



2025:DHC:4998



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:19.06.2025

+ **CRL.L.P. 523/2018 & CRL.M.A. 29663/2018**

SUNITA GUPTA

..... Petitioner

versus

STATE & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. V.K. Singh, Adv.

For the Respondents : Mr. Sunil Kumar Gautam, APP for the
State
SI Harish, PS- PV East
Mr. Mukul Bhimani, Adv. for R2

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking leave to appeal against judgment dated 21.09.2017 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Tis Hazari Courts, Delhi, in Criminal Appeal No. 54613/2016, whereby Respondent No.2 was acquitted for the offence under Section 509 of the Indian Penal Code, 1860 ('**IPC**').



2. By the impugned judgment, the learned Appellate Court had set aside the judgment on conviction dated 14.07.2016 and order on sentence dated 13.10.2016, in Case No. 64719/2016, whereby Respondent No.2 was convicted for the offence under Section 509 of the IPC and sentenced to undergo simple imprisonment for a period of one month and to pay a fine of ₹5000/-, and in case of default in payment of fine, to further undergo simple imprisonment for five days.

3. At the outset, it is pertinent to note that the present petition has been preferred by the victim under Section 372 of the Code of Criminal Procedure, 1973 ('CrPC').

4. It is settled law that the victim's right to appeal against acquittal is absolute and no special leave is required by a victim to prefer such a challenge. The Hon'ble Apex Court in the case of **Joseph Stephen v. Santhanasamy : (2022) 13 SCC 115** had observed as under:

"13.1. It cannot be disputed that now after the amendment in Section 372CrPC after 2009 and insertion of the proviso to Section 372CrPC, a victim has a statutory right of appeal against the order of acquittal..."

13.2. As observed by this Court in Mallikarjun Kodagali [Mallikarjun Kodagali v. State of Karnataka, (2019) 2 SCC 752 : (2019) 1 SCC (Cri) 801] , so far as the victim is concerned, the victim has not to pray for grant of special leave to appeal, as the victim has a statutory right of appeal under Section 372 proviso and the proviso to Section 372 does not stipulate any condition of obtaining special leave to appeal like sub-section (4) of Section 378CrPC in the case of a complainant and in a case where an order of acquittal is passed in any case instituted upon complaint. The right provided to the victim to prefer an appeal against the order of acquittal is an absolute right..."

(emphasis supplied)



5. Thus, it appears that the present case has been misnumbered as a leave petition rather than an appeal.

6. In view of the above, the present case is directed to be renumbered as an appeal.

CRL.A. (to be numbered) & CRL.M.A. 29663/2018
(for condonation of delay)

7. Briefly, it is the case of the prosecution that on 11.05.2005, Respondent No.2 had allegedly used indecent words and made indecent gestures to the victim/ appellant with the intention of outraging her modesty. It is alleged that the husband of the victim was present at the spot at the time of the incident. The incident led to registration of FIR on the complaint filed by the husband of the victim. Pursuant to filing of charge sheet, summons were issued on Respondent No.2 for the offence under Section 509 of the IPC.

8. Initially, the learned Trial Court convicted Respondent No.2 under Section 509 of the IPC by observing that the testimony of the victim had remained intact and was corroborated by the testimony of PW2 (husband of the victim). It was further observed that the defence of the accused that the victim had a tendency to make false allegations to members in their locality was not substantiated by examination of any such members of the society. It was also observed that due to the previous dispute between the parties, Respondent No.2 had every occasion to indulge in the kind of activities as had been alleged.

9. By the impugned judgment, the learned ASJ acquitted



Respondent No.2 by taking note of the discrepancies in the testimony of the victim's husband in relation to the date of the incident. It is further observed that the learned Trial Court had ignored the previous litigations between the parties. It was held that the prosecution had not been able to prove its case beyond reasonable doubt and the inconsistencies entitled Respondent No.2 for benefit of doubt.

10. The learned counsel for the appellant submitted that the learned ASJ had erroneously acquitted Respondent No.2 without appreciating that conviction can solely be based on the testimony of the victim.

