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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 174/2020**
STATEPetitioner

Through: Mr. Hitesh Vali, APP.

versus

RAHUL @ DEEPURespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

% **ORDER**
02.12.2025

1. The State seeks leave under Section 378(1) of the Code of Criminal Procedure, 1973¹ to assail judgment of acquittal dated 16th December, 2019 passed by the Court of Additional Sessions Judge-07 (POCSO), West, Tis Hazari Courts, Delhi in SC No. 29/2014, titled “*State v. Rahul @ Deepu*”. These proceedings emanate from FIR No. 456/2013, registered at P.S. Paschim Vihar for the offences under Sections 354-A(1) of the Indian Penal Code, 1860² and Section 8 of the Protection of Children from Sexual Offences Act, 1860.³

Factual Background

2.1. The case of the prosecution originates from a complaint lodged by the victim’s mother, alleging that on 21st December, 2013, when she returned home from work, her daughter informed her that while she was watching

¹ “Cr.P.C.”

² “IPC”



television at the *jhuggi* of one Aarti, the Respondent arrived and held the victim's hand. Her friend 'A', who was also present, intervened and helped remove the Respondent's hand. It is further alleged that the Respondent then made the victim sit on the bed and touched her chest, upon which she managed to free herself and ran away. On the basis of this complaint, the subject FIR was registered.

2.2. During investigation, the victim's statements were recorded under Sections 161 and 164 Cr.P.C., and she was medically examined. Upon conclusion of investigation, chargesheet was filed for offences under Section 354A(1) IPC and Section 8 of the POCSO Act. By order dated 28th April, 2014, the Trial Court framed charges against the Respondent under Section 10 of the POCSO Act. The Respondent pleaded not guilty and claimed trial.

2.3. To prove the charge, the prosecution examined 7 witnesses, details whereof are as follows:

PW No.	Name/Description	Role/ Deposition
PW-1	Victim 'K'	Alleged sexual assault; statement under Section 164 CrPC.
PW-2	'P', mother of the victim	Complainant; called the Police on 100 number; corroborated the victim's disclosure.
PW-3	'A', friend of victim	Present with the victim at the time of the incident; did not support the victim's account.
PW-4	Shri Manoj Kumar, Lab Assistant in Physics Lab, Govt. Sarvodaya Kanya Vidyalaya,	Produced the victim's school record to prove that her date of birth was 3 rd August, 2003.
PW-5	W/Ct. Laxmi.	Went with victim to Sanjay Gandhi Memorial Hospital and got her medically examined.
PW-6	Ct. Sunil Kumar.	Got the FIR registered; got the victim's MLC conducted.
PW-7	Retd. SI Rajender Singh	Recorded the statement of the victim's mother; prepared <i>rukka</i> .

³ "POCSO Act"



2.4. After conclusion of prosecution evidence, the statement of the Respondent was recorded under Section 313 Cr.P.C., wherein all incriminating material was put to him. He denied the allegations *in toto* and claimed false implication. In his defence, he examined Mrs. Aarti as DW-1, at whose *jhuggi* the incident was alleged to have occurred. DW-1 deposed that she was at home with her children throughout the relevant period and that the victim had not visited her house on the date of the alleged incident. She further stated that she witnessed a quarrel between the victim's father and the Respondent over money on the evening of the same day.

2.5. Upon consideration of the victim's age, witness depositions, and the evidence on record, the Trial Court, *vide* judgment dated 16th December, 2019, acquitted the Respondent of all charges.

State's Contentions

3. Mr. Hitesh Vali, APP for the State, seeks leave to appeal against the impugned judgment on the following grounds:

3.1. The impugned judgment rests on presumptions, conjectures and surmises rather than a sound and correct appreciation of the evidence on record and is, therefore, unsustainable and liable to be set aside.

