



2024:DHC:6911



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on:09.09.2024

+ **CRL.L.P. 547/2019**

STATE

..... Petitioner

versus

SARJEET

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Pradeep Gahalot, APP for the State
alongwith Mr. Sanyam Bansal, Ms. Sonali
Sharma & Ms. Neelakshi, Advocates.
SI Sudhesh (Main I.O.) & SI O.S. Thakur
(P.S. Jaffarpur Kalan).

For the Respondent : Mr. Azhar Alam, Advocate.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking grant of leave to challenge the judgment dated 24.04.2019 (hereafter '**the impugned judgment**'), in Sessions Case No. 440696/2016 arising out of FIR No.116/2014, registered at Police Station Jaffarpur Kalan, whereby the learned Trial Court had acquitted the respondent of the offence



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under Section 4 read with Section 3(i) of the Protection of Children from Sexual Offences Act, 2012 (**'POCSO Act'**).

2. The brief facts of the present case are that the respondent allegedly raped the prosecutrix, who was 17 years old at the time of the incident. The victim had been missing after leaving her house for school on 19.05.2014. The victim's father made a missing persons complaint on 20.05.2014 at 00:45 AM, and mentioned that he suspected the respondent, who was a resident of the village where the victim's maternal uncle resided. The present case was registered on the said complaint. Thereafter, the police visited the respondent's house in Haryana, and found him to be missing. At around 12:30 PM on 20.05.2014, the complainant went to the police station with the victim and the respondent. In her statement under Section 161 of the CrPC, the victim stated that she had gone with the respondent of her own free will, as she considered the respondent as her husband and that she had known him since November, 2013. She stated that she had tried to persuade her parents, however, they intended to get her married to some other person. She stated that she had thus ran away with the respondent. She further stated that they spent the night in a Hotel near New Delhi Railway Station, where they had physical relations. She stated that her parents had asked them to return and promised to arrange their marriage, however, the victim did not want to live with them.



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3. The learned Trial Court framed the charge against the respondent *vide* order dated 04.08.2014 for the offence under Section 4 read with Section 3(i) of the POCSO Act.

4. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offence and observed that testimony of the victim was unreliable due to contradictions. It was noted that there was a lack of supporting evidence to prove the offence.

5. The learned Trial Court held that the prosecution had failed to prove beyond reasonable doubt that the victim was a minor at the time of the incident as her age as per the birth certificate (Ex. PW-5/DA) was 01.05.1996. It was also noted that the victim had given contradictory statements wherein she had initially admitted that she had gone with the applicant willingly, however, in her testimony, she had stated that she had no friendship with the respondent and she had gone with him under threat that he would murder her brother.

6. It was noted that even if the victim was assumed to be under 18 years of age, the prosecution failed to prove that the respondent had kidnapped her. Reliance was placed on the case of ***Vardhrajani v. State of Madras : AIR 1965 SC 942*** where the Hon'ble Apex Court had held that the offence of kidnapping was not made out as the girl, who was 17 years of age at that time, had voluntarily gone with the accused therein having the capacity to know the import of doing so. Further, it was noted that while the hymen of the victim was torn, no semen was found in the MLC.



7. It was also noted that the prosecution had miserably failed to prove its case and the accused was therefore acquitted in the present case.

8. The learned Additional Public Prosecutor for the State submitted that the impugned judgment is based on conjectures and surmises and as such cannot stand the scrutiny of law and liable to be set aside.

9. He submitted that the learned Trial Court has acquitted the respondent on account of some discrepancies in the statement of the victim. He contended that the courts should examine the broader probabilities of a case and not get swayed by minor or insignificant discrepancies in the statement of the child victim, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.

10. He submitted that the testimony of the victim is corroborated by the FSL report which mentioned that at the time of medical examination, the victim's hymen was freshly torn.

11. He submitted that it is trite law that conviction can be sustained on the sole testimony of the victim and in the present case the prosecutrix has clearly named the accused in her statements.

12. He submitted that the learned Trial Court failed to appreciate the testimony of Dr. V.N.V. Satish, Junior Staff surgeon (PW-14) who had deposed that –*“as the upper second molars had not erupted, the possibility of her being 18 years of age or more is very bleak”*.

13. The learned counsel for the respondent submitted that the testimony of the victim was riddled with discrepancies.



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14. He submitted that in the statements of the victim that were recorded under Sections 161 and 164 of the CrPC, the victim had stated that she wished to marry the respondent, however, the victim presented a different version in her testimony where she deposed that the respondent had threatened to kill her brother in custody of his friends.

15. He submitted that the version of the prosecution is not supported by the statements of PW-2 (father of victim) and PW-5 (mother of victim) as the victim had made no mention of the alleged threats to them.

16. He submitted that the victim's statement that the accused raped her by threatening to kill her brother whom he had kidnapped is contradicted by the statement of her mother (PW-5) who deposed that on the date of the alleged incident, the victim's brother was at home.

17. He submitted that the victim was a major on the day of the incident, that is, 19.05.2014, as her date of birth on the birth certificate which was corroborated by the victim's mother is 01.05.1996. He submitted that the school certificate was unreliable since the date of birth was recorded merely on the word of the victim's parents at the time of admission, and no document was given to substantiate the same.

