



\$~27

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

+ **CRL.L.P. 30/2022**

STATEPetitioner

Through: Ms. Richa Dhawan, APP
for the State
SI Nagender, PS-
Seemapuri

versus

PRAVEEN NAIDURespondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **29.07.2025**

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 25.02.2020 (hereafter "**the impugned judgment**") passed by the learned Additional Sessions Judge (hereafter "**Trial Court**"), Shahdara District, Karkardooma Courts, Delhi in Sessions Case No. 1010/2016 arising out of FIR No. 1111/2015, dated 07.08.2015 registered at Police Station Seemapuri, whereby the learned Trial Court acquitted the accused/ respondent for the offence under Section 354 of the Indian Penal Code, 1860 ('IPC') and Section 8 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 prosecutrix, who was 16 years of age at the time of the alleged incident, alleging that in the year 2014 during summer vacations, when she was staying at the house of the respondent, the respondent would sleep with her and touch

CRL.L.P. 30/2022

Page 1 of 12



her while she would be asleep to which she would have to sleep on her stomach. She alleged that the respondent touched her body but never touched her private parts. The respondent is a married man who works at a NGO namely– Action India. The prosecutrix alleged that the wife of the respondent used to misbehave with her and was suspicious about the respondent.

3. The learned Trial Court on 23.05.2017 framed charges under Section 354 of the IPC and Section 8 of the POCSO Act against the respondent to which he pleaded not guilty and claimed trial.

4. The respondent in his statement under Section 313 of the CrPC denied the allegations against him and stated that he has been falsely implicated in the present case. He stated that the victim herself wanted to live with him as she and her sister were reluctant to live in Sanskar Ashram. He stated that for this reason, the employees of Action India decided that they would take care of the two girls turn by turn. He stated that the prosecutrix had stayed at his time three times prior to 2014 vacations. He stated that the victim, during her stay, would always be talking to a boy namely– Bobby, for long hours, and had shown concern about the same to the NGO office. He stated that the present case had been registered at the instance of one Ms. Khadija, who had some rivalry with Action India and its Director Ms. Gauri Chaudhary. 9 prosecution witnesses were examined before the Trial Court.

5. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offences and observed that the testimony of the prosecutrix was unreliable due to



contradictions and inconsistencies and that the prosecution failed to prove its case beyond reasonable doubt.

6. Testimonies of the prosecution witnesses, especially that of the prosecutrix were noted and observed that there were material inconsistencies and improvements. There was an unexplained delay of more than a year in making the complaint, the learned Trial Court was of the view that the possibility of the respondent being implicated in the present case by Khadija, who runs a rival NGO, cannot be ruled out.

7. The learned Additional Public Prosecutor ('APP') submits that the learned Trial Court failed to appreciate the testimony of the prosecutrix, who was below 18 years of age at the time, wherein she has made categorical allegations with regard to the occurrence of the offence.

8. She submits that the testimony of the sister of the prosecutrix (PW2) is consistent with the testimony of the prosecutrix and that both these witnesses have been duly cross-examined.

9. She submits that despite the fact that the prosecutrix was confused about the fact whether the incident took place in the year 2014 or 2015, her testimony has been consistent to the extent that she was molested by the respondent during her stay at his house.

10. She submits that the statement given by the respondent under Section 313 of the CrPC is not substantiated with any corroborative evidence.



11. It is trite law that 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 ***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)

12. In the present case, the prosecution's allegations are sought to be proved on the basis of statements of the witnesses.



13. In her statement before the learned Magistrate, the prosecutrix stated that during the summer vacation, Action India sent her with the respondent to his place, where he would touch her while she was asleep.

14. The prosecutrix was examined-in-chief, wherein she stated that after her father died in the year 2012, she and her elder sister were looked after by Action India and stayed in the hostel of the school they were admitted in. She stated that the respondent asked her to stay at his house for summer vacations in the year 2014 instead of Sanskar Ashram, where they would stay when school would close during vacations. She stated that while her sister was staying with one Soni Didi, she stayed at the house of the respondent and during her stay, the respondent used to harass her by touching her. She stated that the respondent used to touch her and come and sleep in between when his wife used to make her sleep with her. She stated that the wife of the respondent may have been aware of the acts of the respondent. She stated that after staying there for two months, the prosecutrix came back to the hostel, and narrated the incident to one Tara Aunty, who cooked food in the said hostel. She stated after one week she was sent to Sanskar Ashram, where one Ms. Khadija came to inquire about the alleged incident. She deposed that upon being informed by Tara Didi, Ms. Khadija produced her before the Child Welfare Committee (CWC), where her statement was recorded by one Seema Didi.

