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

% *Judgment delivered on: 25.02.2025*

\+ **CRL.L.P. 157/2019**

STATE .....Petitioner

Through: Mr. Naresh Kumar Chahar, APP for the State.

versus

SHIVJI .....Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

SWARANA KANTA SHARMA, J

1. The State has preferred this petition under Section 378 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] seeking leave to appeal against the judgment dated 23.10.2018 [hereafter '*impugned judgment*'] passed by the learned Additional Sessions Judge-01, Special Court, POCSO (North-West District), Rohini Courts, Delhi [hereafter '*Trial Court*'] in case arising out of FIR No. 607/2014, registered at Police Station (PS) Shalimar Bagh, Delhi, for offence punishable under Sections 377/34 of the Indian Penal Code, 1860 [hereafter '*IPC*'] and Section 6 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

2. The case of the prosecution, in brief, is that upon receipt of a PCR call, DD No. 39A dated 27.06.2014 was recorded regarding a

quarrel at Jhuggi No. 11B, Haiderpur Lohiya Camp, Ambedkar Nagar, Delhi. The matter was assigned to ASI Ranvir Singh, who had reached the spot, but found that the persons involved in the quarrel had already been taken to BJRM Hospital in a PCR van. The Investigating Officer (I.O.) had then proceeded to the hospital, where it was ascertained that the minor victim 'N' had been medically examined, wherein he had disclosed history of alleged sexual assault by two individuals a few days prior. The I.O. had also found that the one Shivji had been medically examined separately in connection with the alleged sexual assault committed by him, on the victim N, five days earlier. The victim was thereafter counseled and, in the presence of his father, he gave a statement wherein he alleged that on 23.06.2014, at about 3:00 p.m., he had gone to an open space near Max Hospital to relieve himself, where two boys namely Shivji and Dildar, who were known to him, had approached him. He alleged that they had forcibly took him towards the railway line, where they had committed unnatural sexual acts with him, by inserting their penises one by one into his anus. The victim further stated that when he had raised the alarm, the accused persons had fled, after which he had returned home. Based on the victim's complaint, the present FIR was registered, and the investigation was carried out. The seized samples were collected from the doctor, and the accused Shivji was subsequently arrested. The statement of the victim was also recorded under Section 164 of Cr.P.C. before the concerned Magistrate.

3. During the course of investigation, the co-accused Dildar was

apprehended and found to be a juvenile, leading to the registration of a separate case against him before the concerned Juvenile Justice Board (JJB), whereas the charge-sheet was filed against the accused Shivji. On 27.02.2015, the learned Trial Court framed charges against the accused Shivji for offences punishable under Section 6 of the POCSO Act and Sections 377, 506, and 34 of the IPC.

4. The prosecution had examined 15 witnesses, including the doctor who had examined the victim and the accused (PW-5), the victim himself (PW-9), mother of the victim (PW-11), father of the victim (PW-12), and the main I.O. of the case (PW-15). The statement of the accused was recorded under Section 313 of the Cr.P.C.

5. The learned Trial Court, after considering the entire evidence on record, *vide* impugned judgment dated 23.10.2018, acquitted the accused/respondent of all the charges framed against him in the present case.

6. Aggrieved by the acquittal of respondent, the present petition seeking leave to appeal has been filed by the State.

7. The learned APP for the State argues that the impugned judgment is contrary to the evidence on record and settled legal principles in sexual assault cases. It is contended that the respondent deserves conviction as the prosecution has established its case beyond reasonable doubt. It is submitted that the victim was merely 10 years old, making it natural for him to be frightened of two older boys who had sexually assaulted him. The victim's mother had learnt

about the incident and confronted the accused's mother, leading to a quarrel. It is argued that though the PCR call recorded the incident as a "quarrel" rather than sexual assault, the same does not diminish the gravity of the offence, as disclosures in such cases often emerge gradually. The learned APP further argues that the assault occurred five days before the victim's medical examination, and given that it was a single instance where the accused fled upon the victim raising an alarm, the absence of injuries in the MLC is unsurprising, since it is a well-established medical fact that children's wounds heal faster than adults'. Moreover, settled law holds that the testimony of an eyewitness, particularly a child victim, carries greater weight than medical evidence if found credible.

