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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL. L.P. 615/2015**

% *Date of Judgment: 29<sup>th</sup> February, 2016*

STATE

.... Petitioner

Through : Ms. Anita Abraham, APP for State  
with SHO Inspector Rajender Prasad,  
P.S. Aman Vihar.

Versus

SONI & ANR.

.... Respondents

Through: Mr. R. K. Raghav, Advocate proxy  
counsel for Ms. Rashmit Singla,  
Advocate

**CORAM:**

**HON'BLE MR. JUSTICE G.S.SISTANI**

**HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL**

**SANGITA DHINGRA SEHGAL, J.**

1. The present Leave petition has been instituted under Section 378 of the Code of Criminal Procedure against judgement dated 27.03.2015 passed by the Additional Sessions Judge in Sessions Case No. 58/2013 by which the respondents herein have been acquitted for the offence punishable under Section 376 read with Section 34 of the Indian Penal Code.
2. The brief facts of the case are as under:

*“On 04.04.2008, at about 2.15 pm, an information was received in PS Aman Vihar through wireless operator that in house no.253 (new number 854), Gali no. 5, Y block, Aman Vihar, Prem Nagar- II, rape had been*

*committed with a girl on 28.03.2008. The said information was recorded as DD no. 20-A and the information thereof, was given to HC Bhagwan, who along with Ct. Raj Kumar, proceeded to the spot. Simultaneously, the SHO, PS Aman vihar also directed SI K.S Dogra to go to the spot to conduct investigation in the matter. Accordingly, the aforesaid police party went to the spot, where they found child victim R, her parents and accused Bablu. Finding the matter to be in respect of sexual assault upon a child victim, SI K.S. Dogra called for Lady Constable. Accordingly, L/Ct.Rajbala reached at the spot. In presence of parents of child victim and L/Ct. Rajbala, SI K.S. Dogra made inquiries from the child victim R (hereinafter referred to as child victim) and recorded her statement, wherein she stated that on 28.03.2008 at about 4.45 pm, she alone was present in her house. Accused Soni, who resides in the neighbourhood came to her house and asked her to come to her house for correcting the channels of T.V. She accordingly, went to her house, where accused Bablu was already present. After leaving her in the room with accused Bablu, accused Soni went outside. Accused Soni bolted the door from outside. In the room, accused Bablu committed penetrative sexual assault upon her against her consent, upon which, she raised alarm. After hearing her screams, her mother came*

*there, after opening the door. Accused Bablu ran away from the spot. Her mother brought her to their house, where she narrated the entire incident to her mother. She and her mother did not report the matter to the police, out of fear of ignominy. Thereafter, on 04.04.2008 her parents apprehended accused Bablu and called police at number 100.*

*After recording of the statement of child victim, SI K.S. Dogra (hereinafter referred to as IO) prepared tehreer and got the case FIR registered in the matter, through Ct. Raj Kumar. IO prepared site plan at the instance of child victim. Accused Soni was summoned from her house and both the accused persons were arrested and their personal search was conducted. Accused Bablu made disclosure statement and also got the place of incident identified. Thereafter, the child victim as well as accused were sent for medical examination in SGM hospital, where their MLCs were conducted and the exhibits were obtained including the undergarments of child victim. Statement of child victim u/s 164 Cr.P.C. was recorded. The exhibits were sent for FSL examination. After completion of the investigation, the charge sheet in the matter was filed.*

*2. After filing of the charge sheet in the matter, the copy thereof, was supplied to the accused. On 09.01.2012, charges u/s 376 IPC read with Section 109*

*IPC were framed against both the accused persons and a separate charge u/s 376 IPC was framed against the accused Bablu, to which, they pleaded not guilty and claimed trial. ”*

3. The prosecution has examined 12 witnesses in all. One more witness was summoned by the court as CW-1. Statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure whereby they claimed to be innocent. In their defence, accused persons examined one witness Sh. Kailash as DW-1.
4. Ms. Anita Abraham learned APP for the State has contended that the order of the trial court is bad in law as the learned Sessions Judge failed to appreciate the material evidence produced by the prosecution which proves the guilt of respondents for the offence they stand charged.
5. It is further contended by the counsel for the State that trial court committed a gross error while holding that the medical evidence in this case does not corroborate with the oral testimony of the prosecutrix. The counsel for the state submitted that the testimony of the prosecutrix has fully supported the case of the prosecution and the MLC of the prosecutrix Ex. PW2/A cogently establishes that it was forcible sexual penetrative assault upon her.
6. It has also been contended by the counsel for the State that trial court erred in observing that there are material inconsistencies in the testimonies of PW-9 (father of the prosecutrix), PW-10 (prosecutrix) and PW-11 (mother of prosecutrix).

