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

% Judgment reserved on: 17.09.2025
Judgment delivered on: 24.09.2025

\+ CRL.A. 672/2023

STATE NCT OF DELHI .....Appellant

versus

KARNAIL SINGH .....Respondent

Memo of Appearance

For the Appellant: Mr. Nawal Kishore Jha, APP for the State with Ms. Kalpana Jha, Advocates.
SI Priyanka, P.S. Alipur

For the Respondent: Mr. Ravi Nayak, Advocate along with respondent in person

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. The appellant-State takes exception to judgment dated 04.03.2022 passed by learned Trial Court whereby accused (respondent herein) has been acquitted of all the offences.

2. Let us take note of the relevant facts.

3. Respondent was sent up to face trial for committing offences of penetrative sexual assault upon a minor girl and for threatening and intimidating her.

4. Since the case pertains to sexual assault upon a minor girl, she would be referred to as '*victim S'* in the present judgment.

5. Investigation took off on the basis of receipt of DD No. 11A at PS Ali Pur which was to the effect that a girl aged 11-12 years had been raped.

6. Police swung into action and contacted *victim S* who had already reached SRHC Hospital, Narela. Her MLC was collected wherein she had given history of sexual assault and penile penetration. In her statement, she revealed that on 25.07.2015, she had gone to the house of her paternal grandmother. Since her grandmother had gone out, she was alone at her house. Accused, who was their neighbor, came there and threatened her and raped her. When she shouted, her grandmother reached and on noticing her, the accused fled away.

7. Necessary investigation was carried out. Statement of *victim S* was also got recorded under Section 164 Cr.P.C. in which she indicted the accused, who was arrested for commission of offences under Sections 4 & 10 of *Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act)* and under Sections 376/377/354B/451/506 IPC.

8. Accused was, eventually, charged for offences under Section 6 of POCSO Act and under Section 376(2)(i) & 506 IPC to which he pleaded not guilty and claimed trial.

9. Prosecution examined thirteen witnesses, including *victim S*, her mother and grandmother. Concerned police officials and doctors also entered into witness box.

10. Accused, in his statement under Section 313 Cr.P.C., while denying his involvement, claimed that he had been falsely implicated. He

also revealed that father of *victim S* was a bad-character (BC) of the area and since he (accused) had deposed against him in a criminal case, he had been implicated at the behest of her father. He also examined his one neighbour in order to substantiate that father of *victim S* was habitual offender and that he (accused herein) was a witness against him in one such case.

11. Learned Trial Court, while acquitting the accused, went on to hold that prosecution could not even prove that the victim was minor at the time of occurrence and that there was no medical or forensic evidence to substantiate the offence of penetrative sexual assault. It also referred to the testimony of *victim S*, in particular, her cross-examination in which, she had completely exonerated the accused while deposing that he had not committed any such sexual act and rather he had simply slapped her on the date of incident and out of anger, she had lodged a complaint against him. Her mother and grandmother also did not support the prosecution case. It was in the backdrop of such deposition of material witnesses that the accused has been acquitted.

12. This Court is conscious of the fact that scope of interference in an appeal against the acquittal is a constricted one. Reference be made to *Jagdish God v. State of Chhattisgarh and Others*: 2025 SCC OnLine SC 744, *Bhupatbhai Bachubhai Chavda and Another v. State of Gujarat: 2024 SCC OnLine SC 523* and *Ballu Alias Balram Alias Balmukund and Another v. State of Madhya Pradesh: (2024) 12 SCC 202*. Interference with order of acquittal is warranted where it is demonstrated that there is

manifest illegality or perversity in the conclusions recorded by the Trial Court or where trial court's decision is found to be based on an erroneous view of law or where the entire approach of the trial court in dealing with the evidence was patently illegal or where decision has been given, ignoring material evidence. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence, the only possible conclusion was that the guilt of the accused stood established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view was possible. Thus, a judgment of acquittal can be upset where it is found to be perverse. In *Jagdish God (supra),* it has been held as under:-