8. It is also contended that the learned Trial Court erred in disregarding the victim's testimony, which remained consistent with his previous statements, including under Section 164 of Cr.P.C. The learned Trial Court also failed to recognize that the statement of a sexual assault victim, if reliable, does not require independent corroboration. Additionally, it is contended that the learned Trial Court has overlooked the natural reluctance of minor witness Laddu, who had allegedly overheard the accused's extra-judicial confession. Given his age, it was unsurprising that he or his family were not willing to let him testify before the Court and therefore, this should not have been a ground to cast doubt on the prosecution's case.

9. In view of the above, the learned APP contends that the impugned judgment suffers from legal and factual infirmities, and

therefore, deserves to be set aside.

10. Since no one had appeared on behalf of the respondent, this Court had only heard arguments on behalf of the State/petitioner.

11. The impugned judgment as well as the Trial Court Record has been perused and examined by this Court. This Court has also gone through the testimonies of the prosecution witnesses.

12. Before adverting to the merits of the case, it shall be apposite to take note of a few judicial precedents on the scope of interference in an appeal, or a petition seeking leave to appeal, filed against the judgment of acquittal.

13. The Hon'ble Supreme Court in ***Ballu @ Balram @ Balmukund and Anr. v. State of Madhya Pradesh:*** *2024 SCC OnLine SC 481* had observed that unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted. The relevant extract of the decision reads as under:

> "8. **It is settled law that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted on the ground of suspicion, no matter how strong it is. An accused is presumed to be innocent unless proved guilty beyond a reasonable doubt.**
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> 9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. **Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted**……
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> 20. The High Court could have interfered in the criminal appeal only if it came to the conclusion that the findings of the trial Judge were either perverse or impossible. As already

discussed hereinbefore, no perversity or impossibility could be found in the approach adopted by the learned trial Judge.

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High Court, unless the view taken by the learned trial Judge was a perverse or impossible view."

(Emphasis added)

14. Similarly, in ***Kalinga @ Kushal v. State of Karnataka By Police Inspector Hubli:*** *(2024) 4 SCC 735*, the Hon'ble Supreme Court observed as under:

"25. This Court cannot lose sight of the fact that the Trial Court had appreciated the entire evidence in a comprehensive sense and the High Court reversed the view without arriving at any finding of perversity or illegality in the order of the Trial Court. The High Court took a cursory view of the matter and merely arrived at a different conclusion on a re-appreciation of evidence. It is settled law that the High Court, in exercise of appellate powers, may reappreciate the entire evidence. However, reversal of an order of acquittal is not to be based on mere existence of a different view or a mere difference of opinion. To permit so would be in violation of the two views theory, as reiterated by this Court from time to time in cases of this nature. **In order to reverse an order of acquittal in appeal, it is essential to arrive at a finding that the order of the Trial Court was perverse or illegal; or that the Trial Court did not fully appreciate the evidence on record; or that the view of the Trial Court was not a possible view.**

26. **At the cost of repetition, it is reiterated that the anomaly of having two reasonably possible views in a matter is to be resolved in favour of the accused. For, after acquittal, the presumption of innocence in favour of the accused gets reinforced.** In *Sanjeev v. State of H.P., (2022) 6 SCC 294*, this Court summarized the position in this regard and observed as follows:

"7. It is well settled that:

7.1. While dealing with an appeal against acquittal, the reasons which had weighed with the trial court in acquitting

> the accused must be dealt with, in case the appellate court is of the view that the acquittal rendered by the trial court deserves to be upturned (see Vijay Mohan Singh v. State of Karnataka, (2019) 5 SCC 436, Anwar Ali v. State of H.P., (2020) 10 SCC 166))
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> 7.2. With an order of acquittal by the trial court, the normal presumption of innocence in a criminal matter gets reinforced (see Atley v. State of U.P., AIR 1955 SC 807)
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> 7.3. If two views are possible from the evidence on record, the appellate court must be extremely slow in interfering with the appeal against acquittal (see Sambasivan v. State of Kerala, (1998) 5 SCC 412)."
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> (Emphasis added)

