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

Date of Decision: 19th March, 2019

+ **CRL.LP. 607/2018**

STATE (GOVT.OF NCT OF DELHI)

....Appellant

Through: Mr. Rajat Katyal, APP for State

Versus

AMIT KUMAR & ORS.

....Respondent

Through: None.

SANGITA DHINGRA SEHGAL, J (ORAL)

C.M. NO. 32433/18 (for exemption)

Exemption allowed subject to just exceptions.

Application stands disposed of.

C.M. NO. 32432/18 (delay in filing)

For the reasons stated in the application, the delay of 21 days in filing the present leave petition is condoned.

Application stands disposed of.

CRL.L.P. 607/2018

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 15.05.2018 passed by the learned Trial Court in Case FIR No. 03/13 registered at Police Station – Qutub Minar Metro Station, New Delhi, whereby the respondents (accused before the Trial Court) were acquitted of the charges punishable under Section

354A/354D/509/34 of the Indian Penal Code(hereinafter referred as '**IPC**').

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

“(i) One complaint was filed by the complainant against the accused persons with allegations that on 26.04.2013, she along with her friend N and S were travelling from IFFCO Chowk Metro Station towards Delhi. On IFFCO Chowk Metro Station, four boys were standing waiting for the metro train and on seeing the complainant and her friends, they started chasing them. When complainant and her friends entered inside the metro train, all four accused boarded the same metro train and started making vulgar gestures and passing vulgar comments on them. They were also staring at complainant and her friends and on being asked to refrain from doing so, they did not mend their ways. At about 10.40 pm, with the help of CISF staff the accused persons were deboarded from the train at Arjun Garh Metro Station by the three women and complainant made PCR call at 100 number.

(ii) On the basis of said complaint, FIR was registered for offence u/S 354A/354D/509/34 IPC. Investigation was undertaken and charge-sheet was filed in the Court. Cognizance of the offence was taken and accused persons were summoned.

(iii) Notice for commission of offences u/s 354A(1)(iv)/509/34 IPC was given to all the four accused persons on 26.05.2014 to which they pleaded not guilty and claimed trial.”

3. To bring home the guilt of the respondents, the prosecution has examined 10 witnesses in all. Statements of all the respondents were recorded under Section 313 of Cr.P.C. by the learned trial court wherein they pleaded not guilty and claimed trial. The respondents examined one witness in their defence.
4. Mr. Rajat Katyal, APP for State contended that the impugned judgment dated 15.05.2018 was based on conjectures and surmises and the same deserves to be set aside; that the statement of the victim and her friends support the case of the prosecution and their statement has been corroborated by PW-6 HC Krishan who was posted at the concerned metro station where the alleged incident took place; that the learned trial court failed to take into consideration the settled provision of law that minor discrepancies in the testimonies of the victim does not affect the case of the prosecution; that the learned trial court has erred in giving the benefit of defective investigation in favour of the accused person.
5. I have heard the learned counsel for the State and perused the material on record.
6. At the outset we deem it appropriate to peruse the testimonies of material witnesses i.e. PW-1 (M.P), PW-2 (N) and PW-3 (S). PW-1(M.P) in her examination-in-chief deposed that when she was at IFFCO Chowk Metro Station, one of the respondents made indecent gestures towards her friend at the frisking gate and when she was putting her bag on X-ray machine, one of the

accused peeped through her T-shirt and other three accused were speaking amongst themselves and laughing at them. Thereafter, they contacted CISF Police and told them about the misbehaviour of the respondents. The CISF personnel scolded the accused persons and told them to board metro train and advised the victims to wait till one metro train passes and accused persons board it. Thereafter PW-1 (M.P) along with her friends boarded the next train and found the accused persons coming towards them. Further, she stated that two of the respondents sat in front of them and other two sat beside them at side seat. Thereafter, she again contacted the metro police and the metro police apprehended the respondents and the complainants alighted at Arjan Garh Metro Station. The police got the complaint registered at the spot i.e. Arjan Garh Metro Station.

7. PW-2 (N) being the friend of the complainant and the victim of the alleged crime was also examined. According to PW-2 (N), when they were going through the security frisking, the respondents started commenting on them and used words like *CHINKI*, *PROSTITUTE* against her. She further deposed that when she was picking her bag from security check X-ray machine, respondent No.3/Tushar Malik peeped in her T-shirt to which she along with PW-1 (M.P) and PW-3 (S) reported the matter to the CISF Security Personnel's. The CISF Personnel directed the complainants/victims to wait for some time and

instructed the respondents to go and board their metro. Further, she reiterated the version of PW-1 (M.P) as to how the accused were seated inside the metro coach.

