



\$~20

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

+ **CRL.L.P. 76/2022**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State

versus

SHIV SEVAK SHUKLA

.....Respondent

Through: Mr. Saksham Verma, Adv.
(through VC)

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

11.08.2025

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 22.07.2021 (hereafter '**the impugned judgment**'), in Sessions Case No. 7174/2016 arising out of FIR No.260/2015, registered at Police Station Hauz Khas, whereby the learned Trial Court had acquitted the accused/respondent for the offences punishable under Section 354A(2) read with Section 354A(1)(i) of the Indian Penal Code, 1860 ('IPC') and Section 10 read with Section 9 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The brief facts are that prior to her death, the maternal grandmother of the prosecutrix used to work at the house of the accused/respondent. The mother of the prosecutrix also used to work at the house of the accused / respondent since their economic condition was not good.



3. It is alleged that the accused/respondent used to touch the vagina and chest of the prosecutrix, despite her objection to the same.
4. It is alleged that the prosecutrix confided in her teacher about the incident, who then referred her to the care centre, whereafter, the prosecutrix was produced before Child Welfare Committee, Kalka.
5. The FIR in the present case was registered pursuant to the statement of the prosecutrix that was recorded before the Child Welfare Committee.
6. Subsequently, the accused/respondent was arrested in the present case. The learned Trial Court *vide* order dated 31.07.2015 framed against the accused/respondent for the offences under Section 354A(2) read with Section 354A(1)(i) of the IPC and Section 10 read with Section 9 of the POCSO Act.
7. 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. He further stated that the prosecutrix had fallen in some bad company and had been caught with a boy in his house during the night for which he had scolded the prosecutrix.
8. The learned Trial Court noting the contradictions in the case of the prosecution acquitted the accused/respondent by the impugned judgment.
9. 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.



10. He submits that the prosecutrix had supported the case of the prosecution at every stage and there were no inconsistencies in her statements.

11. *Per contra*, the learned counsel for the accused/respondent vehemently opposes the arguments as raised by the learned Additional Public Prosecutor for the State and consequently prays that the present petition be dismissed.

12. I have heard the learned counsel for the parties and perused the record.

Analysis

13. 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)

14. The learned Trial Court *vide* the impugned judgment acquitted the accused/respondent on the ground that the testimony of the prosecutrix cannot be the sole basis of conviction without corroboration as the veracity of prosecutrix’s evidence had been controverted on material aspects.

15. The learned Trial Court noted that there are discrepancies in regard to the date when the prosecutrix had informed her teacher about the alleged incident.

16. PW-1, prosecutrix in her complaint as well as her examination in-chief stated that she had told regarding the alleged incident to her teacher on 25.12.2014. She stated that her teacher had asked her to wait for some time and advised her to start residing with her sister in Gurgaon, where she stayed for a period of 10 days. She further stated that after her return to school, her teacher took her to Child Welfare Committee, whereafter, her statement was recorded, pursuant to which the present FIR was registered.

17. PW-7, Ms. Garima who is the teacher of the prosecutrix, stated that the prosecutrix had informed her about the alleged incident on 24.02.2015, whereafter, she produced the prosecutrix before the Child Welfare Committee, who after making inquiries from the prosecutrix proposed that she be taken to Udyan Care



Shelter Home. She stated that she took the prosecutrix at the said shelter home, thereafter, the prosecutrix had been shifted to Global Family Charitable Trust.

18. From a perusal of the aforementioned testimonies, it can be seen that the prosecutrix stated that she informed her teacher regarding the alleged incident on 25.12.2014, on the contrary, the teacher stated that she was informed about the alleged incident on 24.02.2015.

19. The prosecutrix further stated, it was after her return to school, that her teacher had produced her before the Child Welfare Committee, however, the teacher stated that after getting information regarding the alleged offence, she immediately produced the prosecutrix before the Child Welfare Committee.

20. It is pertinent to note that, the prosecutrix had been admitted in the said school on 03.04.2010 and had been withdrawn from there on 08.05.2013. During cross-examination, when the prosecutrix was asked as to why was she withdrawn from the said school, she stated that she does not know the reason for the same.

21. Therefore, if the prosecutrix had been withdrawn from the school on 08.05.2013, the case of the prosecution that the prosecutrix had informed her teacher regarding the alleged offence on either of the two dates becomes highly improbable and cast a doubt on the case as made by the prosecution.

22. Further, neither before this Court nor during the course of trial had the prosecution led any evidence to explain the discrepancies in the statements of the prosecutrix and her teacher.



23. The learned Trial Court noted that the prosecutrix during her cross-examination stated that she used to meet a boy during night and used to regularly talk to him over the mobile phone.

24. The prosecutrix stated that the accused/respondent objected to such activities of her and on many occasions she was beaten up by her mother and the accused/respondent.

25. On being asked as to why had she not informed regarding the same to anybody, she deposed that accused/respondent used to scare her by showing the prosecutrix his eyes.

26. In the opinion of this Court, the explanation as given by the prosecutrix does not inspire much confidence. Undisputedly, the prosecutrix had been meeting and talking to her friends on a regular basis and the prosecutrix had ample of opportunities to inform regarding the incident to anyone of her friends.

27. 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 discrepancies and the same does not inspire confidence. The benefit of the same has to go to the accused/respondent.

28. Therefore the learned Trial Court rightly acquitted the accused/respondent of the alleged offence.

29. 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.



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

AMIT MAHAJAN, J

AUGUST 11, 2025