15. Having considered the aforesaid judicial precedents, it shall be relevant to now examine the reasons recorded by the learned Trial Court in the impugned judgment for acquitting the respondent herein. The relevant extracts of the findings recorded by the learned Trial Court are set out below:

> "9. Coming to the main incident, admittedly there is delay of four days in lodging the FIR. The alleged incident as per prosecution occurred on 23.06.2014 and victim did not inform anyone because of alleged threats of the accused. Surprisingly the fact that victim was threatened is missing from the initial police statement Ex.PW7/A. In this statement the victim had stated that as soon as he raised alarm, both the accused ran away and he returned to his house. The fact that he was threatened or that he was under constant fear is not mentioned in this statement. Later on as per prosecution, one Laddu informed about the incident to his parents and the mother of Laddu so informed the mother of victim. As per mother of the victim, Laddu was informed about the incident by victim himself whereas victim had stated that accused himself was mentioning about the incident somewhere in the presence of Laddu and that is how Laddu came to know about the incident. In these circumstances, the fact that the accused himself admitted the commission of this act in the presence of Laddu becomes his extra judicial confession and Ladu becomes a very

relevant witness. Non examination of Laddu before whom accused admitted his guilt is fatal to the prosecution. Further, there is no medical or scientific evidence to corroborate the testimony of the victim. Victim was only ten years old at the time of alleged incident and as per prosecution the act of sodomy was committed upon him by two persons simultaneously just five days before. One of the those assaulters was a fully grown male. In that case, there should have been some injury, tear or tenderness in the anal area of the victim even after a period of five days. As per the statement of PW-5 SR Surgery, there was no abnormality, tear or injury mark or tenderness in the anal area of the victim and contrary to it, it was completely normal and healthy. Further, victim as well as his parents have admitted that there was a quarrel on the issue of drawing water from the common tap/hand pump installed outside the house of the victim between mother of the accused and the mother of the victim and initial PCR was made by the mother of the accused regarding the said quarrel on 27.06.2014 whereas this FIR was later on recorded on 28.06.2014 on the statement of the victim. Presence of the mother of the victim at the hospital at the time of medical examination of the victim is also doubtful. The prosecution story appears to be doubtful.

10. In facts, prosecution has failed to prove any of the offence against the accused beyond reasonable doubt. Accused Shivji is given benefit of doubt. Accordingly, he is acquitted. His is bail bond stands cancelled and surety bond stands discharged. Endorsement, if any on the documents of accused or his surety be cancelled. The original documents of accused or his surety, if on record, be returned to him forthwith."

16. A perusal of the aforesaid reveals that the learned Trial Court has extended the benefit of doubt to the accused, and found that the case of the prosecution could not be proved beyond reasonable doubt, on account of (i) there being delay in registration of FIR and no mention of any threats extended by the accused in the initial complaint lodged by the victim; (ii) non-examination of a crucial witness namely Laddu; (iii) medical evidence not supportive of the

case of prosecution; and (iv) possibility of accused being falsely implicated in the case.

17. Firstly, this Court notes that the delay in reporting the incident has been considered as one of the factors affecting the credibility of the prosecution's case, by the learned Trial Court. In this regard, it is to be noted that the alleged incident had taken place on 23.06.2014, however, the complaint *qua* the same was made about five days later. The prosecution attributes this delay to the fact that the accused had threatened the victim not to disclose the incident to anyone, or else, he would kill his parents. However, it is significant to note that the initial statement of the victim (Ex.PW7/A), recorded by the police, does not find mention of any such threats. The victim had only stated that upon his raising an alarm, both the accused persons had fled, and he had returned home. The learned Trial Court has, on this ground, doubted the case of prosecution. However, in this Court's opinion, this fact, though may be considered relevant by the Court, but it cannot be overlooked that the victim had mentioned in his statement under Section 164 of Cr.P.C., recorded on the same day as the FIR, as well as in his deposition before the Trial Court, that he had been threatened by the accused persons. Thus, while the delay in reporting the incident may raise some concerns, it cannot, in itself, be a conclusive ground to doubt the prosecution's case.

