

a 23. The proceedings initiated pursuant to FIR bearing no. 311/2018 are quashed, leaving it open for respondent no.2 to take appropriate remedies for the redressal of his grievance.

24. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

b **Result:-** FIR quashed.

ABC 2020 (I) 97 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI

(Manmohan & Sangita Dhingra Sehgal, JJ.)

Crl.L.P. 596/2019

Decided on 27th November, 2019

d STATE - Petitioner(s).

Versus

SONIYA & ANR. - Respondent(s).

e **Law Covered:-** (A) Code of Criminal Procedure, 1973 – Section 378 – Appeal against acquittal – Indian Penal Code, 1860 – Sections 323, 328, 346, 363, 376, 109 & 120-B – Protection of Children from Sexual Offences (POCSO) Act, 2012 – Section 4 – Immoral Traffic (Prevention) Act, 1956 – Sections 3, 4 & 5 – Appeal against acquittal – Admission by prosecutrix – that she loved the accused & had voluntarily stayed with him – accused took the prosecutrix to public places but she did not to raise any alarm or invite the attention of the public – Date of kidnapping – material contradiction in the statement of the prosecutrix regarding – Admission by prosecutrix – had not seen the accused paying any money to the respondent no.1 – Held, the evidence of the prosecutrix is neither reliable nor inspires any confidence – Hymen was ruptured – Medical evidence – does not connect the accused to accused with the alleged crime – Matrimonial discord between respondent no.1 (sister-in-law) & prosecutrix's brother – Held, prosecutrix had f deposited falsely and with the intent to frame her sister-in-law – sole testimony of the prosecutrix, which had been wavering and was not consistent – Acquittal upheld. (Para 8, 9, 10, 11, 13 & 14)

g (B) Code of Criminal Procedure, 1973 – Section 378 – Appeal against acquittal – Settled law – Any acquittal order cannot be lightly interfered with by the Appellate Court – The power to grant leave must h

be exercised with care & caution – because the presumption of innocence is further strengthened by the acquittal of an accused. (Para 15)

Facts:- Initially present case was registered for offence punishable u/s 363 IPC on the statement of father of victim that his minor victim daughter aged about 15 years went missing. After more than one month, the victim appeared before the police alongwith her family members and made statement. On the same day, she was got medically examined, however she had refused for her internal medical examination. In her statement u/s 164 Cr.PC she levelled allegations regarding kidnapping and other heinous offense against her sister-in-law and tenant. Offences punishable u/s 323/328/346/376/109/120B IPC, 4 POCSO Act and 3/4/5 ITP Act were added. The Trial Court by way of its impugned judgment acquitted both the accused. The State was in the present appeal against the said acquittal, however, the acquittal was upheld by the honourable Delhi High Court.

Law of relief:- It would neither be fair nor reasonable to convict an accused on the wavering and inconsistent sole testimony of the prosecutrix.

Held:- The Trial Court had also correctly found that there was a material contradiction in the statement of the prosecutrix with regard to the date of kidnapping. (Para-8)

Consequently, the evidence given by the prosecutrix is neither reliable nor inspires any confidence. (Para-10)

It is pertinent to mention that the prosecutrix had initially refused her medical examination on 30th November, 2013 and it was only during her second MLC on 05th December, 2013 that the Doctor had recorded that her hymen was ruptured. (Para-11)

The aforesaid fact of matrimonial discord between respondent no.1- Soniya and prosecutrix's brother coupled with the material contradictions in her evidence leaves this Court in no doubt that the prosecutrix had deposed falsely and with the intent to frame her sister-in-law / respondent no.1-Soniya in this case.(Para-13)

Consequently, this Court is of the view that it would neither be fair nor reasonable to convict either the respondent no.1-Soniya or respondent no.2-Satish on the sole testimony of the prosecutrix, which had been wavering and was not consistent. (Para-14)

It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to

a review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. [See: *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450*]. (Para-15)

Cases Referred:-

b *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450, (Para-15)*

JUDGMENT

MANMOHAN, J.: - **CRL. M.A. 39677/2019**

c Keeping in view the averments in the application, the delay in filing the criminal leave petition is condoned.

Accordingly, the application stands disposed of.

CRL.L.P. 596/2019

d 1. Present criminal leave petition has been filed on behalf of the State challenging the judgment dated 11th July, 2019 passed by Additional Sessions Judge-01 (POCSO), Shadara District, Karkardooma Courts, Delhi acquitting the accused in FIR No. 173/2013 registered with Police Station Harsh Vihar, Delhi under
e Section 323/328/346/363/376/109/120-B IPC, Section 4 of Protection of Children from Sexual Offences Act, 2012 and Sections 3/4/5 of Immoral Traffic (Prevention) Act, 1956.

