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

+ **CRL.L.P. 221/2020**

STATE

.....Petitioner

Through: Mr. Mukesh Kumar, APP for State
with Ms. Pooja, SI, PS-Bhalaswa
Dairy.

versus

SANJAY KUMAR

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

19.05.2025

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1. The present application under Section 378(3) seeks leave to appeal against judgment dated 31st August, 2019 passed by ASJ-06 POCSO (North), Rohini Courts, Delhi in Sessions Case No. 58032/2016, emanating from FIR No. 22/2013 registered at PS, Bhalswa Dairy, Delhi. By the impugned judgment, the Trial Court has acquitted the Respondent for the offences under Section 342 of Indian Penal Code, 1860¹ read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012²

2. Briefly, the facts of the case are as follows:

2.1 On 22nd January, 2013, on receipt of DD No. 72B, ASI Kanti Prasad along with a constable proceeded to a locality in Mukund Pur, Delhi, where a minor girl, then studying in Class XI had alleged wrongful restraint by her

¹ "IPC"

² "POCSO"



landlord (the Respondent). It was alleged that the landlord had locked the staircase door, thereby confining the victim and her younger sister to their room. Upon arrival, the police officers facilitated the unlocking of the door, allowing the victim and her sister to exit.

2.2 On the following day, the complainant/victim registered the complaint in the presence of her mother. She stated that she along with her family resided as tenants in the room on the upper portion of the house owned by the Respondent and that the kitchen of the house was located on the ground floor. She stated that on 22nd January, 2013, at 7:30PM, when her mother was away for work and she was present along with her younger sister, the Respondent, Sanjay Kumar locked the gate of the staircase in the house.

2.3 She stated that when she called out to the Respondent, requesting him to open the gate, he refused and instead started abusing her and her sister. Thereafter, she called contacted the police helpline number – 100 and a PCR van arrived. In the meantime, the Complainant also informed her mother of the incident. When her mother came back and asked the Respondent as to why he had locked the minor girls upstairs, he started abusing her mother as well.

2.4 The Complainant further alleged that the Respondent had previously harassed her and had exhibited inappropriate behaviour towards her. She stated that on an earlier occasion, the Respondent cut the electricity connection of the rental unit where the Complainant was residing, entered the room and sexually assaulted her. Further, she alleged that the Respondent used to threaten her and her mother with dire consequences.

2.5 Based on her statement, the present FIR was registered. Initially, the case was booked under Sections 342, 354, 451, and 509 of the IPC, along



with Section 23 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 8 and 12 of the POCSO Act. However, at the stage of framing of charge, the Trial Court confined the charges to Section 342 IPC and Sections 8 and 12 of the POCSO Act.

2.6 During trial, the prosecution presented documentary evidence and examined 11 witnesses, including material witnesses such as PW1 Niranjan Lai Kaushal (Manager from victim's school), PW2 "SK" (victim), PW3 "RU" (mother of victim), PW5 (SI Satbir Singh, In-charge PCR van) and PW9 (ASI Kanti Prasad, First Investigating Officer).

2.7 In his statement under Section 313 of the Cr.P.C., the Respondent denied the evidence against him and maintained that he was innocent and had been falsely implicated in the present case. In defence evidence, the Respondent examined himself as DW1. He stated during examination that the mother of the victim/complainant was his tenant, and she was unlawfully occupying the rented premises as she had not paid rent for over three years. He contended that a civil suit for possession had already been instituted by him against her, and the present FIR was filed only as a counter-blast to pressurise him into withdrawing the said proceedings.

2.8 After consideration of all of the evidence brought on record, the Trial Court, acquitted the Respondent finding infirmities and contradictions in the case of the prosecution.

2.9 Aggrieved by the said acquittal, through the present application, the State seeks leave to appeal.

3. Mr. Mukesh Kumar, APP for State, submits that the view taken by the Trial Court is unsustainable, being founded on conjectures and misappreciation of material evidence. He urges the following grounds in



support of the plea for grant of leave to appeal:

3.1 A bare perusal of the judgment reveals that the Trial Court failed to evaluate the prosecution's evidence in its proper perspective. Vital and cogent evidence, which ought to have led to the conviction of the Respondent, was either disregarded or inadequately appreciated. The reasoning adopted for acquittal is premised more on assumptions than a fair appreciation of the testimonies on record.

