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

+ CRL.L.P. 87/2018 & CRL.M.A. 2143/2018
THE STATE GOVT OF NCT OF DELHIPetitioner
Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Meena Malik, PS Maurya
Enclave.

versus

HANUMAN PRASADRespondent
Through: Mr. Chetan Lokur,
Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **18.08.2025**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 26.08.2017 (hereafter '**impugned judgment**') passed by the learned Trial Court, North West, Rohini, Delhi in SC No. 68/2015 whereby the respondent was acquitted of the offences under Section 376/342 of the Indian Penal Code, 1860.

2. Briefly stated, it is alleged that on 10.11.2013 at about 11:00 AM, the respondent/brother-in-law of the prosecutrix came to the house of the prosecutrix. Thereafter, the respondent asked the prosecutrix's son to buy a chocolate, and closed the door of the house. It is alleged that the respondent then came to the prosecutrix who was in the kitchen and sexually assaulted her and further inserted his finger into the prosecutrix's private part.



It is alleged that thereafter when the prosecutrix's son came back from the shop, he heard the prosecutrix's voice coming from the house. It is alleged that the prosecutrix's son attempted to open the door but it was to no avail. Thereafter, the prosecutrix's son sought help from one Ranbir who came there and opened the door. The respondent then fled from the spot. It is alleged that the prosecutrix thereafter disclosed about the incident to Ranbir. The prosecutrix further disclosed about the said incident to her husband whereafter a complaint was given. It is also the prosecutrix's case that the respondent used to tease her after her marriage, and used to talk in an indecent manner with her on the phone.

3. By the impugned judgment, the learned Trial Court acquitted the respondent of the charged offences. It was noted that the version of the prosecutrix was marred with doubts. It was noted that as per the statement of the prosecutrix under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC'), the respondent was in the habit of teasing her in an obscene manner. It was noted that the prosecutrix was married for about 15 years, and as per the prosecutrix herself, the respondent used to make about 100 calls in a day and even used to come to her house and damage the door panes and on one occasion had gone to the extent of urinating at the main door of her house. It was however noted that no complaint was ever given by the prosecutrix to any authority at any point of time.

4. The learned Trial Court noted that the FIR too had been filed with a delay. It was noted that the same assumed heightened significance in the backdrop of the earlier complaint filed by the



respondent dated 10.10.2013 at Police Station Maurya Enclave. It was noted that the incident allegedly occurred on 10.11.2013, and the matter was reported on 11.11.2013. It was further noted that the prosecutrix went to the doctor at Muni Maya Ram Hospital on 10.11.2013 itself, however, had failed to disclose about the alleged sexual assault to the doctor.

5. The learned Trial Court further noted that the explanation given by the prosecutrix to justify the delay in giving the complaint to the police did not appear to be plausible especially in view of the defence taken by the respondent that on the date of the alleged incident itself, that is, 10.11.2013, the husband of the prosecutrix had received a notice from Legal Aid in relation to the case lodged by the respondent.

6. The learned Trial Court further considered the testimony of the independent witness Ranbir and noted that the same failed to inspire confidence. It was noted that the statement of Ranbir was not without blemish. It was noted that Ranbir took contradictory stands in relation to who had opened the door of the house in his statement under Section 161 of the CrPC and his evidence before the Court. It was noted that despite admitting to the fact that he had a mobile when the prosecutrix had informed him about the alleged act committed by the respondent, no call was made to the Police. Consequently, considering the gaps in the case of the prosecution the learned Trial Court acquitted the respondent of the offences under Sections 376/342 of the IPC.

7. The learned Additional Public Prosecutor for the State submits that the learned Trial Court erred in acquitting the respondent of the offences under Sections 376/342 of the IPC. He



submits that the statement of the victim is consistent throughout and that she has implicated the respondent with certainty and attributed specific role to him. He submits that the learned Trial Court disbelieved the prosecutrix without any plausible reason, and gave undue importance to minor contradictions.

8. He submits that it is trite law that the conviction of the accused can be sustained on the sole testimony of the prosecutrix without the need of further corroboration. He submits that the learned Trial Court failed to take into account the testimony of PW-10/Ranbir Singh who stated that upon seeing him, the respondent fled the spot. He consequently submits that the impugned judgment is perverse and is liable to be set aside.

Analysis

9. 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 Hon'ble Apex Court in the case of ***State 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.

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24. 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 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 reappreciation, 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.”

(emphasis supplied)

10. In the present case, in order to establish its case, the prosecution has relied upon 11 witnesses out of which PW-8/prosecutrix deposed about the manner of the alleged incident, PW-10/Ranbir deposed about the events that transpired after the occurrence of the alleged incident, PW-6 recorded the statement of the prosecutrix under Section 164 of the CrPC and the other



witnesses deposed about the manner of the conduction of the investigation and the medical examination of the prosecutrix.

11. In her statement under Section 164 of the CrPC, the prosecutrix stated that the respondent used to tease her ever since she was married to the respondent's brother, and that he used to talk in an indecent manner with her. In her evidence, she stated that the respondent made as many as 100 calls to her in a day, and stated that if she failed to open the door when the respondent came to her house, the respondent would damage the door panes and on one occasion the respondent had also urinated at the main door of her house. She further deposed that on 10.11.2013 at about 11-11:15 am, she was present in her house with her two children. She deposed that her daughter was sleeping and her son opened the door.