BRIEF FACTS

f 2. The relevant facts as noted by the Trial Court are as under:-

g "3) In brief the prosecution case is that initially present case was registered on 07.10.2013 for offence punishable u/s 363 IPC on the statement of father of victim that his minor victim daughter aged about 15 years (name withheld) went missing since 04.10.2013 at about 6:00 p.m. All necessary efforts were made to trace the victim. On 30.11.2013 victim appeared before the police alongwith her family members and made statement. On the same day, she was got medically examined, however she had refused for her internal
h medical examination. Thereafter she was admitted to Ashram. On 02.12.2013, her statement was got record u/s 164 Cr.PC from Ld. Metropolitan Magistrate concerned wherein she had levelled allegations regarding kidnapping and other heinous offense against her sister-in-law Soniya and tenant Satish s/o Mohar Singh. On the direction of Chairman, CWC, victim was re- medically examined

and exhibits were seized. After discussing the case with senior police officers, offences punishable u/s 323/328/346/376/109/120B IPC, 4 POCSO Act and 3/4/5 ITP Act have been added. Further investigation has been carried out by Inspector/SHO. On 08.12.2013, accused Smt. Soniya was arrested from her maternal home. Accused Satish Kumar was arrested from Mandoli Chungi at the instance of secret informer. Accused Satish was got medically examined and exhibits were seized. Exhibits were got deposited with FSL and Result is awaited. It is also mentioned that during investigation call details record of mobile number of both accused were obtained, and on checking it is revealed that there was no conversation between both of accused. After completion of the investigation, chargesheet has been filed. a b c

4) Subsequently FSL Result was filed. As per same, since semen could not be detected on the exhibits of victim, DNA examination was not done. d

Charge

5) After supplying necessary copies to the accused, My Ld. Predecessor vide order dated 19.05.2014 charged the accused Soniya for offence punishable u/s 120B IPC and 342/376/109 IPC r/s S. 4 & 5 of ITP Act, to which she pleaded not guilty and claimed trial. Accused Satish Kumar was charged for offence punishable u/s 120-B IPC and 328.346.363/376 IPC and 4 POCSO Act, to which he also pleaded not guilty and claimed trial." e

3. The Trial Court by way of its impugned judgment acquitted the sister- in-law-respondent no. 1 and Satish-respondent no. 2. The relevant portion of the impugned order is reproduced hereinbelow:- f

"45. Firstly coming to the role of the accused Soniya.....Victim had in fact went missing on 04.10.2013 as per complaint of her father and not after 2/3 days of Raksha Bandhan. Therefore said incident is falsely stated. Victim had not stated about sexual intercourse when initially she was examined by the doctor on her recovery and stated that she was raped in her own house on 03.11.2013 when she was examined after she gave statement u/s 164 Cr. P.C. Therefore version of the victim is false that rape was committed upon her on the day of Raksha Bandhan.....It is quite unbelievable that wife of brother of victim i.e. Soniya would remain at her in-laws house and sent her husband to give rakhi on her behalf to her brother. The house of parents of accused Soniya is also not far g h

a from her in-laws' house.....The version of the incident of rape on the day of Raksha Bandhan is concocted which also find credence from the matrimonial dispute going on in between brother of victim and her wife i.e. (accused Soniya) which resulted in settlement on 18.1.2018 at Mediation Cell and culminated in separation/divorce, as per her defence.

b 46.....As per statement of victim u/s 164 Cr. PC that 2/3 days after Raksha Bandhan when she was sent to bring cream, she was kidnapped. However, when she was examined in the court she stated that it was 4th day of the month (first day of Navratra, prior to Dushhra) in the year 2013. Both version cannot co- exist. In fact she
c went missing from 04.10.2013 as per missing complaint. Therefore there are inconsistency between victim and other witnesses.

d 47. Victim has also stated about taking money from the accused. She categorically admitted that it was accused who told her about the same. She herself has not seen.

e 48. Now coming to prosecution case regarding accused Satish.....When she was confronted that when police persons or public persons were present at railway station as to why she did not seek help from them, she stated that it was a mistake but she could not give any reason as to why she did not invite attention of any public person. Thereafter she stated that both of them used to love each other and she admitted that she was stayed with the accused voluntarily out of her own wish. She also admitted that chacha of accused Satish informed her parents. She further admitted that accused Satish never gave her any beatings. It is true version that victim had herself went with the accused and story of kidnapping is false, which further finds support from CDR where there were no calls made by accused Soniya to Satish.
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51. The victim had also concealed in her statement u/s 164 Cr.PC that accused had taken her for court marriage to Etah Mainpuri Court which she had stated when she was again medically examined.....

