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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: December 2, 2025***+ **CRL.L.P. 357/2018**

STATE (GOVT OF NCT OF DELHI)Petitioner

Through: Mr. Sunil Kumar Gautam,
APP for the State
SI Arti Singh, PS- Begum
Pur

versus

MOHITRespondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter* 'CrPC') seeking leave to challenge the judgment dated 28.03.2018 (*hereinafter* 'the **impugned judgment**'), passed by the learned Additional Sessions Judge ('ASJ'), in Sessions Case No. 530522/016 arising out of FIR No. 69/2016, registered at Police Station Begum Pur, whereby the learned Trial Court had acquitted the respondent of the offences under Sections 328/342/366/376/506 of the Indian Penal Code, 1860 (*hereinafter* 'IPC').

2. Succinctly stated, it is the case of the prosecution that on 18.01.2016 an information was received in PS Begumpur from PCR *vide* DD no. 35A dated 18.01.2016, at about 10.30 pm, that one boy has kidnapped the sister of informant. On the same day, information was received that a victim, who allegedly was taken by a boy while she was going to her school, was allegedly raped



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by that boy. Upon receipt of such information, SI Raj Devi went to SGM hospital where victim was with her mother and she was medically examined in the hospital. After receipt of MLC, prosecutrix was counselled from the NGO representative and thereafter statement of the victim was recorded on 19.01.2016.

3. The FIR was registered pursuant to a complaint given by the victim, 19-years-old, stating that she was known to Respondent-accused/Mohit Sharma for the last three years as he is friend of boyfriend of her friend namely Akansha and was friends with him. Prosecutrix further stated that she and Mohit used to meet frequently, however, the family members of the victim had instructed her to not meet him.

4. It is alleged that upon the repeated requests of the accused to meet, on 16.01.2016, when the prosecutrix left her house for school, she placed a pair of her clothes in her school bag at the instance of the accused. She met the accused on a street situated at some distance from her school, and thereafter accompanied him to a flat situated at Sector-21, Begumpur, purportedly for changing her clothes.

5. It is alleged that after reaching the said flat, the accused asked her to change, and at about 9:30 a.m., when she was changing clothes, the accused did not permit her to wear her other clothes and detained her in the said flat without clothes.

6. It is further alleged that during the night the accused administered to her a white coloured liquid, which he represented to be "Limca", which was consumed by her and she felt intoxicated. On regaining partial consciousness, the accused



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informed her that he had taken obscene photographs of her and further threatened to send them to her brother.

7. It is alleged that the prosecutrix does not know what transpired next and on waking up in the morning, she realised that the accused had established physical relations with her. Allegedly, she remained in the flat for the entire day on 17.01.2016. At about 10:00 p.m., when she returned home, the accused provided her with a fresh set of clothes, which she wore, and she retained in her bag the clothes she had earlier brought from her home.

8. It is alleged that on 18.01.2016, the prosecutrix disclosed the incident to her family members, whereupon her brother dialled the emergency number 100 to inform the police.

9. Based on the said complaint, the present FIR was registered. The prosecutrix was produced before the learned Metropolitan Magistrate and her statement under Section 164 CrPC was recorded.

10. During investigation, the accused was arrested and upon completion of investigation, a charge-sheet was filed.

11. *Vide* order dated 27.04.2016, charges were framed against the accused for the offences punishable under Sections 366, 328, 376, 506 and 342 IPC.

12. In order to substantiate the charges, the prosecution examined total 7 witnesses.

13. The statement of the accused under section 313 of the Cr.P.C. was recorded wherein accused denied the allegations and stated that he has been falsely implicated in this case and prosecutrix has lodged the FIR against him under the influence of



her mother and brother for extorting money from him.

14. After duly considering the totality of circumstance and the inconsistencies in the story of the prosecution, the learned Trial Court held that the prosecution has failed to prove the guilt of the accused beyond a shadow of reasonable doubt. Thus, the respondent was acquitted of the charged offences *vide* the impugned judgment.