3.2 Insofar as charge under 342 of IPC, is concerned, it is submitted that the consistent and unrebutted depositions of PW2 (the victim), PW3 (her mother), and PW5 (SI Satbir Singh, PCR) clearly establish that the Respondent had wrongfully restrained the victim by locking the staircase from the outside. PW5 specifically deposed that he had summoned the Respondent to unlock the gate, which the Respondent did, indicating that he alone was in control of the means of egress from the upper floor. This squarely fulfils the ingredients of wrongful restraint under Section 342 IPC, and the Trial Court failed to return findings thereon in accordance with law.

3.3 The Trial Court failed to properly appreciate the deposition of PW2, the victim, who in clear and unambiguous terms deposed that the Respondent had previously entered the rented room after disconnecting the electricity supply, and had sexually assaulted her by touching her breasts. Then the Respondent also caught hold of her hand and attempted to take her into another room, to which she objected and raised an alarm. These allegations, which the victim reiterated even during cross-examination, constitute specific acts that attract the rigour of Sections 8 and 12 of the POCSO Act. The blanket rejection of this testimony, despite its consistency, has led to a miscarriage of justice.



3.4 The testimony of PW2 (victim) remained consistent on all material points throughout the different stages of the trial. Moreover, she implicated the Respondent with certainty and attributed the specific role to him. There is no discernible reason on record to discard her testimony, particularly given the settled position of law that the testimony of a child victim, if found to be reliable and credible, can form the sole basis for conviction.

3.5 The Trial Court, erred in holding that there is an unexplained delay in registration of the FIR. It is contended that the explanation offered by the victim, that she waited for her mother's return before proceeding to the police station, is both reasonable and expected in the circumstances of the case, where the minor girl was alone at the time of the incident. In cases involving sexual assault, especially where the victim is a child, delay in reporting is not uncommon and cannot be a ground for doubting the veracity of the complaint. Reliance is placed on the judgment of the Supreme Court in *Satpal Singh v. State of Haryana*³ wherein it was held that delay in lodging an FIR in cases of sexual offences should be viewed in the context of prevailing social sensitivities and the trauma experienced by the victim.

3.6 The perusal of the evidence in the present case clearly brings out a case of conviction against the Respondent under Sections 342 of IPC and Sections 8 and 12 of POCSO Act.

Analysis

4. The Court has considered the submissions advanced the State and carefully perused the impugned judgment and the record of the case. At the outset, it is necessary to recall the general principles governing the appellate court's jurisdiction in matters involving an appeal against acquittal. In



Chandrappa v. State of Karnataka⁴, Supreme Court elucidated the governing principles in such cases as follows:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

5. While the appellate court’s powers under Section 378 of the Cr.P.C. are indeed broad, the threshold for granting *leave to appeal* under sub-section (3) is more circumscribed. In **State of Maharashtra v. Sujay**

³ 2011 (2) ACR 1387

⁴ (2007) 4 SCC 415



Magnesh Poyarekar⁵, the Supreme Court clarified that at the stage of considering whether to grant leave, the Court is not to test whether the impugned order is perverse or legally unsustainable on its face. Rather, the guiding principle is whether the material on record raises an arguable case that merits reappreciation. The Court held:

“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.

...XX... ...XX... ...XX...

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

⁵ (2008) 9 SCC 475



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.”*

[Emphasis supplied]

Thus, the standard is not whether the judgment is manifestly erroneous, but whether it warrants a second look based on the nature and quality of the prosecution evidence.

6. At this stage the Court has to consider whether on a *prima facie* appreciation of the impugned order and the material on record, a case has been made out for exercise of jurisdiction under Section 378(3) to grant leave to appeal against the acquittal. At the same time, it bears reiteration that an order of acquittal carries a double presumption of innocence, and where two views are reasonably possible, the view favouring the accused must ordinarily prevail.

7. Turning to the facts of the present case, it is relevant to note that the age of the victim, found to be below 18 years by the Trial Court, is not in dispute. The central issue, rather, was whether the Respondent had wrongfully restrained the minor victim on the date of the incident, and whether there was credible evidence of prior sexual misconduct attributed to him by the Complainant.

8. Upon a careful reading of the Trial Court’s judgment, this Court finds that the acquittal was not based on conjecture, but upon a reasoned appreciation of the evidentiary record. The Trial Court closely scrutinised the depositions of prosecution witnesses and found material contradictions, coupled with an unexplained delay in reporting the offence, both of which



cast a shadow of doubt on the prosecution's case. The relevant findings of the Trial Court are extracted below:

“25. In the light of above evidence, it is clear that there is unexplained delay in registration of FIR. As per the testimony of PW9 ASI Kanti Prasad on 22.01.2013, he received a call i.e. DD No. 72B and reached the residence of the victim. As per DD no. 72B, information regarding incident was registered at 9:04 PM. However, the victim did not make any complaint on 22.01.2013. The victim made her complaint only on the next day i.e. on 23.01.2013 on the basis of which the present FIR was registered. There is no explanation given by the prosecution or by the complainant for delay in registration of FIR.”