7. The counsel for the State submitted that the trial court failed to appreciate that the delay in lodging of the FIR cannot be a ground for acquitting the accused persons. Even if we assume that there is a delay in registration of the FIR, the delay was sufficiently explained by the witnesses that it was out of fear of shame and ignominy.
8. Per contra, learned counsel appearing on behalf of the respondents has contended that the respondents have been falsely implicated in the matter by the parents of the child victim by using her as a tool.
9. The Counsel for the respondents submits that the trial court has rightly held that there is an inordinate delay in registration of the FIR which has not been sufficiently explained by the prosecution.
10. The counsel further submits that the testimony of the child victim is not trustworthy as the testimony is not free from blemish. The counsel further submits that there are material contradictions in the statements recorded under Section 161 of the Code of Criminal Procedure and the statement before the Magistrate.
11. The counsel for the respondents has strongly urged that the medical evidence does not support the version of child victim. From the testimonies of PW-10 (prosecutrix) and PW-11 (mother of prosecutrix) it gets categorically established that she did not suffer from any kind of shock or distress after the alleged incident which indicates that the respondents have been falsely implicated.
12. We have heard learned counsel for both the parties and perused the testimonies and also examined the judgment rendered by the trial court. We may now discuss the evidence put on record in detail.

13. **MATERIAL CONTRADICTION IN THE EVIDENCE**

PW-9 Shri Ram Prasad (father of the prosecutrix) in his evidence deposed that on 28.03.2008 he along with his wife had gone to work and when they came back home, he saw a number of persons standing in the gali and heard cries of his daughter coming from the house of the accused Soni. PW-9 further deposed that his wife inquired from accused Soni about his daughter and thereafter his wife opened the door of the house of the accused Soni. His daughter came out of the room but accused Bablu managed to escape from there.

14. PW-10 (prosecutrix) in her testimony deposed that on 28.03.2008 at about 6:50 pm she was alone in her house when she was called by accused Soni to check the cable T.V. set at her house, as it was not working properly. Thereafter she went to accused Soni's house. PW-10 further deposed that accused Bablu was already present inside the room. Accused Soni bolted the door from outside and inside the room accused Bablu committed rape upon her. PW-10 further deposed that on hearing her mother's voice she cried loudly and after that she was rescued by her mother. However by that time accused Bablu had managed to escape.

15. PW-11 Smt. Jasomati (mother of prosecutrix) in her testimony deposed that on 28.03.2008 she along with her husband had gone to the market and when they returned at about 6.15 p.m. they found the child victim missing from their house. PW-11 further deposed that she made inquiries about the child victim from accused Soni and thereafter when she entered accused Soni's house, she found that the child victim was tying the strings of her salwar in the presence of the

accused Bablu who escaped from the spot. PW-11 further deposed that when she brought her daughter back to home, the child victim narrated the entire incident of penetrative sexual assault to her.

After perusal of the afore-mentioned testimonies it appears that there are material contradictions in the testimonies of PW-9 (father), PW-10 (prosecutrix), and PW-11 (mother) with respect to the occurrence of the alleged incident.

- PW-9 in his testimony stated that he found a number of neighbours gathered in his gali and screams of his daughter were being clearly heard. After hearing which PW-11(mother) went to the house of the accused Soni and rescued the child victim therefrom.
- On the other hand, PW-11 (mother) in her testimony deposed that when she returned to her house with her husband, she found the child victim missing. She made enquiries from accused Soni, who was guarding the room from outside. Thereafter, she went inside the house of accused Soni and found child victim there tying the strings of her salwar in the presence of accused Bablu.
- PW-10 (prosecutrix) deposed that on hearing her mother's voice she cried loudly and after hearing her screams her mother had come to rescue her.

After reading the above testimonies we find that there are material contradictions which clearly establish that the incident did not happen the way it has been projected by the prosecution.

16. **TEST CHILD VICTIM**

The main question involved for consideration in this leave petition is whether the testimony of prosecutrix is trustworthy, credible and worthy of reliance in order to convict the respondents herein?

It is true that conviction in a case of rape can be based on the solitary testimony of the prosecutrix provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. In order to test the veracity of the deposition of prosecutrix, it needs to be discussed thread bare. In the statement of the child victim, Ex. PW10/A under Section 161 of the Code of Criminal Procedure she categorically levelled allegations of penetrative sexual assault, but in her statement Ex.PW8/C which was before Metropolitan Magistrate she did not mention any such allegation against the accused persons.

17. It is settled position of law that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable case of prosecution. The testimony of the prosecutrix has to be appreciated on the principle of probabilities just as the testimony of any other witness. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which may lend assurance to her testimony. In a case where sole testimony of the prosecutrix does not inspire confidence and corroboration, it is to be read in its totality and if the same is found improbable, in such case her testimony becomes liable to be rejected.



