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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 306/2022**

STATE

.....Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State
W/SI Priyanka, PS- SP
Badli

versus

RAVI KUMAR

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

16.04.2025

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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 08.03.2021 (hereafter '**the impugned judgment**'), in Sessions Case No. 446/2017 arising out of FIR No.197/2016, registered at Police Station S.P. Badli, whereby the learned Trial Court had acquitted the respondent of the offence under Sections 354/354D/506 of the Indian Penal Code, 1860 ('IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The present case arises out of an FIR registered on the basis of a complaint registered at the instance of the victim, who alleged that on 25.02.2016, the respondent had engaged in unwelcome conduct by stalking her, taking her photographs without consent, forcibly holding her hand, and issuing threats.

3. The FIR was registered under Sections 354/354D/341/506 of the IPC and subsequently the respondent was arrested. The

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charge sheet was filed for offences under Sections 354/354D/341/506 of the IPC and Section 12 of the POCSO Act.

4. The learned Trial Court framed the charge against the respondent *vide* order dated 06.10.2017 for the offence under Sections 354A/354D/506 of the IPC and Section 12 of the POCSO Act.

5. The learned Trial Court, by the impugned judgment, acquitted the respondent of the charged offence and observed that testimony of the victim was unreliable due to contradictions. It was noted that there was a lack of supporting evidence to prove the offence.

6. 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.

7. 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.

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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)

8. The Hon’ble Apex Court in the case of **Babu Sahebagouda Rudragoudar and Others v. State of Karnataka : 2024 INSC 320** discussed the scope of interference by an Appellate Court for reversing the judgment of acquittal. The relevant portion of the judgment is reproduced hereunder:

“38. Further, in the case of **H.D. Sundara & Ors. v. State of Karnataka [(2023) 9 SCC 581]** this Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 of CrPC as follows: -

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the

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basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

- (a) That the judgment of acquittal suffers from patent perversity;*
- (b) That the same is based on a misreading/omission to consider material evidence on record;*
- (c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.*

40. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

9. 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***

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Sandeep v. State (NCT of Delhi) 95. 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

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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 that 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)

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10. The prosecution's case rested substantially on the testimonies of the victim (PW-1) and her father (PW-2). However, both material witnesses did not support the case during trial.

11. During the course of the trial, the victim, in her deposition, stated that although the respondent used to stand outside her school, the issue was resolved amicably after her parents confronted his family. She expressly deposed that she bore no grievance against the respondent.

12. In cross-examination by the learned APP, the victim further stated that she was over the age of 18 at the time of the incident and had a familial relationship with the respondent. She admitted to fabricating allegations to mislead her parents and categorically asserted that she did not want any legal action against the respondent. Significantly, she stated that she had since got married to the respondent of her own volition, and they have a child from the said marriage.

13. It is also relevant to note that the father of the victim (PW-2) admitted in his testimony that the complaint was the result of a misunderstanding and that both his daughter and the respondent were good friends.

14. There is no gainsaying the fact that, the star witness of the prosecution is the victim, who during the trial turned hostile and did not support the case of the prosecution. This significantly undermines the prosecution's case and renders the charges unsustainable.

15. For this Court to interfere with an acquittal, it must identify illegality, perversity, or a substantial error of law or fact in the decision of the learned ASJ. However, the impugned judgment

meticulously addresses evidentiary weaknesses, such as absence

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of witnesses, speculative, perverse, and contradictions in testimonies, thereby, making the decision legally sustainable. The petitioner has not shown that the learned ASJ's findings were perverse, irrational, or contrary to law, warranting interference by this Court.

16. It is pertinent to mention that the victim had married the respondent subsequently.

17. This Court need not emphasize that order of acquittal is not, generally, interfered with when view taken by the learned Trial Court is found to be reasonable and plausible one. Appellate Court cannot reverse the decision merely because a different view was also possible. Presumption of innocence, which is in favour of the accused, gets strengthened by such order of acquittal and he, thus, even otherwise becomes entitled to get the benefit of doubt.

18. Nothing has been canvassed before this Court which suggest that the other view i.e. conviction of respondent was the sole possibility.

19. In view of the aforesaid discussion, this Court is of the opinion that 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.

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

AMIT MAHAJAN, J

APRIL 16, 2025

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