26. Further, as per the testimonies of prosecution witnesses ASI Kanti Prashad was the first person who reached the spot of incident after the DD was marked to him on the call of the complainant; But, the complainant did not disclose any facts regarding commission of offence to him. As per the testimony of PW9 ASI Kanti Prasad, he found the complainant to be matured and understanding. As per the testimony of PW9 ASI Kanti Prashad, when he asked the victim about her complaint, the complainant told him that the landlord was misbehaving with her mother as such her mother could only give information regarding the allegations. No allegations regarding the wrongful restraint or the sexual harassment were made by the victim at the first instance to the first IO ASI Kanti Prashad. A perusal of DD No. 72B also reveals that no allegations regarding sexual harassment were made by the complainant when she made call to the police. There is no explanation tendered by the victim or her mother why the allegations the accused is charged with were not made by the victim to the first IO when he reached at the spot on her call.

27. The victim only gave her statement on the next day and the theory of afterthought allegations is not ruled out by the prosecution. Therefore, benefit of doubt goes in favour of the accused.

28 Furthermore, there are certain contradictions in the case set up by the prosecution. As per testimonies of PW2 'SK' and PW3 'RU' (mother of the victim), when she reached the spot, police was already present there. However, as per testimony of PW9 ASI Kanti Prasad when they reached the spot after receiving the DD, the victim had stated that her mother was not present and she would give her statement in the police station when her mother would arrive and thereafter, they (police officials) returned back to the police station. It seems that PW3 RU has tried to show that she had reached the spot at the time of incident whereas as per testimony of PW9, she was not there.



29 Except the victim 'SK' (PW2), no other witness to the alleged incident has been examined by the prosecution. As per the testimony of PW2 (victim), her younger sister was present at the spot at the time of alleged incident. However, the prosecution has not made younger sister of the victim a witness nor examined her. Rather, the prosecution has chosen to make mother of the victim a witness in this case who was not even present at the spot and her testimony is just hearsay evidence and cannot be relied upon.

[Emphasis supplied]

9. This reasoning is further corroborated by the Trial Court's observations that the victim first made a police call on 22nd January, 2013, yet no complaint was lodged that day. It was only on 23rd January, 2013, after an intervening delay and in the presence of her mother, that a formal statement was recorded. In cases involving sexual offences, Courts are undoubtedly mindful of the psychological and social reasons that may cause delay in disclosure. However, in the present case, the delay is accompanied by notable omissions: the victim, described by the IO as mature and capable of understanding, did not disclose the allegations of sexual assault to the police officer who responded immediately to her distress call, and instead referred only to a dispute involving her mother.

10. It is also significant that the alleged incident of prior sexual assault admittedly occurred months earlier, on 6th October, 2012, but was not reported until 23rd January, 2013, and no explanation was offered as to why such grave allegations were withheld for an extended period. The first version offered to the police omitted this crucial detail altogether, undermining the credibility of the subsequent narrative.

11. Furthermore, the prosecution failed to examine a key eyewitness, the younger sister of the victim, who was admittedly present at the time of the incident on 22nd January, 2013. Instead, the prosecution relied on the



deposition of the victim's mother, who was admittedly not present at the scene and whose testimony is therefore hearsay in nature. The omission to produce the sister as a witness, despite her relevance, weakens the evidentiary value of the prosecution's case and lends weight to the Trial Court's conclusion that there were lacunae in the prosecution's version.

12. This Court is conscious of the principle that a delay in lodging the FIR, by itself, is not fatal to the prosecution, particularly in cases involving sexual offences. However, when the delay is coupled with material inconsistencies and unexplained omissions at crucial stages of investigation, as in the present case, it becomes a significant factor in determining whether the prosecution has discharged the burden of proof beyond reasonable doubt.

13. In light of the above, this Court finds that the Trial Court's findings were based on a sound appreciation of the evidence on record. The view taken by the Trial Court may not be the only possible view, but it is certainly a plausible and reasonable one in the facts of this case. Consequently, no *prima facie* case has been made out for grant of leave to appeal under Section 378(3) of the Cr.P.C.

14. Accordingly, the leave to appeal sought by the State is denied and the present petition is dismissed along with any pending applications.

SANJEEV NARULA, J

MAY 19, 2025

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