18. However, the absence of any medical evidence is a material factor that raises doubts about the prosecution's version. In this case, the victim, a 10-year-old child, was allegedly subjected to penetrative

sexual assault by two persons, one of whom was an adult, and he had reportedly suffered severe pain due to the said acts. However, the MLC, although recorded five days after the alleged incident, does not reflect any injuries, tears, or tenderness in the anal region. The doctor who had conducted the medical examination (PW-5) had testified before the learned Trial Court that the perianal area was healthy, the anal orifice and sphincter were normal, and no signs of injury were present on the victim. Given the nature of the allegations, where forceful penetration by two individuals was alleged, it would be reasonable to expect some medical evidence corroborating the victim's version, considering the tender age of the victim child. However, a complete absence of any injury or sign of any penetration in the anal region does raise doubts about the occurrence of the alleged offence.

19. Next, the manner in which the incident came to light and the contradictions in witness' testimonies also add to the uncertainty in this case. The prosecution's case is that the victim had not disclosed the incident of sexual assault to his parents, but his mother had been informed about the incident by Ms. Poonam, the mother of Laddu. As per the deposition of the victim's mother (PW-11), she was informed by Ms. Poonam, that her son Laddu had been told by the victim himself about the alleged incident. However, the victim, in his testimony, contradicted this version and stated that he had not informed Laddu, but that the accused had made a mention of the incident somewhere, and Laddu had overheard it. These conflicting

versions create doubt as to how the information regarding the alleged assault had surfaced. Moreover, Laddu, who was a crucial link in this chain of disclosure, was never examined before the Trial Court, nor was his statement recorded by the police. Thus, his non-examination leaves a gap in the prosecution's version, as it remains unclear how Laddu had come to know of the incident that had allegedly occurred four to five days earlier.

20. Next, the defence raised by the accused regarding a pre-existing dispute between his mother and the victim's mother over drawing water from a common hand pump cannot also be ignored in the given set of facts and circumstances. In his statement under Section 313 of Cr.P.C., the accused had denied the factum of any such incident taking place and had asserted that the victim was tutored by his mother to falsely implicate him due to the ongoing dispute between them. The fact that a quarrel had indeed taken place is not disputed, as even the victim, during his examination, admitted that a quarrel had occurred in relation to drawing water from the hand pump. The victim deposed that the said quarrel had occurred after the alleged incident of sexual assault. The presence of a common hand pump was also not denied by the victim's parents. Notably, the PCR call on 27.06.2014 was made not by the victim's family but by the accused's mother, and it was recorded as a "quarrel". The sequence of events leading to the lodging of the FIR, when viewed in this background, also casts doubt on whether the allegations in this case stemmed from the prior animosity between the two families rather

than an actual act of sexual assault.

21. Lastly, this Court also notes that the victim's mother (PW-11) and his father (PW-12) both had testified, in their examination in chief and cross-examination, that the victim's mother had not accompanied the victim to the hospital. However, the I.O. (PW-15) had categorically stated, in his examination in chief and cross-examination, that both parents had visited the hospital.

22. Therefore, considering the totality of the evidence on record, this Court finds that the view taken by the learned Trial Court is a plausible one, and the prosecution has failed to establish the charges against the accused beyond reasonable doubt.

23. The reasoning of the learned Trial Court cannot be faulted, and the learned APP has not been able to point out any infirmity or perversity in the Trial Court's findings. Consequently, this Court finds no justification to interfere with the impugned judgment of acquittal.

24. Accordingly, the present petition is dismissed.

25. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

FEBRUARY 25, 2025/ns