h xxxx xxxx xxxx xxxx

53. As regards accused Satish, there is no taking as victim had herself gone with the accused and left her home voluntarily. As regards incident of rape/sexual intercourse, victim had refused for her internal medical examination and in view of inconsistencies, the accused Satish is entitled to acquittal."(emphasis supplied)

ARGUMENTS ON BEHALF OF THE PROSECUTION

4. Ms. Aashaa Tiwari, learned APP for the State contended a
that the prosecutrix is a child as she was only 14 years on the date of
incident. She pointed out that the prosecutrix had informed the
doctor during her second MLC dated 05th December, 2013 that she
had been raped by respondent no.2-Satish in her own house on 03rd b
November, 2013 and subsequently on a number of occasions in the
last two months. Upon the statement of prosecutrix, the Doctor while
preparing the MLC had recorded 'History of full penetration present.'
The Doctor in the MLC had also recorded a finding that the
prosecutrix's hymen was ruptured. c

5. Learned APP for the State submitted that the Trial Court
failed to appreciate that the respondent-accused can be convicted on
the sole testimony of the prosecutrix if it inspires confidence and if it
is found reliable. She further submitted that there is presumption d
under Sections 29 and 30 of POCSO Act against the respondent-
accused and it is for the respondent-accused to prove to the contrary.

CASE OF PROSECUTRIX/PROSECUTION

6. This Court finds that the case of the prosecution is that
prosecutrix's sister-in-law - respondent no.1-Soniya was in conspiracy e
with the accused - respondent no.2-Satish inasmuch as the statement
of the prosecutrix was that respondent no.1-Soniya not only took
money from the respondent/tenant - respondent no.2-Satish for
facilitating the prosecutrix's first rape on Rakshabandhan but she was f
also instrumental in getting the prosecutrix kidnapped two-three
days later inasmuch as respondent no.1-Soniya after sending the
prosecutrix to the market to buy a Betnovate Cream had
simultaneously informed respondent no.2-Satish about the location of
the prosecutrix. g

COURT'S REASONING

THE EVIDENCE GIVEN BY THE PROSECUTRIX IS NEITHER
RELIABLE NOR INSPIRES ANY CONFIDENCE. THE MEDICAL
EVIDENCE ON RECORD DOES NOT CONNECT THE RESPOND- h
ENT NO.2-SATISH WITH THE ALLEGED CRIME.

7. As far as the allegation that prosecutrix's sister-in-law -
respondent no.1-Soniya facilitated kidnapping of the prosecutrix, this
Court finds that the prosecutrix in her cross-examination had
admitted that she loved respondent no.2-Satish and had voluntarily

a stayed with him. The prosecutrix had also admitted in her cross-examination that it was a mistake on her part not to raise any alarm or invite the attention of the public even when respondent no.2-Satish took her to public places like railway station. The relevant portion of the cross-examination of the prosecutrix is reproduced hereinbelow:-

b "Court Q. Why you did not help for police persons or public persons at railway station while you were sexually assaulted and detained for two months?

Ans. It was a mistake but I cannot give any reason as to why I did not invite attention of any public person.

c *At this stage, the prosecutrix states that both of us used to love each other. It is also correct that I was stayed with the accused voluntarily out of my own wish.* (emphasis supplied)

d 8. The Trial Court had also correctly found that there was a material contradiction in the statement of the prosecutrix with regard to the date of kidnapping. It is pertinent to mention that the prosecutrix in her statement recorded under Section 164 Cr.P.C had stated that two-three days after Rakshabandhan when she was sent to the market to purchase Betnovate Cream, she was kidnapped. e However, when she was examined in Court, she had stated that she was kidnapped on the fourth day of the month (first day of Navratra, prior to Dussehra) in the year 2013. Since the prosecutrix is supposed to have gone missing from 04th October, 2013 as per the missing complaint, her kidnapping two-three days after Rakshabandhan (date f of first alleged rape) is a falsehood.

