

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

% Judgment delivered on: 03.02.2025

+ **CRL.L.P. 734/2019**

STATEPetitioner

versus

LALIT Respondent

Advocates who appeared in this case:

For the Petitioner : Ajay Vikram Singh, APP for the State.
SI Sangeeta, PS S.B. Dairy.

For the Respondent : Mr. Akhilesh Kr. Singh, Adv. along with
respondent.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed seeking leave to appeal against the judgment dated 14.08.2019 (hereafter '**impugned order**') passed by the learned Additional Session Judge ('**ASJ**'), Rohini Courts, Delhi in SC No. 57556/2016 whereby the respondent was acquitted in FIR No. 132/2013 of the offences under Sections 376/452/506 of the Indian Penal Code, 1860 ('**IPC**')

2. The FIR was registered on a complaint given by the prosecutrix alleging that her husband was away to the village, in the evening of 13.03.2013, the accused came to prosecutrix and closed down the shutter and dragged her in the last room of the shop and then



committed rape. It is alleged that she raised noise, however, nobody outside the shop heard her scream since the shutter was closed.

3. By the impugned order, the learned ASJ acquitted the respondent of the charged offences. The learned ASJ noted that the prosecutrix deposed that she and her husband were engaged in the business of filling of quilts and mattresses and had taken a shop on rent. It was noted that as per the deposition of the prosecutrix the respondent was a resident of the same village, and used to '*chhedkhani*' with her. The prosecutrix deposed that she had told her husband and landlord about the same, who in turn went to the house of the accused to deter him from engaging into any such activity.

4. The learned ASJ noted that in her cross-examination however, the prosecutrix deposed that when she stopped her son from working for the respondent, the respondent came to her juice shop and quilts/mattresses filling shop and threw the glasses kept in the juice shop. She stated that she had complained to the landlord against the respondent who then went to the house of the respondent to make him understand not to engage in such activities. It was noted that as per her examination-in-chief, the prosecutrix and her husband complained the landlord as the respondent used to do *chhedkhani* with her. However, as per her cross-examination, the complaint was made in regard to the respondent's act of breaking the juice glasses.

5. The learned ASJ noted that the husband of the prosecutrix deposed that he had given an intimation to the police by dialling 100 number. It was noted that the initial complaint given to the police was



one of a quarrel and not of rape. It was noted that till such time as the prosecutrix and her husband reached the police station, there was no intimation to anybody that the respondent had committed rape on the prosecutrix.

6. The learned ASJ noted that place of the incident was a congested one. It was noted that as per the prosecutrix's own stance, the respondent straightway came to her shop, closed the shutter, dragged her to the middle room and committed rape on her. The learned ASJ noted that given the busy locality, it is only plausible that somebody might have seen the respondent entering the shop of the prosecutrix. It was however noted that no such witness was brought forth by the prosecution.

7. The learned ASJ noted that the as per the victim's own deposition she was dragged by the respondent to the middle room, however, as per the MLC report, no injury was found on the body of the victim, and her blood pressure and pulse were normal. Further, the gynaecologist had collected the scalp hair, pubic hair, oral swab, rectal swab of the prosecutrix. The FSL report, however, opined that the exhibits collected from the internal medical examination of the victim were not found to be stained with any semen. It was noted that while for an offence of rape, the statement of the prosecutrix ought to be given prime consideration, the same must inspire confidence. In view of the aforesaid, the learned ASJ acquitted the respondent of the charged offences.



8. The learned Additional Public Prosecutor for the State submitted that the learned ASJ erred in acquitting the respondent of the charged offences. He submitted that the impugned order is based on conjectures and presumptions and is consequently not sustainable in the eyes of law. He submitted that a perusal of the impugned order manifested that the evidence was not properly appreciated which led to the acquittal of the respondent.

9. He submitted that merely because the shop of the prosecutrix was nestled in a busy locality, does not necessarily mean that the people may be paying attention to what is transpiring inside one of the shops. He submitted that the learned ASJ consequently erred in observing that in such a busy locality, somebody might have definitely seen the accused entering the shop.

10. He submitted that the learned ASJ failed to take into account the statement of the prosecutrix recorded under Section 164 of the Code of Criminal Procedure, 1973 ('CrPC'). He submitted that the prosecutrix has made clear and specific allegations against the respondent. He submitted that in order to establish the offence of rape, the sole testimony of the prosecutrix is sufficient without want of any further corroboration. He submitted that unless the testimony of the prosecutrix is marred with serious contradictions that materially affect the case of the prosecution, minor contradictions or embellishments of trivial nature ought to be overlooked. He submitted that there is always a possibility that no public person witnessed the offence and so



long as the testimony of the prosecutrix inspires confidence, the order of conviction can be passed.

