State: AIR 1954 SC 1, Madan Mohan Singh v. State of U.P.: AIR 1954 SC 637, Atley v. State of U.P.: AIR 1955 SC 807, Aher Raja Khima v. State of Saurashtra: AIR 1956 SC 217, Balbir Singh v. State of Punjab : AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra: AIR 1963 SC 200, Noor Khan v. State of Rajasthan : AIR 1964 SC 286, Khedu Mohton v. State of Bihar: (1970) 2 SCC

450, Shivaji Sahabrao Bobade v. State of Maharashtra: (1973) 2 SCC 793, Lekha Yadav v. State of Bihar (1973) 2 SCC 424, Khem Karan v. State of U.P.: (1974) 4 SCC 603], Bishan Singh v. State of Punjab: (1974) 3 SCC 288], Umedbhai Jadavbhai v. State of Gujarat: (1978) 1 SCC 228, K. Gopal Reddy v. State of A.P.: (1979) 1 SCC 355, Tota Singh v. State of Punjab: (1987) 2 SCC 529, Ram Kumar v. State of Haryana: 1995 Supp (1) SCC 248, Madan Lal v. State of J and K: (1997) 7 SCC 677, Sambasivan v. State of Kerala: (1998) 5 SCC 412, Bhagwan Singh v. State of M.P.: (2002) 4 SCC 85, Harijana Thirupala v. Public Prosecutor, High Court of A.P.: (2002) 6 SCC 470, C. Antony v. K.G. Raghavan Nair: (2003) 1 SCC 1, State of Karnataka v. K. Gopalakrishna: (2005) 9 SCC 291, State of Goa v. Sanjay Thakran: (2007) 3 SCC 755 and Chandrappa v. State of Karnataka: (2007) 4 SCC 415. 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 demeanor 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.

29. Keeping in view the aforesaid propositions, we see no compelling and substantial reason to interfere with an order of acquittal passed by the learned Trial Court in the present case and therefore, upon overall analysis, we are of the view that the present leave petition preferred by the State being meritless deserves to be dismissed.
30. Accordingly, the present leave petition being devoid of merit is dismissed

SANGITA DHINGRA SEHGAL, J

SIDDHARTH MRIDUL, J

FEBRUARY 01, 2019

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