



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 17.06.2025

+ **CRL.L.P. 362/2018**

STATE GNCT DELHI

.....Petitioner

versus

SHIV MOHAN

.....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Sunil Kumar Gautam, APP for the State.
SI Sadhna, PS Mangolpuri.

For the Respondent : Mr. Anubhav Dubey, Mr. Sachidanand Choudhary, Mr. Sparsh Gola & Mr. Yash Narayan Trivedi, Advs.

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HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition has been filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 21.03.2018 (hereafter '**the impugned judgment**'), in Sessions Case No. 52535/2016 arising out of FIR No. 746/2015, registered at Police Station Mangolpuri, whereby the learned Trial Court acquitted the accused/ respondent for the offences under Section 376/506 of the Indian Penal Code, 1860 ('IPC').

2. The FIR, in the present case, was registered pursuant to a compliant made by the prosecutrix alleging that on 01.04.2015 at



about 7:45 a.m. she received a phone call from the accused/respondent, asking her to report to work early as other workers had also reported.

3. However, after reaching the factory she saw that no other worker had come and it was only the accused/respondent who was present, whereafter, she started doing her work.

4. It is further alleged, that after some time, the accused/respondent held the prosecutrix from behind, made her lie on the floor and allegedly committed sexual assault on her. Thereafter, the accused/respondent allegedly threatened the prosecutrix that if she discloses about the incident to anybody he will kill her family members.

5. On 09.04.2015, when the prosecutrix was asked by her husband as to why was she not having her meal, she started crying and disclosed regarding the incident to her husband, whereafter, on 10.04.2015 he took her to the police station and registered the present FIR.

6. During the course of investigation, the prosecutrix was taken to a hospital where she was medically examined and her statement under Section 164 of the CrPC was recorded.

7. The police thereafter arrested the accused/respondent and after completion of investigation, chargesheet was filed under Section 376/506 of the IPC.

8. The learned Trial Court on 31.08.2015 framed charges under Sections 376/506 of the IPC against the accused/respondent to which



he pleaded not guilty and claimed trial.

9. The accused/respondent in his statement under Section 313 of the CrPC denied the entire evidence against him and stated that he has been falsely implicated in the present case. He stated that the prosecutrix used to instigate the other workers in the factory and raised quarrels against him regarding salary and overtime charges.

10. He further stated that he and his wife had asked the prosecutrix to leave the factory and go away, instead she lodged this false case against him.

11. The learned Trial Court noting the contradictions in the statement of the prosecution witnesses acquitted the accused/respondent by the impugned judgment.

12. The learned Additional Public Prosecutor for the State submitted that the learned Trial Court failed to appreciate the reasons given by the prosecutrix for the delay in lodging the FIR.

13. He submitted that the learned Trial Court erred in coming to the conclusion that there is doubt regarding the conduct of the prosecutrix, who failed to lodge a complaint on the date of the incident.

14. He further submitted that the learned Trial Court failed to appreciate the fact that the testimony of the prosecutrix was fully corroborated with her statement under Section 164 of the CrPC and same had been supported by her husband.

15. *Per contra*, the learned counsel appearing for the accused/respondent vehemently opposed the arguments raised by the learned Additional Public Prosecutor for the State.



16. I have heard the learned counsel appearing for the parties and perused the record.

Analysis

17. It is trite law that this Court must exercise caution and should only interfere in an appeal against acquittal where there are substantial and compelling reasons to do so. At the stage of grant of leave to appeal, the High Court has to see whether a prima facie case is made out in favour of the appellant or if such arguable points have been raised which would merit interference. The Hon'ble Apex Court in the case of *Maharashtra v. Sujay Mangesh Poyarekar*: (2008) 9 SCC 475 held as under:

“19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal “shall be entertained except with the leave of the High Court”. It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by sub-section (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a prima facie case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

***21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits.** But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial*



court could not be said to be “perverse” and, hence, no leave should be granted.”

(emphasis supplied)

18. The learned Trial Court *vide* the impugned judgment acquitted the accused/respondent for the charged offences on the ground that there were material inconsistencies in the depositions made by the prosecutrix and her husband.

