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

CNR No. DLHC010033802020

+ **CRL.L.P. 172/2021**

STATE

.....Petitioner

Through: Mr. Shoaib Haider, APP for the State.
Insp. Satbir Singh, PS: Jaitpur.

versus

SHAHJID MALIK & ANR.

.....Respondent

Through: Mr. Yugansh Mittal, Adv.(DHCLSC)
with Mr. Keshav Poonia, Advs. for R-
1 and 2.
Mr. Kavindra Gill, Adv. for victim.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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05.08.2026

1. This application under Section 378(1)(b) of the Code of Criminal Procedure, 1973 has been preferred by the State seeking leave to appeal against the judgment dated 09.12.2019 passed by the Additional Sessions Judge-06 (POCSO Act), South-East, Saket Courts, New Delhi, in SC No. 1617/2016 arising out of FIR No. 168/2014 registered at PS Jaitpur under Sections 323/452/34 of the Indian Penal Code, 1860 and Section 8 of the Protection of Children from Sexual Offences Act, 2012.

2. By the impugned judgment, the accused Iqbal Malik has been acquitted of all the offences with which he was charged, while the accused Shahjid Malik has been acquitted of the offences punishable under Section



452 IPC and Section 8 of the POCSO Act and has been convicted only for the offence punishable under Section 323 IPC, for which he has been sentenced, *vide* order on sentence of the same date, to pay a fine of Rs. 1,000/-.

3. The genesis of the prosecution case lies in DD No. 46-A recorded on 19.03.2014 regarding a quarrel at Samosa Chowk, J.J. Colony. On receipt of the said information, the complainant, mother of the prosecutrix, stated that on the said date, at about 7.30 p.m., the accused Shahjid Malik had come to her house and, upon being questioned about the parking of a vehicle, began abusing her. He is alleged to have thereafter summoned his uncle, the accused Iqbal Malik, whereupon both entered the house, pushed the complainant aside, caught hold of the minor prosecutrix and threatened to outrage her modesty. It was alleged that Shahjid Malik caught hold of the prosecutrix by her chest and pulled her, and that when the father of the prosecutrix returned from a nearby ATM and attempted to intervene, both accused persons assaulted him as well. On this version, FIR No. 168/2014 came to be registered under Sections 323/354A/452/506(1)/34 IPC and Section 8 of the POCSO Act.

4. Upon completion of investigation, charges were framed against both accused persons under Sections 452/323/34 IPC and Section 8 of the POCSO Act, to which they pleaded not guilty and claimed trial. The prosecution examined ten witnesses, including the prosecutrix as PW-1, her mother as PW-2 and her father as PW-3, apart from the medical and police witnesses. The defence, in turn, examined four witnesses, DW-1 to DW-4, who deposed to the presence of the accused persons elsewhere at the material time.



5. On the question of the age of the prosecutrix, the trial Court, in the absence of any documentary proof and in the absence of any specific challenge by the defence to her age being below eighteen years, held that the prosecutrix was a minor at the relevant time and that the provisions of the POCSO Act stood attracted.

6. Applying the above tests, the Trial Court noted several infirmities in the prosecution version. It observed that the manner in which the victim, her mother and her father reached the hospital for medical examination was itself inconsistently deposed to, and that the victim's account in her examination-in-chief before the Court departed materially from her own statement recorded under Section 164 Cr.P.C., more closely mirroring the version given by her mother in the complaint than her own prior statement. It further noticed that neither the mother nor the victim had, in their Court depositions, referred to any threat by the accused to outrage the victim's modesty, notwithstanding that this formed a central plank of the initial complaint. The Trial Court also found contradictions as to which of the two accused had allegedly dragged the victim out of the house, an aspect on which the versions of the victim and her father did not align.

7. The Court has considered the findings rendered in paragraph 34 to 37 of the impugned order dated 09.12.2019, which are extracted as under:

“34. Further police witnesses as well as PW-1 and her father PW-3 have deposed that both of them were taken to hospital for medical examination and that in the meanwhile, complaint of PW-2, the mother of the prosecutrix was recorded. However PW 2 in her cross examination has deposed that she also went to the hospital in their car. However PW-1 has stated that she was taken to the hospital in a private van. In her cross examination, PW-1 has specifically stated that her mother was not medically examined as she did not receive much injury.