3.2. The victim has remained consistent in her version in her statements under Sections 161 and 164 Cr.P.C., as well as in her deposition before the Trial Court. Her account suffers from no material contradictions; hence, her sole testimony is sufficient to form the basis for conviction of the Respondent.

3.3. The testimony of PW-3 appears to have been influenced or tutored, possibly at the instance of her mother, who had facilitated the grant of bail to the Respondent. In her statement under Section 161 Cr.P.C., PW-3 had fully



supported the victim's allegations, stating that the Respondent misbehaved with the victim and that PW-3 helped free her from his hold. However, she resiled in her testimony before the Court, and her testimony is not reliable, as such.

3.4. The Trial Court failed to appreciate that the Defence did not produce any material to substantiate its plea that the victim's father had demanded money from the Respondent, thereby rendering the defence of false implication over a monetary dispute wholly unsubstantiated.

Analysis

4. The pertinent question before this Court is whether leave to appeal is warranted under Section 378(3) CrPC. It is well-settled that an appeal against an order of acquittal does not lie as a matter of course, and the same must be analysed on merits. The appellate court is required to apply its mind to the material on record, including the sworn testimonies of the prosecution witnesses, and record reasons as to why leave should or should not be granted, and whether the acquittal recorded by the trial court calls for interference.⁴

5. In the present case, the prosecution case is founded on an allegation that the Respondent sexually assaulted the victim at the *jhuggi* of a neighbour, purportedly in the presence of the victim's friend. In view of the offences invoked under the POCSO Act, the Trial Court was first required to ascertain the age of the victim. On consideration of the material brought on record, including the victim's school records and the evidence of the relevant witnesses, the Trial Court recorded a categorical finding that the victim was a minor on the date of the alleged incident. The victim's minority

⁴ State of Maharashtra v. Sujay Mangesh Poyarekar, (2008) 9 SCC 475; Manoj Rameshlal Chhabriya v.



is not in dispute before this Court.

6. As regards the allegation of sexual assault, the Trial Court undertook an analysis of the testimonies of the two material witnesses, the victim (PW-1) and her friend (PW-3), and found that their narrations of the incident were mutually inconsistent. The relevant finding of the Trial Court are extracted hereinunder:

“Two versions of the incident:

26. *There are two most material witnesses in the instant case. These two witnesses are PW-1/Victim 'K' and her friend PW-3 'A'. Both these witnesses were minor at the time of incident in question.*

27. *As per the testimony of PW-1/Victim 'K', she and her friend 'A' were watching TV at the house of a neighbour, namely, Smt. Aarti on 21.12.2003. At that time, accused Rahul @ Deepu came there, caught hold of her (PW-1) hand and touched her breast. It was her friend 'A' (PW-3) who got her hand released from the clutches of accused. PW-3, however, deposed that on the day of incident, she, victim 'K' and the accused were sitting in the room of Smt. Aarti but they were not watching TV as the TV was not working. The three of them were talking to each other. Victim 'K' then left and nothing happened there. She categorically denied all the allegations.*

28. *Thus, there are two opposite versions of the incident narrated by two material witnesses. The benefit of doubt in such a case must go to the accused. Further, it is also noted that the owner of the house where the incident in question took place, i.e., Smt. Aarti was not cited as a prosecution witness nor her statement U/s 161 Cr.P.C. was recorded. No doubt, victim 'K' has stated that Smt. Aarti was not present in her house when the incident took place, no investigation on this material aspect was conducted by the IO.*

CONCLUSION

29. *In view of above discussion, benefit of doubt is granted to the accused. Accused Rahul @ Deepu is acquitted of all the charges against him. The previous bail bond of the accused dated 24.01.2013 stands cancelled. The surety as well as the superdar of the case property, if any, are discharged. Endorsements, if any, be cancelled.”*

Mahesh Prakash Ahuja, 2025 INSC 282.