12. The prosecutrix stated that the respondent gave ₹20 to the prosecutrix's son and asked him to get two chocolates. She deposed that the respondent thereafter bolted the door from inside, entered the kitchen where the prosecutrix was working and thereafter used force against her and also inserted his finger in her private part. She deposed that in the meantime, upon hearing her screams, her son and one Ranbir started knocking the door from outside whereafter the respondent opened the door and fled the spot.

13. The prosecutrix stated that she disclosed about the said incident to Ranbir after about 10-15 minutes. She further stated that she informed about the said incident to her husband at about 3 PM when her husband came home. She thereafter stated that she went to the hospital with her husband as she was not feeling



well. Upon being cross examined by the learned counsel for the respondent, the prosecutrix stated that she had gone to the hospital because she was not feeling well, and stated that she did not disclose about the pain in her private part to the doctor. She further stated that she did not disclose anything about the alleged incident to the doctor.

14. PW-10/Ranbir, in his evidence, stated that on the date of the incident he was coming downstairs after collecting garbage when he saw the prosecutrix's son standing at the main door of the house. PW-10/Ranbir stated that when he asked the prosecutrix's son as to why he was screaming, he asked Ranbir to come inside and opened the door of the house. PW-10 stated that upon coming inside the house, he saw the respondent who ran away at the sight of PW-10. Upon being cross examined by the learned Additional Public Prosecutor for the State on the aspect of who had opened the door, PW-10, contrary to his stand taken in the statement under Section 161 of the CrPC that it was the respondent himself who had opened the door, he stated that the door was not opened by the respondent.

15. In his defence, the respondent stated that he had been falsely implicated in the present case by the husband of the prosecutrix. He stated that he had a sum of ₹40,000/- with him for his treatment which was stolen by the prosecutrix's husband. He stated that in this regard, he had also made a complaint before Police Station Maurya Enclave on 10.10.2013. He further stated that he had also moved an application in the office of Delhi Legal Services Authority for the purposes of getting a lawyer on 06.11.2013.



16. It is well established that an accused can be convicted solely on the basis of the evidence of the victim without the need of any further corroboration so long as the same inspires confidence. However, in instances where the evidence of the victim is fraught with gaps or flaws or fails to provide a sufficient account of the incident, the conviction of the accused cannot be sustained [Ref: **Nirmal Premkumar v. State : 2024 SCC OnLine SC 260**].

17. In the present case, a perusal of the material on record indicates that the case of the prosecution was filled with inconsistencies and failed to establish the case against the petitioner beyond reasonable doubt.

18. From a perusal of the testimony and statement of the prosecutrix, it is apparent that the prosecutrix failed to give a sufficient account of the incident. It is apparent from the statement of the prosecutrix under Section 164 of the CrPC that she had been married to the brother of the respondent for past 15 years who allegedly on several occasions used to talk to her in an indecent manner. However, no complaint on any occasion was ever given by the prosecutrix to any authority.

19. It is also pertinent to note that there was a delay in giving complaint for the registration of the FIR especially when considered in the backdrop of the complaint lodged by the respondent on 10.10.2013. The Hon'ble Apex Court while considering the impact of delay in lodging an FIR in sexual offences and its consequential probability of embellishment or chance of false implication in the case of **Tulshidas Kanolkar v. State of Goa : (2003) 8 SCC 590** held as under:



“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case....”

20. In the present case, the incident allegedly occurred on 10.11.2013, however the matter itself was reported on 11.11.2013. On the date of the incident itself, that is, on 10.11.2013, after the occurrence of the incident, the prosecutrix went to see a doctor, however she failed to disclose anything in relation to the alleged sexual assault to the doctor. It is pertinent to note that as per the case of the prosecutrix herself, she had disclosed about the alleged incident to her husband on the said date at around 3 PM itself. No plausible ground was raised to justify the delay in giving the complaint. As rightly noted by the learned Trial Court, the delay in giving the complaint in the present case was further augmented in view of the defence taken by the respondent that on 10.11.2013 itself, the prosecutrix and her husband had received a notice from Legal Aid in respect of the case lodged by the respondent.

21. Insofar as the testimony of PW-10/Ranbir is concerned, it is pertinent to note that the same was not without contradictions. PW-10/Ranbir had approached the prosecutrix's son upon seeing



him standing at the door of the house. PW-10/Ranbir however took contradictory stand in respect of who had opened the door of the house. In his statement under Section 161 of the CrPC, PW-10/Ranbir stated that the door was opened from inside by the respondent. However, in his evidence before the Court, he stated that the door was opened by the prosecutrix's son. On being cross-examined on this particular aspect, PW-10/Ranbir stated that the respondent had not opened the door from inside. As rightly noted by the learned Trial Court, there was no explanation as to why the witness did not call the police when he was admittedly having a mobile phone with him. Even otherwise, as rightly appreciated by the learned Trial Court, the said witness was not instrumental in proving the actual incident of sexual assault.

22. The medical examination of the prosecutrix as well did not bring forth any indication about the occurrence of the alleged incident.

23. Upon a consideration of the facts and circumstances of the present case, this Court does not find any ground to accede to the State's request to grant leave to appeal in the present case.

24. The present petition is accordingly dismissed. Pending application also stands disposed of.

AMIT MAHAJAN, J

AUGUST 18, 2025