



2025:DHC:8911



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.10.2025

+ **CRL.L.P. 531/2022 & CRL.M.A. 23968/2022**

STATE

..... Petitioner

versus

SUBHASH

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Raj Kumar, APP for the State.
SI Manisha Sharma, PS Hauz Khas.

For the Respondents : Mr. Naveen Kumar Tripathi, Adv. through
V.C.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed under Section 378 of the Code of Criminal Procedure, 1973 ('CrPC') seeking leave to challenge the judgment dated 06.10.2021 (hereafter '**impugned judgment**') in Sessions Case No. 7808 of 2016 arising out of FIR No. 460/2016, registered at Police Station Hauz Khas, New Delhi whereby the learned Trial Court acquitted the respondent of offences punishable under Sections 376(2)/342/354A/354D of the Indian Penal Code, 1860 ('IPC') and Section 4 read with Section 3 and Section 12 read with



Section 11 of the Protection of Children from Sexual Offences Act, 2012 (**POCSO Act**).

2. The brief facts of the case are that the respondent allegedly raped the prosecutrix, who was 15 years old at the time of the alleged incident. It is alleged that the respondent would follow the victim around and would try to talk to the victim against her wishes. It is alleged that the respondent kissed the victim, one year prior to the alleged incident.

3. It is alleged that on 16.05.2016, the parents of the victim had left their house to buy medicine, thereafter, the victim went to pick up her brother, who was playing on the stairs. It is alleged that at that time the respondent was standing near the stairs, whereafter, he pulled the victim and dragged her into his room.

4. It is alleged that the respondent bolted the room from inside and raped the victim. It is alleged that during the act, the respondent ejaculated on the right leg of the victim, thereafter, she went to wash herself.

5. It is alleged that the victim's uncle noticed that she had gone missing and upon searching for her, the victim's uncle knocked on the respondent's door and allegedly, found the victim inside. It is alleged that, thereafter, the victim confided in her father and uncle about the alleged incident, who in turn informed the police which led to the registration of the present FIR.

6. The Learned Trial Court framed charges under Sections 376(2)/342/354A/354D of IPC and Section 4 read with Section 3 and



Section 12 read with Section 11 of the POCSO Act against the respondent to which he pleaded not guilty and claimed trial.

7. The learned Trial Court, noting the contradictions in the evidence of the prosecution witnesses acquitted the respondent by the impugned judgment.

8. The learned Additional Public Prosecutor ('APP') for the State submitted that the impugned judgement is based on presumptions, conjectures and surmises, devoid of merits and as such cannot *prima facie* stand and thus, deserves to be set aside.

9. He submitted that the learned Trial Court ignored the deposition of the victim, who consistently deposed against the respondent and provided specific date, place and time of the incident. He further submitted that the victim has supported the case of the prosecution and her testimony is supported by MLC. He submitted that the learned Trial Court ignored the judgment titled ***Ganesan vs. State : (2020) 10 SCC 573***, wherein it was held, *inter alia*, that conviction can be granted on the sole testimony of the victim in cases of rape.

10. He submitted that the victim girl was aged about 14 years at the time of commission of the alleged offence and her age was not disputed by the respondent. He further submitted that the learned Trial Court ignored the settled law that no corroborative evidence can be expected and the testimony of the victim is sufficient for conviction.

11. He submitted that the learned Trial Court ignored the testimony of the father, who deposed that when he knocked on the door of respondent, the victim had come out of the room while weeping and



informed him that the respondent had raped her.

12. He submitted that the learned Trial Court has not furnished any reason as to how, presumption under Section 29 of the POCSO Act was rebutted by the respondent. He submitted that in cases of offences under the POCSO Act, there is a presumption in favour of the prosecution under Section 29 of the Act. He submitted that, the respondent failed to rebut the presumption in the present case and the learned Trial Court acquitted the respondent by merely noting that, the prosecution failed to prove its case beyond all reasonable doubt.

13. He submitted that the learned Trial Court ignored that Section 30 of the POCSO Act permits the Special Court to presume, for any offence under the Act, which requires a culpable mental state on the part of the respondent, the existence of such mental state.