7. The prosecution case is predicated upon the testimonies of the victim (PW-1) and the eyewitness (PW-3), who is stated to be the victim's friend and was present at the time of the alleged occurrence. However, the depositions of these two witnesses are materially inconsistent. PW-1 deposed that on 21st December, 2013, she and PW-3 were at the *jhuggi* of "Aarti Bhabi" and were watching television when the Respondent arrived, caught hold of her hand, and touched her chest. She further stated that PW-3 then intervened and extricated her from the Respondent's grasp. A perusal of PW-3's testimony, however, reveals a substantially divergent account. When specifically questioned regarding the series of events of 21st December 2013, PW-3 deposed as follows:

"I, Rahul @ Deepu and 'K' were talking to each other. Then 'K' said that she is leaving for her home. She then left. Nothing happened there. All the allegations against Rahul @ Deepu are false."

8. PW-3 thus, controverted all the allegations levelled by the victim against the Respondent. When further questioned as to whether the Respondent had inappropriately touched the victim or grabbed her hand, PW-3 categorically denied the same.

9. The prosecution has contended that PW-3 had supported the victim's version in her statement under Section 161 Cr.P.C. and subsequently resiled during trial. However, upon being confronted with the said statement, PW-3 denied having made it, asserting that she never furnished such a statement to the police. She further deposed that the victim had levelled false allegations against the Respondent and had misrepresented facts to her mother.

10. In these circumstances, it becomes evident that the prosecution case is founded upon two inherently irreconcilable versions, the victim implicating the Respondent, and the purported eyewitness, who is stated to be the



victim's friend, unequivocally denying the occurrence of the alleged incident. In the face of such material contradictions, the Court is unable to record its satisfaction regarding the establishment of the foundational facts necessary to sustain the prosecution case.

11. It is well-settled that the statutory presumptions under the POCSO Act operate only once the prosecution succeeds in establishing the foundational facts of the alleged offence.⁵ Such presumptions may thereafter be rebutted by the defence, either through cross-examination or by leading defence evidence. In the present case, the wholly contradictory testimonies of PW-1 and PW-3 do not prove the foundational facts, warranting the invocation of the presumption. The Trial Court, therefore, correctly concluded that in the absence of credible evidence, the Respondent was entitled to the benefit of doubt.

12. It is also relevant to note that the prosecution did not examine Mrs. Aarti, the owner of the *jhuggi* where the alleged incident is stated to have taken place, as a prosecution witness. She was, however, examined by the defence as DW-1, and her testimony materially undermines the prosecution case. She deposed that she was present in her *jhuggi* with her children throughout the day of the alleged incident. She further stated that the victim did not visit her *jhuggi* at any point on that day. DW-1 also suggested a possible motive for false implication, explaining that there had been frequent quarrels between the Respondent and the victim's father, who would often demand money from the Respondent. She additionally deposed that on the date of the alleged occurrence, she witnessed the Respondent and the victim's father engaged in a quarrel, and only on the following day did she

⁵ Altaf Ahmed v. State (GNCTD of Delhi), 2020 SCC OnLine Del 1938.



come to know of the allegation of “*chhed-chhad*” made by the victim. This testimony, when viewed together with the prosecution’s failure to examine such a crucial witness, significantly strengthens the Trial Court’s conclusion that the prosecution version was doubtful and that the Respondent was entitled to acquittal.

13. In these circumstances, the Trial Court’s conclusion that the prosecution has failed to prove its case beyond reasonable doubt, is based on the mutually contradictory versions of the prosecution witnesses and lack of any other corroborative evidence.

14. Accordingly, the Court does not discern any ground to grant leave to appeal. The conclusion drawn by the Trial Court, supported by the record, is a plausible view, fortified by the presumption of innocence that merits acquittal. No exceptional circumstance has been shown to justify appellate interference under Section 378(3) Cr.P.C.

15. In view of the above, the present leave to appeal is dismissed.

SANJEEV NARULA, J

DECEMBER 2, 2025/as