19. The learned Trial Court noted that there is a delay of 10 days in registration of FIR. The incident allegedly took place on 01.04.2015 and the prosecutrix lodged the complaint on 10.04.2015. It was upon the prosecution to explain the delay in registration of FIR, however, in the present case no plausible explanation had been provided by the prosecution regarding the delay in registration of FIR.

20. PW-2, the prosecutrix in her examination-in-chief deposed that the accused/respondent had allegedly held her from behind, made her lie on the floor and thereafter committed sexual assault upon her.

21. The learned Trial Court noted that the version of the prosecutrix regarding the commission of incident is highly improbable. The factory of the accused/respondent was on the first floor and at the time of incident the prosecutrix could have resisted the accused/respondent and raised an alarm for help. However, the evidence tendered by the prosecutrix is silent on the said aspect.

22. The prosecutrix further deposed that the accused/respondent allegedly threatened her to not disclose anything about the incident to anybody otherwise he would kill her family members.



23. Undisputedly, the factory of the accused/respondent was on the first floor and the landlord resided on the ground floor of the same building, however, the prosecutrix had not complained about the incident to anybody including her husband. Further in her cross-examination she deposed that on the day of the incident she remained in the factory of the accused/respondent till 9:30 p.m. and thereafter returned to her house.

24. It was noted by the learned Trial Court that the prosecutrix on the day of the incident worked till 9:30 p.m. and still did not disclose anything regarding the incident, which creates a doubt regarding her conduct. It was further noted by the learned Trial Court that only on alleged oral threats made by the accused/respondent the prosecutrix did not report the incident till 10 days of the alleged date of incident, further creating a doubt regarding the credibility of her deposition.

25. The prosecutrix for the first time in her cross-examination stated about disclosing the incident to the wife of the accused/respondent. She further deposed that after the incident the accused/respondent told his wife that the prosecutrix refused to report to work and that he would commit suicide if she will not come to work.

26. The prosecutrix further deposed that the wife of the accused/respondent was aware of the said incident, who on telephone had called her and said that she would lodge a police compliant against her if she refused to come back to work.

27. The learned Trial Court noted that it is highly unlikely that wife of the accused/respondent after having knowledge of the said incident



would make a phone call to the prosecutrix and compel her to return back to work. It was further noted by the learned Trial Court that the prosecutrix had never mentioned anything regarding the wife of the accused/respondent in her statement before the police as well as her statement under Section 164 of the CrPC.

28. PW-4, husband of the prosecutrix deposed that on 09.04.2015, after he had returned from work the prosecutrix informed him about the alleged incident and said that she had not informed him earlier as the wife of the accused/respondent had threatened her of killing her family members.

29. The learned Trial Court noted that the version of the husband of the prosecutrix regarding the alleged threat being made by the wife of the accused/respondent is in complete contradiction to the statement made by the prosecutrix.

30. It was further noted by the learned Trial Court that the prosecutrix in her examination-in-chief deposed that she had informed about the incident to the daughter-in-law of the landlord of the place where she was residing, however, neither the police recorded her statement nor was she made a witness by the prosecution.

31. It is trite law that the accused can be convicted solely on the basis of evidence of the prosecutrix as long as same inspires confidence and corroboration is not necessary for the same [Ref. **Moti Lal v. State of M.P. : (2008) 11 SCC 20**]. However, as noted above, the testimony of the prosecutrix is full of inconsistencies and the same does not inspire confidence. The benefit of the same has to go to the



accused/respondent.

32. Therefore, in the opinion of this Court the learned Trial rightly acquitted the accused/respondent. In the present case, the FIR was registered after an inordinate delay of 10 days and the prosecution failed to provide any suitable explanation for the delay. The date of the alleged incident is 01.04.2015, but the prosecutrix did not report the same till 10.04.2015 and continued to work in the factory of the accused/respondent which creates a suspicion regarding her conduct. Further, the wife of the accused was aware about the entire incident and would still compel the prosecutrix to join back creates a big doubt regarding her version of the alleged incident. Even the evidence tendered by the husband of the prosecutrix is contradictory to the version of the prosecutrix.

33. In view of the aforesaid discussion, this Court is of the opinion that there is no infirmity with the impugned judgment passed by the learned Trial Court and the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State's request to grant leave to appeal in the present case.

34. The leave petition is dismissed in the aforesaid terms. Pending application(s), if any also, stand disposed of.

AMIT MAHAJAN, J

JUNE 17, 2025