11. The learned counsel for the respondent submitted that the learned ASJ rightly acquitted the respondent of the charged offences. He submitted that the case of the prosecution is not corroborated by any other evidence except the statement of the prosecutrix. He submitted that while the statement of the prosecutrix, by itself, may be sufficient to bring home a conviction without a need of any further corroboration, it is however imperative that the statement inspires confidence.

12. He submitted that the statement of the prosecutrix is not consistent. He submitted that given the material inconsistencies in the version of the prosecutrix coupled with the dearth of any evidence pointing towards the guilt, the respondent was rightly acquitted of the charged offences.

Analysis

13. 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.

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)

14. From a perusal of the impugned order, it is evident that the learned ASJ took into consideration all the contentions raised by the State. This Court, therefore, ought to assess whether the appreciation of the evidence by the learned ASJ is suffering from any perversity.

15. In the present case, the prosecution allegations are sought to be proved only on the basis of statement of the prosecutrix. It is an admitted case that that the same is not corroborated by any other independent evidence.

16. 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 Sandeep v. State (NCT of Delhi)**⁵. 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 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)

17. The Hon’ble Apex Court in ***State (GNCT of Delhi) v. Vipin @ Lalla : Criminal Appeal No. 94/2025*** affirmed the position and observed as under:

“10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.”



18. It has been argued by the learned Additional Public Prosecutor for the State that minor variations in the statement of the prosecutrix is not fatal to the case of the prosecution. It has been argued that the conviction of the respondent can be made solely on the basis of the testimony of the prosecutrix. It has further been argued that the fact that medical documents do not corroborate the testimony of the prosecutrix is of no consequence.

19. In the present case, the learned ASJ noted that the prosecutrix deposed that the respondent used to taunt her, and used to do *chhedkhani* whenever she went to her godown. She deposed that a complaint was made to the landlord regarding the same who then went to the house of the respondent to deter him from engaging into such activities. Subsequently, in her cross-examination, the prosecutrix deposed that when she stopped her son from working with the respondent, the respondent came to her juice shops and threw glasses. She stated that she complained to the landlord regarding the same who then went to the house of the respondent to make him understand.

20. From a perusal of the two statements, the learned ASJ noted that as per the examination-in-chief, the prosecutrix and her husband had complained to the landlord because the respondent did *chhedkhani* with her. As per the cross-examination of the prosecutrix, it was her stance that she had made a complaint to the landlord as the respondent had broken their juice glasses.

21. It is pertinent to mention that as per the statement of the landlord/PW12, no averment regarding any complaint being made to



him by the prosecutrix or her husband with regard to any misconduct by the respondent was mentioned. PW12 did not say anything with respect to any *chhedkhani* or breaking of the glasses by the respondent.

22. The first intimation regarding the incident was given by the husband of the prosecutrix by dialling the 100 number. It is pertinent to note that the DD No. 15 registered at 04:17 pm however only pertained to a quarrel having taken place. No intimation with regard to the commission of rape was given.

23. PW9/ASI Ramesh was deputed to enquire into the said DD No. 15 who deposed that he had received a complaint regarding a quarrel, however, no injured was present on the spot. He deposed that on further enquiry, it was revealed that the persons involved in the quarrel had already gone to the Police Station. Further as per PW9, the people present at the spot told him that it was merely a quarrel between some persons who had already gone to the police station. It was noted that by the time the prosecutrix and her husband reached the police station, there was no intimation to anybody that the prosecutrix had been raped.

24. It was noted that the victim stated that there were many shops in the vicinity. She deposed that as many as 10-12 shops were located in the vicinity. It was noted that the shop of the prosecutrix was located near a bus stand and was housed in a congested area. However, no witness to the said incident had been produced. It was noted that as per the prosecutrix's own stand, the respondent came to the shop, closed



the shutter dragged her to the middle of the room and committed rape. It was noted that the prosecution did not bring any witness to the witness box.

25. It is the victim's own case that she had shouted for help, however, no one came to her rescue. Given the place where the shop of the prosecutrix was situated, it is implausible how there was no witness who saw the accused entering the shop or could hear the victim's cry for help. It is the victim's own case that around 10-12 shops are located in the vicinity.

26. The medical examination of the victim further shows no fresh mark of injury. The gynaecologist had collected the scalp hair, pubic hair, oral swab, rectal swab of the prosecutrix. However, the FSL report opined that the exhibits collected from the internal medical examination of the victim were not found to be stained with any semen.

27. In the light of the aforesaid circumstances, the learned ASJ rightly noted that the evidence of the prosecutrix did not inspire confidence.

28. Upon a consideration of the totality of the facts and circumstances of the case, this Court does not find any perversity in the impugned order so as to warrant any interference by this Court.

29. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

FEBRUARY 03, 2025