35. On perusal of MLC of victim PW-1, Ex. PW-5/B, it is noticed that she



had suffered abrasions over her forearms and clavicle. Clavicle is also known as the collarbone which is long, thin, and located at the base of the neck. One of the main functions of the collarbone is to hold the arms freely and supported, away from the trunk. Thus, the victim had not suffered any injury on her breast. Even learned Metropolitan Magistrate has recorded that the victim had shown injuries on her neck which were abrasions as per her MLC Ex. PW- 5/B. If a female is dragged by holding her from her chest, she is bound to suffer some external injury or internal injury to tissues of the breast. However, neither her MLC nor her discharge summary reveals that she received any external or internal injury on her breast/chest. Her discharge summary, Ex. PW-5/C mentions injury as multiple abrasions below left clavicle, right and left forearm. The subsequent opinion of the doctor described her injuries as simple in nature. Further in the alleged history, victim had not stated about any sexual assault and her MLC, Ex. PW-5/B as well as her discharge summary, Ex. PW-5/C recorded her history as assault. PW-9, SI Chandra Shekhar during his cross-examination admitted that MLC merely mentions as alleged history of assault and no description of the incident as stated by the complainant was given.

36. PW-1, PW-2 and PW-3 i.e. victim and her mother and her father respectively have alleged that accused persons gave beating to him. However on perusal of MLC of father of victim, Ex. PW-4/A, it is noticed that no particulars of any injury have been given in his MLC. Rather it is recorded on his MLC that he absconded from the hospital.

37. The recording of history as assault in the MLC of victim, nonmentioning of any injury by the father of the victim in his MLC read with Ex. PW-7/A, the first information about the incident i.e. DO no. 46-A about a quarrel having taken place at Samosa Chowk, Main Road read in light of the manner in which the incident took place and the improvements made by victim, PW-1 in her testimony as recorded in the Court compared to her statement recorded under section 164 Cr.P.C. has caused dent in the story of prosecution and thus the accused persons have been able to rebut the presumption existing in favour of the victim under section 29 of POCSO Act. PW- 1, PW-2 and PW-3 are not sterling witnesses and thus both the accused persons namely Shahjid Malik and Iqbal Malik are The Court

8. On this basis, the Trial Court held that the recording of the history as ‘assault’, rather than sexual assault, in the MLC and discharge summary of the victim, the absence of any injury recorded in the MLC of her father despite the allegation of beating, and the improvements appearing in the victim’s testimony when compared with her own statement under Section



164 CrPC, had caused a dent in the prosecution case sufficient to rebut the presumption under Section 29 of the POCSO Act. It accordingly held PW-1, PW-2 and PW-3 not to be sterling witnesses and acquitted both accused persons of the offence under Section 8 of the POCSO Act.

9. Learned Counsel appearing for the State submits that the impugned judgment of acquittal is perverse and contrary to the record, inasmuch as the testimonies of the victim, her mother and her father are consistent on the material aspects of the occurrence, namely, the entry of the accused persons into the house, the assault upon the victim and the beating administered to her father, and that the contradictions relied upon by the trial Court are minor and inconsequential, being the natural consequence of the passage of time between the incident and the recording of testimony in Court.

10. It is further submitted that the trial Court erred in disbelieving the version of PW-3, who specifically deposed to having found the accused persons inside his house upon his return, and in failing to appreciate that the presence of the accused persons at the spot was never seriously disputed.

11. The submissions are opposed by Learned Counsel appearing for the respondents, who submits that the impugned judgment is well-founded and properly appreciates the material and evidence on record, having regard to the specific and material contradictions between the victim's own statement under Section 164 CrPC and her testimony in Court, the medical evidence which is inconsistent with the manner of assault alleged, and the absence of any injury on the person of the victim's father despite the allegation of beating administered to him.