11. He submitted that no discrepancy could be found in the testimony of the victim and the same should have been relied and no benefit should have been given to the accused solely because the testimony of the victim's husband had some contradictions.

12. He submits that even if the testimony of the victim's husband is totally ignored, the conviction can solely be based on the victim's testimony as it is a settled law that the victim's testimony does not require any corroboration if the same inspires confidence.

13. He pointed out that earlier, the victim and her husband had filed case, being Criminal Misc Petition No. 3398 of 2018, to challenge the impugned judgment, however, the same was withdrawn on 13.07.2018 as it came to the notice of the parties that the appropriate remedy would lie under Section 372 of the CrPC. He submitted that some delay was caused in preferring the previous petition on account of bereavement in the family of the victim as well as misplacing of the files due to infestation of termites in the office of the previous counsel



for the victim. He submitted that the delay was not deliberate and the same may be condoned in the interest of justice.

14. The learned counsel for Respondent No.2 submitted that the learned ASJ has rightly appreciated that the infirmity in the testimony of the husband of the victim goes to the very root of the matter. He submitted that the incident relates to the year 2005 and the delay ought not be condoned as the reasons mentioned in the application for condonation of delay are vague.

ANALYSIS

15. Before delving into the merits of the case, this Court considers it apposite to take note of the delay caused in preferring the present case. While an appeal under Section 372 of the CrPC has no prescribed period of limitation, however, it has been noted that a reasonable period of limitation for a victim's appeal under the aforesaid provision should be 60 days from the date of the impugned order [Ref. *Kareemul Hajazi v. State (NCT of Delhi)* : 2011 SCC OnLine Del 60]. In the present case, condonation is sought for 310 days and it is contested that the delay was caused on account of misplacing of files as well as bereavement in the family of the petitioner. It is further stated that the petitioner erroneously preferred a Criminal Misc. Petition against the impugned judgment and the present case was filed swiftly after withdrawing the previous petition.

16. While the application for condonation of delay is widely



worded, this Court considers it apposite to condone the delay taking into account the reasons mentioned therein and the fact that the case has been pending before this Court since the year 2018.

17. The scope of interference by an Appellate Court against an appeal against acquittal is well settled. Recently, the Hon'ble Apex Court in the case of **Surendra Singh v. State of Uttarakhand : 2025 SCC OnLine SC 176** had observed as under:

“11. Recently, in the case of Babu Sahebagouda Rudragoudar v. State of Karnataka [(2024) 8 SCC 149], a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:

“...41. 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:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. 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.”

12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and 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.”

(emphasis supplied)



18. In the present case, the accused does not have concurrent findings of acquittal in his favour. Respondent No.2 was initially convicted by the learned Trial Court, whereafter, his conviction was overturned by the learned ASJ by the impugned judgment. Even so, now that Respondent No.2 has been acquitted, it is to be seen if the impugned judgment suffers from any patent perversity or if the learned ASJ has failed to appreciate the material on record before arriving at the finding of acquittal.

19. In order to prove its case, the prosecution examined the complainant (the victim's husband) and the victim as well as two police officials.

20. One of the primary factors which weighed the learned ASJ to acquit Respondent No.2 were the inconsistencies in the complaint as well as the deposition of the complainant. It was noted that at the bottom of the complaint (Ex. PW1/B) dated 11.05.2005, it was written that the complainant had spent almost the entire previous day in the police offices regarding the problem. During cross-examination, the complainant had asserted that it was correct that he had visited the police station regarding the case on 10.05.2005. As rightly noted by the learned ASJ, the testimony of the complainant as well as the complainant suggest that the incident took place on 10.05.2005, which is in teeth with the deposition of the victim, who has stated that the incident occurred on 11.05.2005. The same casts a significant doubt



on the veracity of the case of the prosecution.

21. The said aspect has been entirely ignored by the learned Trial Court. A bare perusal of the judgment on conviction dated 14.07.2016 shows that while the learned Trial Court has taken note of the particulars of the deposition of the complainant in the judgment, however, no deference has been paid to the apparent inconsistency in relation to the occurrence of the incident. Even though the complainant and her husband have deposed differently about the date of the incident, but the learned Trial Court has erroneously noted that the testimony of the victim has been further supported by the testimony of the complainant/ PW2.