8. PW-3 (S), another victim of the alleged incident was also examined as a witness by the prosecution who deposed that the incident started from the IFFCO Chowk metro station when she was travelling with her friends 'M.P', 'N' and her senior Yuel Harrison. She further deposed that the accused Tushar commented upon 'N' by calling her 'Chinki'.

FRISKING POINT

9. PW 1 to PW3 deposed that while 'N' was collecting bag from the frisking point, respondent No. 3/Tushar passed lewd comments on her. However, the same does not find any mention in the complaint as well as the statements of PW-2 (N) and PW-3 (S) recorded under Section 161 Cr.P.C. The CCTV footage of the Frisking Point reveals that the respondent No. 1/Amit had entered the frisking zone only after 'N' left from there.

NON-DISCLOSURE OF THE MALE COLLEAGUE

10. PW-3 (S) during her cross-examination deposed that they were accompanied by one of their senior, namely, Yuel Harrison in the same metro coach at the time of alleged incident and PW-2 (N) deposed in her cross-examination that one of her senior Yuel Harrison was also travelling in the same metro coach at the time of incident whereas the victims failed to mention the

name of any male companion in their complaint as also in their statement recorded under section 161 Cr.P.C. PW-10 Ct. Praveen in his cross-examination also establishes the presence of male persons along with the complainant and her friends. However, being the natural witness, the said person has neither joined the investigation nor examined by the prosecution, which is cloaked with shadow of doubt.

CONTRADICTION AS TO SITTING ARRANGEMENT

11. PW-1 (M.P) during her examination-in-chief deposed that two respondents sat in front of them while other two sat beside their seat. However during her examination-in-chief PW-2 (N) deposed that the respondents occupied two corner seats each having a capacity of two persons. The deposition of the complainants reflects a different sitting arrangement. As per PW-2 (N), the accused persons got seated on the two side seats to the contrary PW-1 (M.P) deposed that two accused persons sat in front of her which creates a shadow of doubt on the testimonies if the victim.

DEFENCE WITNESS

12. The defence examined DW-1 namely Joseph Paul, who was travelling on the same metro as of the victims and the respondents and has deposed that he was travelling on the same metro coach in which respondents were travelling. He further deposed that the respondents remained seated in his coach only and he heard noises of the women coming from the adjacent

coach. The presence of the said witness is corroborated by the CCTV footage and undisputed by the prosecution. The deposition of DW-1 contradicts the version of the prosecutrix and her friends as to the sitting arrangement. Further, nothing has been shown on record to shake the veracity of the deposition of DW-1 who is an independent witness.

CCTV FOOTAGE

13. It is an admitted fact that the entire metro premises as well as the metro coaches are under surveillance round the clock. The prosecution failed to provide any cogent reason as to why the CCTV footage of the places where the incident allegedly took place i.e. the place where complainant approached the CISF personnel, the place where lewd comments were stated to have been passed by the respondents and the footage of inside area of the coach, was not collected. It is noteworthy that such an important piece of evidence was treated with such soft hand. Thus, a shady and untruthful investigation conducted by the Investigating Officer in the present case has led the case of the prosecution into a grave doubt.

NO CISF PERSONNEL WAS JOINED IN INVESTIGATION

14. PW-1 (M.P) in her statement has deposed that she along with her friends noted that the respondents were standing near the barricades and were continuously staring at them. It was then they decided to seek assistance from the CISF. According to victims, the CISF personnel scolded the respondents and asked

them to board the metro train whereas victims were asked to wait till the next metro train arrived. However, all the three complainants failed to mention the name of the CISF personnel, who advised them. Further neither the CISF personnel joined the investigation nor was he examined in the Court by the prosecution, which creates a doubt on the happening of the alleged incident.

CONCLUSION

15. From the perusal of the above testimonies and factual aspects it is apparent that there are various contradictions in the testimonies of PW-1 (M.P), PW-2 (N) and PW-3 (S). CCTV footage of the platform as well as footage inside the metro train also shatters the case of the prosecution. More so, no CISF personnel stated to be deputed at frisking gate to whom prosecutrix and her friends made a complaint has been examined by the prosecution. Further, non examination of Mr. Yuel Harrison, who was allegedly accompanying the prosecutrix at the relevant time also weakens the prosecution case. The accumulated result of all the aforesaid discrepancies in the investigation has proved fatal for the case of the prosecution.
16. 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. Upon re-appraisal of evidence and relevant material

placed on record, in case the High Court reaches a conclusion that another view can reasonably be taken, then the view, which favours the accused, should be adopted. Unless the High Court arrives at a definite conclusion that the findings recorded by the trial court are perverse, the High Court would not substitute its own views on a totally different perspective.

17. 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."

18. 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.*

19. 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.

20. Trial Court record, if any be sent back.

SANGITA DHINGRA SEHGAL, J

MARCH 19th, 2019

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