ANALYSIS

18. 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)

19. In the present case, the prosecution allegations are sought to be proved only on the basis of statement of the prosecutrix. It is an admitted case that that the same is not corroborated by any other independent evidence.



20. It is trite law that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as same inspires confidence and corroboration is not necessary for the same. The law on this aspect was discussed in detail by the Hon'ble Apex Court by **Nirmal Premkumar v. State, 2024 SCC OnLine SC 260**. The relevant portion of the same is produced hereunder:

“11. Law is well settled that generally speaking, oral testimony may be classified into three categories, viz.: (i) wholly reliable; (ii) wholly unreliable; (iii) neither wholly reliable nor wholly unreliable. The first two category of cases may not pose serious difficulty for the Court in arriving at its conclusion(s). However, in the third category of cases, the Court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

12. In Ganesan v. State⁴, this Court held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

*13. This Court was tasked to adjudicate a matter involving gang rape allegations under section 376(2)(g), I.P.C in **Rai Sandeep v. State (NCT of Delhi)**⁵. The Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a ‘sterling witness’, the Court opined as under:*

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with



the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(underlining ours, for emphasis)

14. In *Krishan Kumar Malik v. State of Haryana*⁶, this Court laid down that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the 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, which 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. 32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. 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. The 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.”

15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a “sterling witness” without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution’s case. While a victim’s testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.”

(emphasis supplied)

21. It has been argued by the learned APP that the respondent ought not to have been acquitted merely on account of minor discrepancies in the statements of the victim. It is relevant to note that the discrepancies in the versions of the victim are not minor. As rightly noted by the learned Trial Court, the victim initially admitted to having gone with the respondent and stated that she wanted to marry him but her parents were objecting to the same. However, during her testimony, she took a diametrically opposite stand and alleged that the respondent had kidnapped her and raped her under the threat of



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harming her brother. The said contradiction goes to the root of the matter and cannot be said to be so minor so as to not affect the prosecution's case. The testimony of the victim is rendered doubtful due to her inconsistent and dubious stand and the same does not inspire confidence.

22. The victim in her testimony had made allegations of kidnapping against the respondent. The learned Trial Court had rightly noted that the victim had not made any such allegations at the outset and neither informed about the same to her parents or the police. The brother of the victim at that time was at home as per her parents as well. The allegation that the victim had accompanied the respondent and he had raped her under threats of harm to the victim's brother is a significant improvement over the initial stance of the victim and seems improbable. As noted above, initially the victim had maintained that she had left her home voluntarily as her parents were not agreeing to her relationship with the respondent and wanted to get her married to someone else. In such circumstances, it does not seem that the victim was enticed away from lawful guardianship or forced into sexual relations.

23. However, it is settled law that the consent of a minor is no consent. Insofar as the age of the victim is concerned, two contradicting documents were brought forth by the parties. While the prosecution placed reliance on the Admission Register for the period 19.07.1991 to 04.04.2008 of the victim's school to establish the date of birth of the victim as 01.05.1997, the defence relied upon a birth



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certificate (Ex. PW-5/DA) that was registered on 10.05.1996 where the date of the birth of the victim was shown as 01.05.1996. In the opinion of this Court, the learned Trial Court rightly favoured the birth certificate to determine the age of the victim. It was rightly appreciated that while the principal of the school (PW4) supported the Admission Register, however, she deposed that at the time of admission, no documents were produced by the parents of the victim regarding her age. Moreover, PW-5 (mother of the victim) had admitted the date in the said birth certificate and PW-2 (father of the victim), in his testimony, had admitted to lowering the victim's age at the time of admission. In the opinion of this Court, the learned Trial Court rightly noted that the prosecution had been unable to establish that the victim was a minor at the time of the incident.

24. It is relevant to note that there is no cogent proof regarding the sexual relations being established either. While the MLC suggests that the hymen of the victim was torn, it was rightly noted by the learned Trial Court that no semen was found so as to suggest sexual relations had been established between the parties. It was also noted that PW2 (father of victim) and PW3 (Investigating Officer) had not stated that the victim had told them that the respondent has established sexual relations with her and their testimonies thus don't help the case of the prosecution. It seems that there was a typographical error and the learned Trial Court was referring to PW5 (mother of victim) instead of PW3 as it was also mentioned that apart from the said witnesses, the rest of the witnesses were official witnesses.



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25. Furthermore, the learned Trial Court rightly noted that it was peculiar that the respondent accompanied the victim and her father to the police station. It seems odd as to why the respondent would present himself up for arrest and the same created a doubt in the story of the prosecution.

26. Insofar as the argument regarding the presumption of guilt under Section 29 of the POCSO Act is concerned, the same comes into play once the prosecution establishes the foundational facts. It can be rebutted by discrediting the witnesses through cross-examination as well [Ref. *Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938]. The respondent has successfully cast doubt over the age of the victim.

27. Having noted that the testimony of the prosecutrix is in doubt and that there is no independent corroboration in the form of MLC or FSL, the possibility of the respondent's false implication cannot be ruled out.

28. In view of the aforesaid discussion, this Court is of the opinion that 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.

29. The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

SEPTEMBER 9, 2024