15. The learned Trial Court noted that the allegations pertained to the year 2014, and the complaint against the respondent came to be lodged in the year 2015, more than a year



after the alleged incidents. Such a delay was never explained by the prosecution. The learned Trial Court rightly observed that it was not the case of the prosecution that the prosecutrix was under any kind of pressure or fear immediately after the incident or during that period of one year. The prosecutrix is not stated to be under any kind of threat given by the respondent, for her to not disclose anything about the incident.

16. The learned ASJ while taking note of all the statements of the prosecution witnesses as well as the evidence placed on record, held that there are material inconsistencies in the case of the prosecution, some of which are broadly discussed hereunder:

16.1 The prosecutrix was confused regarding the period of incident. In her examination-in-chief, she has stated that the alleged incident took place in the summer vacations of 2014, whereafter she was shifted to Sanskar Ashram, however, in her cross-examination, she stated that the offence was committed in the year of 2015 as she was shifted to Sanskar Ashram on 11.05.2025, whereafter Ms. Khadija had inquired with her about the alleged incident. Upon being specifically asked by the learned Trial Court, she has expressed confusion regarding the alleged year of incident.

16.2 In her initial cross-examination, the prosecutrix denied having any phone in her with which she spoke to Bobby but later she revealed that the phone was handed over by her to the sister of Mridula Didi, at the house of the respondent.

16.3 The prosecutrix has stated that she did not disclose anything regarding the incident as they were having a dispute, whereas



PW2 in her examination-in-chief deposed that after the vacations, the prosecutrix has informed her about the sexual harassment by the respondent. As a matter of fact, when she was confronted with her own statement under Section 161 of the CrPC, it was revealed that she was not aware of the alleged incident, at the time.

17. 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 and so 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)

18. The learned trial Court further took note of certain probabilities and improbabilities in the case. The prosecutrix in her cross-examination had admitted that there was a dispute between the NGO run by Ms. Khadija and Action India, which was being run by Ms. Gauri Chaudhry. Given the peculiar facts of the case, the learned Trial Court was of the view that, since the



respondent worked for Actio India and it was, as a matter of fact that Ms. Khadija, who had made inquiry and produced the prosecutrix before the CWC, the possibility of the respondent having been falsely implicated in the present case, cannot be ruled out. Moreover, it is pertinent to note that Ms. Khadija did not appear before the learned Trial Court, despite being cited as a witness by the prosecution. In such circumstances, this Court finds no reason to interfere with the well-considered view taken by the learned Trial Court, particularly in light of the prosecutrix's own admission regarding inter-organizational disputes, the possibility of false implication owing to rivalry, and the conspicuous absence of Ms. Khadija—an important prosecution witness who failed to appear despite being duly cited. [Ref: **Krishan Kumar Malik v. State of Haryana : (2011) 7 SCC 130**]

19. It is also noted that the prosecutrix, in her deposition, stated that she had narrated the incident to one Tara Aunty, who was employed as a cook at the hostel where the prosecutrix was residing at the relevant time. Evidently, Tara Aunty would have been a material witness for the prosecution; however, it is significant to note that she was never examined nor cited as a witness by the prosecution. [Ref: **Krishan Kumar Malik v. State of Haryana (supra)**]

20. The observations made by the Hon'ble Apex Court in **Krishnegowda v. State of Karnataka : (2017) 13 SCC 98** are relevant to note here. The Hon'ble Court while noting the inconsistencies and contradiction in the case of the prosecution and lapses in the investigation, held as under:



“26. Having gone through the evidence of the prosecution witnesses and the findings recorded by the High Court we feel that the High Court has failed to understand the fact that the guilt of the accused has to be proved beyond reasonable doubt and this is a classic case where at each and every stage of the trial, there were lapses on the part of the investigating agency and the evidence of the witnesses is not trustworthy which can never be a basis for conviction. The basic principle of criminal jurisprudence is that the accused is presumed to be innocent until his guilt is proved beyond reasonable doubt.

27. Generally in the criminal cases, discrepancies in the evidence of witness is bound to happen because there would be considerable gap between the date of incident and the time of deposing evidence before the court, but if these contradictions create such serious doubt in the mind of the court about the truthfulness of the witnesses and it appears to the court that there is clear improvement, then it is not safe to rely on such evidence.”

21. 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.

22. Therefore, in the opinion of this Court, the learned Trial rightly acquitted the accused/respondent. In the present case, the complaint was made after an inordinate delay and the prosecution failed to provide any suitable explanation for the delay. The incident is allegedly said to have taken place in the year 2014, but the prosecutrix did not report the same till 2015.

23. 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 that the State has not been able to establish a *prima facie* case in its favour and no credible



ground has been raised to accept the State's request to grant leave to appeal in the present case.

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

AMIT MAHAJAN, J

JULY 29, 2025