> "*We have given our anxious consideration, especially in the context of the acquittal by the Trial Court having been reversed by the High Court. The Division Bench of the High Court had, in fact, noticed various judgments of this Court in so far as the consideration of an appeal against acquittal. It is trite that unless it is demonstrated that there is some manifest illegality or perversity in the conclusions recorded by the Trial Court while arriving at the finding of guilt of the accused, an acquittal ordinarily should not be reversed. Where two views were possible, it is also trite, that the one taken by the Trial Court to acquit the accused, if found to be a plausible one, cannot be upset lightly by the Appellate Court. The presumption of innocence available to an accused gets further fortified by the acquittal entered by the Trial Court. Having noticed the trite law, we have to say, the High Court unfortunately reversed the acquittal without anything other than a finding on alibi having not been proved and the accused not having offered any explanation regarding the death of the deceased, which occurred while they were living together."*

13. Mr. Nawal Kishore Jha, learned Addl. P.P. for the State has challenged the acquittal, primarily, for the reason that victim was minor

and such fact has not been appreciated by the learned Trial Court in the desired manner. It has also been argued that in her examination-in-chief, she supported the case of prosecution. Though she retracted and resiled in her cross-examination, since there was a gap between her examination-in-chief and cross-examination, her earlier version given in examination-in-chief could not have been outrightly discarded and reference in this regard has been made to *Deepak v. State: Crl. A. No. 149/2000 (DoD: 03.12.2013), Vinod Kumar v. State of Punjab: (2015) 3 SCC 220, Bhagwan Singh v. State of Haryana: (1976) 1 SCC 389* and *Khujji @ Surendra Tiwari v. The State of Madhya Pradesh: 1991 AIR 1853.* It has thus been argued that the evidence of a prosecution witness cannot be rejected *in toto* merely because such witness did not support the prosecution version during cross-examination and, therefore, the examination-in-chief could not have been treated as completely effaced.

14. There cannot be any debate with respect to the settled proposition of law and evidence of hostile witness cannot be completely effaced from the record. The following observations made by Constitution Bench of Supreme Court in *Neeraj Dutt vs. State (NCT of Delhi)*: 2022 SCC OnLine SC 1724 are also noteworthy.

> ***"87.*** *Therefore, this Court cautioned that even if a witness is treated as "hostile" and is cross-examined, his evidence cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared "hostile" does not result in an automatic rejection of his evidence.*

> *Even, the evidence of a "hostile witness" if it finds corroboration from the facts of the case may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon a "hostile witness" testimony if corroborated by other reliable evidence."*
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> *(emphasis supplied)*

15. The situation in *Khujji (supra)* was totally different. In that case, appellant Khujji and his co-accused were facing a criminal trial and three material eye witnesses did not support the case of prosecution. As far as accused Khujji was concerned, learned Trial Court, taking due consideration of his conduct as he had absconded and the fact that weapon of offence, stained with human blood, had been discovered at his instance, held him guilty for committing murder, while the other co-accused were acquitted. The Hon'ble High Court while affirming such conviction and sentence, also relied upon the testimony of one such eye witness i.e. PW-1 Komal Chand. There was time-gap between his examination-in-chief and cross-examination and Hon'ble High Court held that the witness had been won over or had succumbed to threat and such inference was drawn on the basis of statement of one another prosecution witness, who had been severely beaten up on the night, previous to his appearance in the Court as a witness. Such conviction was affirmed and while holding so, Supreme Court observed that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was also observed that the evidence of such witness could not be treated as

effaced or washed off the record altogether but it could be accepted to the extent it was found to be dependable on careful scrutiny.