12. It is well settled that while an appellate Court possesses wide powers in an appeal against acquittal, such powers are to be exercised with



circumspection, bearing in mind the double presumption of innocence attaching in favour of an accused who has secured an acquittal at trial. In **Chandrappa v. State of Karnataka**¹, the Supreme Court laid down the following principles:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate Court has full power to review, reappraise 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 conclusions, 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.”

13. does not find any reason to grant leave to file an appeal. Accordingly, the application fails and is hereby dismissed.

14. This position has been reiterated by the Supreme Court in **Babu**

¹ (2007) 4 SCC 415.



Sahebagouda Rudragoudar v. State of Karnataka², wherein it was observed:

“Acquittal can be reversed only if the findings recorded by the trial Court are found to be patently illegal or perverse or if the only view possible on the basis of the evidence available on record points towards the guilt of the accused. If two views are possible, the acquittal recorded by the trial Court should not be interfered with unless perversity or misreading of evidence is reflected from the judgment recording acquittal.”

15. The Supreme Court in **Sadhu Saran Singh Vs. State of Uttar Pradesh and Others³** has held that there lies a difference between an appeal against acquittal and an appeal against conviction. Paragraph no. 20 is reproduced as under:-

“20. Generally, an appeal against acquittal has always been altogether on a different pedestal from that of an appeal against conviction. In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and law. However, we believe that the paramount consideration of the Court is to do substantial justice and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. This Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, in Sambasiva V. State of Kerala 1998 SCC (Cri) 1320 has held:

“7. The principles with regard to the scope of the powers of the appellate Court in an appeal against acquittal, are well settled. The powers of the appellate Court in an appeal against acquittal are no less than in an appeal against conviction. But where on the basis of evidence on record two views are reasonably possible the appellate Court cannot substitute its view in the place of that of the trial Court. It is only when the approach of the trial in acquitting an accused is found to be clearly erroneous in its consideration of evidence on record and in deducing conclusions therefrom that the appellate Court can interfere with the order of acquittal.”

² 2024 SCC OnLine SC 561.

³ (2016) 4 SCC 357.



16. It is trite law that the Appellate 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 Supreme Court in the case of ***State of Maharashtra v. Sujay Mangesh Poyarekar***⁴ held as under:

“ 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. 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 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. 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.

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“We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate Court against an order of acquittal recorded by the trial Court. We only state that in such cases, the appellate Court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial Court should not be disturbed. Where there

⁴ (2008) 9 SCC 475.



is application of mind by the appellate Court and reasons (may be in brief) in support of such view are recorded, the order of the Court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and re-appreciation, review or reconsideration of evidence, the appellate Court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

17. In ***Bhupatbhai Bachubhai Chavda & Anr. v. State of Gujarat***⁵ the Supreme Court has held as under:-

It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question.

18. Tested against the aforesaid principles, the Court finds that the view taken by the learned trial Court cannot be said to be perverse, or a view that no reasonable Court could have arrived at on the material on record. The inconsistencies noted by the trial Court, particularly the divergence between the victim’s statement under Section 164 Cr.P.C. and her subsequent testimony in Court on the very manner of the assault, the absence of medical corroboration for the specific allegation of the victim having been caught by

⁵ 2024:INSC:295.



her chest, and the complete absence of any injury on the MLC of the victim's father despite the allegation of him having been beaten, are all matters germane to the Trial Court's assessment of the reliability and sterling character of the prosecution witnesses.

19. These are findings drawn from a considered appreciation of the documentary and testimonial evidence on record, and not findings founded on conjecture or surmise. Even if another view were possible on the same set of facts, that, by itself, would furnish no ground for this Court to interfere with the acquittal, the settled principle being that where two reasonable views are possible on the evidence, the view favouring the accused, taken by the trial Court which had the advantage of observing the demeanour of the witnesses, ought not to be disturbed.

20. For the reasons aforesaid, the Court does not find any reason to grant leave to file an appeal against the impugned judgment dated 09.12.2019. Accordingly, the application fails and is hereby dismissed.

21. All pending applications, if any, also stand disposed of.

PURUSHAINdra KUMAR KAURAV, J

AUGUST 5, 2026/P