15. Aggrieved by the impugned judgment of acquittal, the present petition, seeking leave to challenge the impugned judgement, has been filed.

16. The learned Additional Public Prosecutor for the State submitted that the learned Trial Court erred in acquitting the respondent of the charged offences.

17. He submits that the learned Trial Court has failed to appreciate the seriousness and the importance of the statement of a material witness who also happens to be the victim and also the magnitude of the scale on which the statement of the material witness must be weighed. The learned Trial Court has erred in doubting and discrediting the testimony of the complainant even when there are no major contradictions in her statement.

18. He further submits that the learned Trial Court has failed to appreciate the corroborative medical evidence, particularly the finding of torn hymen, and disregarded the settled position that the testimony of a rape victim stands on a higher footing and does not require corroboration in material particulars.

19. Submissions heard and record perused.

Analysis



20. It is trite law that the Appellate 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 ***State 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.

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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 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. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.”

21. The criminal jurisprudence is premised on the principle that a conviction cannot be sustained on the basis of mere surmises or conjecture. It is thus for the prosecution to establish, by means of cogent and credible evidence, each element of the alleged offence that too beyond reasonable doubt. The standard is not a mere formality but rather serves as an indispensable safeguard against the risk of wrongful conviction.

22. Further, the prosecution case must stand on its own legs and cannot derive strength from any perceived weakness in the



defence.

23. In the present case, from the appreciation of the material on record, it is apparent that there were significant gaps in the case of the prosecution and that the prosecution failed to establish the case against the respondent beyond reasonable doubt.

24. A perusal of the testimony of PW-2/Prosecutrix and her cross-examination, reflects that admittedly, the prosecutrix had known the accused prior to the incident and voluntarily maintained a friendly association with him and was also frequently meeting him without the knowledge of her family. She has also admitted that she used to go out and watch movies with the accused frequently by telling her family that she is going to her friend's house for doing homework. The admitted circumstances preceding the incident indicate voluntary contact, which forms the backdrop against which the subsequent allegations have to be assessed.

25. It has come on record that, on the date of the alleged incident i.e. 16.01.2016, the prosecutrix met the accused voluntarily, carried a change of clothes at his instance, and voluntarily accompanied him to the flat on his bike. Prosecutrix has also admitted in her cross-examination that accused was already waiting for her near the street on the way of school when she reached there. Thus, going with accused by telling her family members that she was going to school appears to be voluntarily and without any pressure.

26. Pertinently, the conduct of the prosecutrix during and after the alleged incident also casts a doubt on the story of the prosecution. Though it is claimed that while the prosecutrix was



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changing, the accused took her clothes and she remained undressed and confined in a residential locality, however, it is to be noted that she admittedly did not raise alarm or seek assistance.

27. While the same has been sought to be justified by stating that the prosecutrix could not raise alarm because the accused had administered certain intoxicating substances to the prosecutrix, captured obscene/naked photographs of her and then threatened to send her images to her brother. However, these serious allegations have not been supported by cogent evidence as undisputedly, no photographs were recovered from the mobile device seized from the accused.

28. Another significant aspect is that the prosecutrix has herself stated that she made a phone call to her brother voluntarily from the accused's phone, falsely informing him that she was at a friend's house in Gurgaon and would remain there overnight. Such conduct is evidently inconsistent with the narrative of fear, coercion or lack of opportunity. If the prosecutrix was undressed and under any threat from the accused, she would have disclosed the same to her brother and raised an alarm on the alleged phone call.

29. It is also apposite to mention that even the allegation of intoxication has not been substantiated as neither any remnant of the alleged substance was recovered from the flat of Sector-21 Rohini, nor is there any medical document to support the alleged administration of intoxicant.