16. In *Vinod Kumar v. State of Punjab (supra)*, despite hostile testimony of complainant in a corruption case, learned Trial Court recorded conviction holding that prosecution had been able to prove the demand and acceptance of the bribe and the recovery of the tainted money from the accused. Such conviction and sentence were upheld by Supreme Court while noting that the trial therein was conducted in an extremely haphazard and piecemeal manner and adjournments were granted, on a mere asking and cross-examination of the witnesses was deferred without recording any special reason and dates were given after a long gap. In that case, material witness had resiled in cross-examination but based on prosecution evidence, testimony of other witnesses and recovery of money, appeal was dismissed while observing that the testimony of a hostile witness cannot be brushed aside. It also noted that as laid down in *Bhagwan Singh (supra)*, even if a witness is characterized as a hostile witness, his evidence is not completely effaced and same remains admissible in the trial and *there is no legal bar to base a conviction upon his testimony, if corroborated by other reliable evidence.*

17. In case in hand, admittedly, there is a gap in recording of examination-in-chief and of cross-examination of *victim S.* Her examination-in-chief was recorded on 09.11.2015 in which she supported the case of prosecution but her examination could not be completed that day as case property had not been produced and, therefore, at the request

of the prosecution only, further examination-in-chief was deferred. When the witness again appeared on 25.02.2016, after completion of her examination-in-chief, when she was tendered for cross-examination, she resiled from her previous statement and came up with revelation that accused had not committed any sexual act and that he had merely slapped her and out of anguish, she had lodged a complaint against him. She also admitted that it was correct that her father had gone to jail several times and had been convicted. Since the witness had taken an apparent somersault, the learned prosecutor sought permission to re-examine her but in her such re-examination, she categorically denied that she was deposing under any pressure or that her deposition recorded that day was false.

18. Moreover, the testimony of her grandmother does no good to the case of prosecution.

19. Despite the fact, the prosecution projected her as an important witness who had reached the spot on hearing shouts of *victim S* and also saw the accused fleeing away, she deposed that she did not know anything about the case and it was only after few days of the incident that she learnt that the accused had been arrested in the present matter. She was cross-examined by the prosecution with the permission of the Court but she remained adamant to her such stand and denied that she when she had returned to her home in a short while, she had seen the accused with *victim S* in an inappropriate condition. All in all, she has not indicted the accused in any manner whatsoever.

20. The testimony of mother of *victim S* is also no different as she also denied any such incident having taken place. In her cross-examination, she rather claimed that the accused was innocent and had been falsely implicated. She also claimed that her earlier statement given to police was at the behest of her neighbours.

21. Fact remains that no such neighbour has been examined by the prosecution.

22. The report of FSL also does not contain any incriminating material, indicating involvement or complicity of the accused.

23. *Victim S* had agreed for her medical examination but medical report does not indicate any external or internal injury. It is despite the fact that as per *victim S*, there was sexual assault and penile penetration.

24. Thus, there is no medical or forensic evidence corroborating the allegation of sexual assault upon *victim S*.

25. The testimony of *victim S* does not inspire any confidence as she has resiled from her stand. There is nothing to signify that she was threatened or won over in the interregnum. The testimony of any such witness, who comes up with conflicting versions has to be analyzed with extra care and circumspection, particularly, when such witness is a child. The Court before recording any finding of guilt has to re-assure itself that such child witness is not only reliable and trustworthy but truthful as well.

26. The testimony of *victim S* does not seem to be of pristine and sterling nature. To make things worse, her grandmother and her mother

have also caused a serious doubt in the case of prosecution. Neither the prosecution nor the parents of *victim S* threw any light about her age and, therefore, learned Trial Court was compelled, and rightly so, to observe that there was no evidence - oral or documentary to ascertain the age of *victim S*.

27. Thus, it is apparent that the learned Trial Court has acquitted the accused after carefully analyzing the evidence of all the witnesses and after due appreciation of forensic and medical record. There is no other corroborating material and, therefore, impugned order does not contain any element of perversity, necessitating any interference.

28. Resultantly, the present appeal is dismissed.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

SEPTEMBER 24, 2025/*dr/st*