18. In ***Krishan Kumar Malik Vs. State: (2011) 7 SCC 130***, the Hon'ble Supreme Court discussed whether solitary evidence of the prosecutrix is sufficient to convict for the offence of Rape in the following words:

*“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.*

*32. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. Record shows that Bimla Devi though cited as a witness was not examined and later given up by the public*

*prosecutor on the ground that she has been won over by the Appellant.”*

Similarly, in the case of ***State of Rajasthan Vs. BabuMeen: (2013) 2 SCALE 479***, it has been held:

*“8. 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.*

*9. 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.*

19. 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 also has 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*** has 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.”*

20. Also, 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.”*

21. In ***Raju v. State of Madhya Pradesh (2008) 15 SCC 133***, the Hon'ble Supreme Court has held that testimony of the victim of a rape cannot be presumed to be a gospel truth and observed that false allegations of rape can cause equal distress, humiliation and damage to the accused as well, in para 11, the Apex Court echoed the sentiments as under:-

*“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.”*

22. Keeping in mind the above cited judgments, the testimony of prosecutrix has to be consistent and natural in line with the case of the prosecution and free from infirmities which inspire confidence in the Court. It cannot be presumed that the statement of the prosecutrix is always true or without any embellishment.
23. After rescanning the entire case in its right perspective, we are of the view that if the evidence of the prosecutrix is read and considered in totality with the circumstances along with the other evidence on record, in which the offence is alleged to have been committed, we are of the view that her deposition does not inspire confidence. There are contradictions and serious inconsistencies in the statements of

prosecutrix at different stages and the same do not inspire confidence to nail the accused Bablu. The evidence as a whole including testimonies of prosecutrix and her father coupled with the MLC report clearly indicates that the story of prosecutrix regarding rape is concocted and not believable.

24. **MEDICAL EVIDENCE**

Having discussed the testimony of the prosecutrix in detail, it is significant to examine whether the medical evidence adduced by the prosecution finds support from the oral testimony of the prosecutrix. In the MLC of PW-10, i.e. Ex.PW2/A, there were no external injuries, however her hymen was torn. On this aspect, it has been held by this Court in *Attender Yadav Vs. State (Govt. of Delhi), Crl.A. 1340/2010*:

*“55. It is by far well recognised position that the condition of hymen being torn of the prosecutrix may not necessarily lead to infer previous sexual intercourse and conversely being hymen not torn also not necessarily mean that there was no sexual intercourse....”*

25. *Modi’s Medical Jurisprudence, 11<sup>th</sup> edition, Chapter XVII, page 475* has been dealt with this subject in following orders:-  
Page 503:

*“In nubile virgins, the hymen, as a result of complete sexual intercourse, is usually ruptured, having one or more radial tears....”*

*Frequent sexual intercourse and parturition completely destroy the hymen, which is represented by several small tags of tissue, which are called carunculaehymenealis or myritiformes”*

Page 504:

*“In small children, the hymen is not usually ruptured, but may become red and congested with the inflammation and brushing of the labia. If considerable force is used, there is often laceration of fourchette and perianaeum.”*

26. In the journal of Forum of medical ethics society since 1993 in the editorial ***“Moving from evidence the case: ethical responsibility of health in responding to sexual assault”***, it has been opined as under:

*“....this is a contrary scientific evidence that the presence of an intact hymen does not rule out sexual assault, and the fact of a torn hymen does not prove previous sexual assault, and the fact of a torn hymen does not prove previous sexual intercourse, as the hymen can be torn due to many other activities like cycling, horse-riding, masturbation etc.”*

27. It is in evidence that PW-11 (mother) categorically admitted that after the alleged date of incident, the behaviour of the child victim was normal and she was not under any kind of distress, whereas PW-9 (father) pleaded ignorance about the behaviour of

the child victim after the date of incident. However, PW-10 (prosecutrix) herself had not complained that she suffered any kind of shock or distress after the incident. In the light of MLC of the prosecutrix and on the basis of the above mentioned circumstances, it is doubtful that the respondent Bablu committed the alleged offence.

28. In a recent case ***Sudershan Kumar Vs. State of H.P.*** reported in **2014 (14) SCALE 276**, the Hon'ble Supreme Court discussed the law while dealing with appeals against acquittal in the following words:

*“29. It has been stated and restated that a cardinal principle in criminal jurisprudence that presumption of innocence of the accused is reinforced by an order of the acquittal. The appellate court, in such a case, would interfere only for very substantial and compelling reason. There is plethora of case laws on this proposition and we need not burden this judgment by referring to those decisions. Our purpose would be served by referring to one reasoned pronouncement entitled **Dhanapal v. State by Public Prosecutor, Madras: (2009) 10 SCC 401** is the judgment where most of the earlier decisions laying down the aforesaid principle are referred to. In para 39, propositions laid down in an earlier case are taken note of as under:*

*"39. In **Chandrappa and Ors. v. State of Karnataka (2007) 4 SCC 415**, this Court held:*



(1) *An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.*

(2) *The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.*

(3) *Various expressions, such as, "**substantial and compelling reasons**", "**good and sufficient grounds**", "**very strong circumstances**", "**distorted conclusions**", "**glaring mistakes**", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.*

(4) *An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. **Firstly**, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. **Secondly**, the accused having secured his acquittal, the presumption*

*of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.*

*30. Thereafter, in para 41, the Court culled out five principles and we would like to reproduce the said para hereunder:*

*“41. The following principles emerge from the cases above:*

*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."*

29. In the light of the aforesaid dictum and for the reasons stated above, we find no merit in this leave to appeal. The same is accordingly dismissed.

**SANGITA DHINGRA SEHGAL, J**

**G.S.SISTANI, J**

**February 29, 2016**

**gr//**