



2025:DHC:4989



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:17.06.2025

+ **CRL.L.P. 204/2022**

STATE OF NCT OF DELHI

.....Petitioner

versus

SATISH KUMAR MANDAL

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Ajay Vikram Singh, APP for the State.
SI Sapna Sharma, PS Chhawla.

For the Respondent :

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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 24.09.2020 (hereafter '**the impugned judgment**'), in Sessions Case No. 217/2017 arising out of FIR No. 276/2016, registered at Police Station Chhawla, whereby the learned Trial Court acquitted the accused/ respondent for the offence under Section 10 read with 9(m) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO').



2. The FIR in the present case was registered pursuant to a complaint made by the mother of the prosecutrix alleging that on 14.07.2016 at around 4:00 p.m. while she was sleeping, the prosecutrix came inside the room and informed her that the accused/respondent had allegedly touched her private parts with his finger and kissed her on the cheek. Since her husband was not at home she did not inform the same to anybody.
3. At 9:30 p.m. when her husband returned back from work, she narrated the entire incident to him, whereafter, he dialled 100 number and informed the police.
4. The police thereafter recorded the statement of the prosecutrix under Section 164 of the CrPC and arrested the accused/respondent. After completion of investigation, chargesheet was filed under Section 354 of the IPC and Section 8 of POCSO.
5. The learned Trial Court on 01.11.2017 framed charges under Section 10 read with Section 9(m) of POCSO against the accused/respondent to which he pleaded not guilty and claimed trial.
6. 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.
7. The learned Trial Court noting the contradictions in the evidence of the prosecution witnesses acquitted the accused/respondent by the impugned judgment.
8. The learned Additional Public Prosecutor for the State submitted that the learned Trial Court erred in not appreciating the fact



that the prosecutrix identified the accused/respondent as the person who had committed the alleged offence.

9. He submitted that the prosecutrix in her statement under Section 164 CrPC as well as in her examination in chief before the learned Trial Court narrated the true incident which categorically showed that the respondent had sexually assaulted her.

10. He further submitted that even though the victim during her cross had resiled from her statement, however, the benefit of the same cannot be granted to the accused.

11. I have heard the Additional Public Prosecutor for the State and perused the record.

Analysis

12. 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)

13. The learned Trial Court *vide* the impugned judgment acquitted the accused/respondent for the said offences on the ground that there were material inconsistencies in the depositions made by the prosecutrix, her father and her mother.

14. The learned Trial Court noted that none of the material witnesses had supported the case of the prosecution.

15. The prosecutrix in the compliant made by her mother alleged that the accused/respondent had touched her private parts with his finger and kissed her on her cheek. In her statement under Section 164 of the CrPC she deposed that the accused/respondent had licked her cheek. Further, in her testimony before the Court she stated that the accused/respondent had licked her private parts while pointing towards her private parts.



16. However, in her cross-examination she resiled and deposed that the accused/respondent had slapped her on her cheek and done nothing except that. She further deposed that she had informed her mother that the accused/respondent slapped her.

17. PW-2, the father of the prosecutrix deposed that he had received a phone call from her wife stating that the accused/respondent had thrown water on their staircase. He deposed that as a result his house got flooded and his wife had an altercation with the accused/respondent.

18. He stated that he had signed some papers as prepared by the Investigating Officer but due to his illiteracy, he did not know as to what was written in the said papers. Further, he deposed that the prosecutrix was taken to a hospital for medical examination but nothing was found against the accused/respondent.

19. PW-7, mother of the prosecutrix deposed that on the date of the incident, while she was sleeping, the prosecutrix informed her that the accused/respondent had thrown water from the staircase as a result her room was flooded. She inquired from the accused/respondent as to why he had thrown water and asked him not to do so, whereafter it is alleged that he started threatening to kill her.

20. She further stated that she informed about the incident to her nephew who dialled 100 and informed the police. In her cross-examination she denied having made any complaint regarding sexual assault by the accused/respondent.

21. From a perusal of the said testimonies the learned Trial Court



noted that both the mother and the father of the prosecutrix had not supported the case of the prosecution and turned hostile. It was noted that the father of the prosecutrix denied the fact that his wife informed him that the accused/respondent had sexually assaulted the prosecutrix. He further denied having made any call to the police and in the contrary, stated that it was his wife who had informed the police.

22. It was further noted by the learned Trial Court that the mother of the prosecutrix in her cross-examination denied the fact that the prosecutrix informed her that the accused/respondent had sexually assaulted her.

23. 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.

24. Therefore, in the opinion of this Court the learned Trial Court rightly acquitted the accused/respondent. In the present case none of the material witnesses supported the case of the prosecution. The prosecutrix supported the case of the prosecution till her examination-in-chief, but resiled in her cross-examination. The allegations levelled against the accused/respondent were not supported by any other corroborative evidence either in the form of the evidence given by



mother and father of the victim or any medical evidence.

25. Further two neighbours of the accused/respondent were examined as defence witnesses who deposed that an altercation had taken place between the mother of the prosecutrix and the accused/respondent, due to which she had called the police, however, they also denied any incident of sexual assault of the prosecutrix.

26. 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.

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

AMIT MAHAJAN, J

JUNE 17, 2025