30. Mere bald assertions in relation to some intoxicating substance being administered to the prosecutrix, without an iota of



evidence to show that the prosecutrix was intoxicated at any point by the accused person, is insufficient to establish the offence under Section 328 of the IPC. In *Prashant Bharti v. State (NCT of Delhi) : (2013) 9 SCC 293*, one of the factors which weighed the Hon'ble Apex Court to quash the charge under Section 328 of the IPC was that allegations of administering of some intoxicant could not be established by cogent evidence due to intervening delay in sending blood samples for examination.

31. Further, the conduct of the prosecutrix on the subsequent day i.e. 17.01.2016 also does not lend support to the prosecution case. It is alleged that she remained with the accused, went with him to a market where he purchased clothes for her, and returned home on his bike without attempting escape or raising alarm. Such conduct does not conform with the allegation that she remained under continued threat or coercion.

32. There are also material deficiencies in the prosecution evidence regarding the investigation of the alleged place of occurrence. The prosecutrix has stated in her examination-in-chief that she was never taken by the police to the flat i.e. the place of occurrence, during investigation, yet a site plan Ex. PW7/B was prepared. The same is also contradictory to the version of the PW-7/IO Rajdevi who has stated that the prosecutrix and her mother had accompanied her to the alleged flat. Even the site plan is bereft of the material particulars of the flat itself.

33. The testimonies of PW-3/the mother of the prosecutrix and PW-6/sister of the prosecutrix, who claimed to have approached the police regarding the prosecutrix's absence, also failed to



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support the prosecution case. It has been stated that a missing compliant had been registered with the police at P.S. Begampur, regarding the alleged kidnapping of the prosecutrix. However, it emerges from the record that no missing complaint was ever exhibited. Further, there is also a contradiction between their versions and that of the prosecutrix, who had categorically stated that she informed her family of her whereabouts on 16.01.2016. When the prosecutrix had already informed her family through her brother, by calling him from the phone of the accused, there was no occasion for the mother and sister of the prosecutrix to file any missing report on that day, which however has not been proved otherwise. Even the brother, who would have been a crucial witness, has not been examined in the present case.

34. It is well settled conviction can be secured on the basis of the evidence led by a victim of sexual assault, however the same must be of sterling quality and without any ambiguity, gaps or inconsistencies. However, it is evident from the above discussion that the testimony of the prosecutrix cannot form the sole basis of conviction as her version is neither wholly consistent nor corroborated by other reliable material or the testimony of the other witnesses.

35. The contention of the State that the learned Trial Court failed to appreciate the corroborative medical evidence, particularly the finding of a torn hymen, is misconceived. The mere presence of a hymenal tear does not, by itself, establish forcible sexual assault. It is well-settled that medical evidence is only corroborative in nature and cannot, in isolation, form the sole



basis for conviction, especially when it does not conclusively establish penetration by force. The MLC also records that “*she has changed clothes and washed her genitals after the incident*” and there is no forensic material to suggest sexual assault as well. While the testimony of the prosecutrix does not require corroboration in material particulars, such testimony must nevertheless inspire confidence and be consistent with the overall circumstances of the case. In a situation where the oral testimony suffers from material inconsistencies, and the medical evidence is neutral and not determinative, the same cannot form the sole basis of conviction.

36. Upon perusal of the evidence and the reasons recorded by the Trial Court, this Court finds no perversity or illegality in the conclusions drawn. The view taken by the Trial Court is not only possible but also a reasonably plausible view on the basis of material available on record, and does not warrant interference in an appellate jurisdiction.

37. The solemn duty of a criminal court is not to convict merely because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt.

38. It is equally well settled that when two views are possible—one pointing to the guilt of the accused and the other towards his innocence — the view favorable to the accused must be adopted. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.

39. The State has not been able to establish a *prima facie* case



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in its favour and no arguable ground has been raised to accede to the State's request to grant leave to appeal in the present case.

40. Hence, the learned Trial Court has rightly acquitted the accused *vide* the impugned judgment and the same does not merit any interference.

41. The present leave petition, along with the pending application(s), if any, are hereby dismissed.

AMIT MAHAJAN, J

DECEMBER 2, 2025

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