g 9. The prosecutrix in her cross-examination has also admitted that she had not seen the respondent no.2-Satish paying any money to respondent no.1-Soniya. The relevant portion of the examination-in-chief and cross-examination of the prosecutrix on this aspect is reproduced hereinbelow:-

h *"I had told the police to my statement it was day of Rakshabandhan of the year 2013, my parents had gone to the hospital to see my injured brother and my bhabhi asked me to bring match box from the room as she was preparing tea. As soon as I entered the room my Bhabhi (accused Soniya) bolted the door from outside. I found accused Satish inside the room. Accused Satish developed physical relation with me against my wishes. I raised noise but no one heard the same. It is correct that I had told the police that after the accused did wrong act with me, co-accused Soniya opened the door and then*

Satish paid Rs. 500/- to her. It is correct that I had told the police that when I protested to my Bhabhi as to why she did it to me and I had lost my respect to which she replied that she will back my respect." a

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"It is correct that I myself had not seen Satish having given Rs.500/- by accused Soniya. Accused Satish had told the same after some days of the rape. It is correct that I was in talking terms with Satish even after the rape. Again said he used to force me to talk." (emphasis supplied) b

10. Consequently, the evidence given by the prosecutrix is neither reliable nor inspires any confidence. c

11. It is pertinent to mention that the prosecutrix had initially refused her medical examination on 30th November, 2013 and it was only during her second MLC on 05th December, 2013 that the Doctor had recorded that her hymen was ruptured. However, the medical evidence on record does not connect the respondent no.2-Satish with the alleged crime. d

THE FACT THAT THERE WAS A MATRIMONIAL DISCORD BETWEEN RESPONDENT NO.1-SONIYA (SISTER-IN-LAW) AND PROSECUTRIX'S BROTHER COUPLED WITH THE MATERIAL CONTRADICTIONS IN HER EVIDENCE LEAVES THIS COURT IN NO DOUBT THAT THE PROSECUTRIX HAD DEPOSED WITH THE INTENT TO FRAME HER SISTER-IN-LAW/RESPONDENT NO.1-SONIYA IN THIS CASE. e

12. The Trial Court has also pointed out that there was a matrimonial dispute between the sister-in-law/respondent no.1-Soniya and brother of the prosecutrix, which culminated in a mediated settlement on 18 th January, 2018 by way of a divorce/separation. f

13. The aforesaid fact of matrimonial discord between respondent no.1- Soniya and prosecutrix's brother coupled with the material contradictions in her evidence leaves this Court in no doubt that the prosecutrix had deposed falsely and with the intent to frame her sister-in-law/respondent no.1-Soniya in this case. g

14. Consequently, this Court is of the view that it would neither be fair nor reasonable to convict either the respondent no.1-Soniya or respondent no.2-Satish on the sole testimony of the prosecutrix, which had been wavering and was not consistent. h

a 15. It is also settled law that any acquittal order cannot be lightly interfered with by the Appellate Court, though it has wide powers to review the evidence and to come to its own conclusion. The power to grant leave must be exercised with care and caution because the presumption of innocence is further strengthened by the acquittal of an accused. [See: *Ghurey Lal vs. State of Uttar Pradesh, (2008) 10 SCC 450*].

b 16. In view of the above, the present leave petition, being bereft of merit, is dismissed.

Result:- Leave petition dismissed.

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ABC 2020 (I) 105 DEL
ACQUITTAL & BAIL CASES
HIGH COURT OF DELHI

(Suresh Kumar Kait, J.)

d

CrI.M.C. 4060/2019 & R.I.M.A.33702/2019 & 36891/2019

Decided on 6 December, 2019

MANMOHAN SHARMA & ORS.

- Petitioner(s).

Versus

e

STATE & ANR.

- Respondent(s).

f **Law Covered:-** (A) *Indian Penal Code, 1860 – Sections 354 & 354-B – Outraging modesty of a woman – failure to report incident at first available opportunity – no whisper about the allegation of outraging the modesty of the complainant by the petitioners – the complaint was lodged after 1½ hours of the incident – Professional background of complainant – The complainant a qualified journalist – Held, Had any incident happened regarding her womanhood, she would have mentioned that fact very strongly at the first instance – Acquittal. (Para 13)*

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h (B) *Indian Penal Code, 1860 – Sections 354 & 354-B – Outraging modesty of a woman – Alleged “torn shirt” – not seized by the police – Held, in absence of same, offence u/s 354/354-B cannot be proved. (Para 13)*

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Facts:- As per the FIR, it was alleged that on the relevant day, the respondent-2 along with her staff went to supervise the distribution of magazines in a residential colony. Her staff member was stopped by the guard at the gate. She asked the guard as to why the staff was not being allowed to distribute the magazines. The guard in the meantime called some