22. It is argued on behalf of the victim that conviction can be based solely on the basis of the deposition of the victim and the learned Trial Court had rightly noted that the victim's testimony was consistent in regard to all material particulars. It is further argued that no benefit of doubt ought to be conferred on Respondent No.2 merely due to some inconsistency in the statement of the victim's husband. The said contentions are unmerited. While the significance of the statement of a victim cannot be ignored, however, the Court cannot be precluded from appreciating the entirety of the material and evidence on record to discern the credibility and reliability of the victim's statement. In the present case, the testimony of the husband of the victim, who was allegedly an eyewitness to the incident, is in contradiction to that of the victim on the aspect of the date of the incident. The said contradiction cannot be taken lightly, especially when there is history



of prior animosity between the parties.

23. The learned ASJ further rightly observed that the learned Trial Court had not aptly considered the previous litigation between the parties. It was noted as under:

*“One another aspect which has been ignored by the Trial Court is that there is previous litigation between the complainant and appellant. The fact has been admitted by the complainant that there is previous litigation pending, including the criminal cases being filed by the complainant. **Though the Ld. Trial Court has given the reason that due to previous litigation the probability cannot be ruled out that appellant may have made the gesture as alleged by the complainant but simultaneously the another interference may be drawn that the appellant may have been implicated falsely due to the previous litigations and it is settled preposition of law that where there are two inferences can be drawn from the same facts. The inference which is favouring the accused has to be considered.**”*

(emphasis supplied)

24. Respondent No.2 had deposed that the complainants moved to his colony in the year 1996-1997 and thereafter, started making false allegations against the members in the society. He further deposed that he had been falsely implicated as in the year 2003, he had accidentally torn a tarpaulin on the complainant's car and he had also filed a case against them. It is rightly noted by the learned ASJ that considering the admitted previous litigation between the parties, the inference in relation to false implication of the accused is to be favoured against the inference that the accused had committed the offence. As noted in the case of ***Surendra Singh v. State of Uttarakhand*** (*supra*), the Appellate Court should only interfere with a finding of acquittal if no two reasonable views are possible and the only view is consistent with



the guilt of the accused. In the present case, in view of the inconsistencies in the evidence as well as the prior animosity between the parties, there is an evident possibility that the accused was falsely implicated.

25. Considering that the learned Trial Court had convicted Respondent No.2 without appreciating material inconsistencies in the evidence, the learned ASJ rightly acquitted Respondent No.2.

26. Even otherwise, it is also relevant to note that while the victim and her husband had deposed that Respondent No.2 made indecent gestures and also said filthy and bad words to the victim, there is no clarity in relation to what was actually said or done by Respondent No.2.

27. It is settled law that mere assertion of “filthy language” being used by the accused or “indecent gestures” being made by him are insufficient to constitute the offence under Section 509 of the IPC. In the case of ***Madhushree Datta v. State of Karnataka : (2025) 3 SCC 612***, the Hon’ble Apex Court had observed that the ultimate test for ascertaining as to whether modesty has been outraged is the action of the offender and sufficiency of material to establish intention or knowledge of the offender to insult the modesty. The Hon’ble Apex Court opined that the ingredients of the offence under Section 509 of the IPC were not disclosed by taking into account a number of factors, including, the absence of reference to specific words used by the accused therein. It was observed that the term “filthy language” when examined in isolation, without any contextual framework or



accompanying words, do not fall within the purview of Section 509 of the IPC. In the present case, it is stated that certain indecent gestures were also made by Respondent No.2 along with using of filthy words, however, the allegations are general in nature and no details regarding the specific words that were used or gestures that were made have been given which can show the criminal intent of the accused to insult the modesty of the victim.

28. In view of the aforesaid discussion, this Court is of the opinion that the prosecution has not been able to establish a case in its favour beyond reasonable doubt and the accused respondent is entitled to grant of benefit of doubt. The impugned judgment warrants no interference.

29. The present appeal is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JUNE 19, 2025