14. *Per contra*, the learned counsel for the accused/respondent vehemently opposes the arguments as raised by the learned APP for the State and consequently prayed that the present petition be dismissed.

ANALYSIS

15. 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)

16. It is well settled that the accused can be convicted solely on the basis of evidence of the complainant / victim as long as the same inspires confidence and corroboration is not necessary for the same. However, the statement of the prosecutrix ought to be consistent from the beginning to the end apart from minor inconsistencies, from the initial statement to the oral testimony, without creating any doubt *qua* the prosecution’s case, as held by the Hon’ble Apex Court in ***Nirmal Premkumar v. State: 2024 SCC OnLine SC 260.***

17. It was argued by the learned APP that the learned Trial Court



ignored the deposition of the victim, who consistently deposed against the respondent and supported the case of the prosecution.

18. However from a perusal of the said testimonies it can be seen that there are certain discrepancies in the same which cast a doubt on the case of the prosecution.

19. The victim in her initial police complaint and statement under Section 164 of the CrPC did not make any allegations regarding penetrative sexual assault and improved upon her statement subsequently, during her cross examination, wherein she stated that penetrative sexual assault had been committed by the respondent.

20. Further, in her statement under Section 164 of the CrPC the prosecutrix alleged that the respondent had ejaculated on her thigh/right leg. However, in her MLC dated 16.05.2016 she had claimed ignorance when questioned regarding the location of ejaculation. Thus, as noted above, it can be seen that the victim has made material improvements in her testimony which has rendered the same doubtful.

21. In so far as the testimony of the victim's father is concerned, the same does not corroborate the testimony of the victim and in fact, casts further doubt on the testimony of the victim. It is pertinent to note that the victim in her testimony had alleged that she had been locked in a room by the accused for 1-2 hours while her parents were not home.

22. However, during cross examination, the father of the victim, stated that he had gone to buy medicines with his wife and had



returned back home within 10-15 minutes, during which time the alleged offence had taken place. The learned Trial Court taking note of the aforesaid facts had rightly found the statement of the father of the victim to be contradictory to the statement of the victim.

23. It is also relevant to note that the uncle of the victim who, according to both the victim and her father was allegedly present at the spot of the alleged incident, was not traceable and was not made a witness by the prosecution in order to further corroborate the case of the prosecution.

24. Further, the prosecution failed to bring any independent witnesses to corroborate the story as alleged by the prosecution, despite the fact that the victim and her father had categorically stated that people were present when the respondent and the victim were allegedly found in the respondent's room.

25. It has also been observed by the learned Trial Court that there is an allegation that the respondent had kissed the victim at an earlier occasion but she had not informed anyone about the same before the present alleged incident. Further, no evidence had been placed on record by the prosecution regarding the allegation that the respondent followed the victim around and tried talking to her against her wishes or attempted to contact her. Therefore, it cannot be ruled out that the respondent and victim were considerably familiar with each other and doubts have been raised regarding any force or coercion exercised upon the victim by the respondent.

26. Insofar as the argument regarding the presumption of guilt



under Section 29 of the POCSO Act is concerned, the same comes into play only once the prosecution establishes the foundational facts. It can be rebutted by discrediting the witnesses through cross-examination as well [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938**]. Once the prosecution has not been able to establish the foundational facts, the onus cannot be placed upon the respondent to rebut the presumption under Section 29 of the POCSO Act.

27. With respect to the presumption under Section 30 of the POCSO Act, which provides for presumption of culpable mental state on the part of the respondent, the judgment of the Hon'ble Apex Court in ***Attorney General v. Satish*: (2022) 5 SCC 545** is of relevance. The relevant portion of the same is produced hereunder:

39. *It may also be pertinent to note that having regard to the seriousness of the offences under the Pocso Act, the legislature has incorporated certain statutory presumptions. Section 29 permits the Special Court to presume, when a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of the Act, that such person has committed or abetted or attempted to commit the offence, as the case may be, unless the contrary is proved. Similarly, Section 30 thereof permits the Special Court to presume for any offence under the Act which requires a culpable mental state on the part of the accused, the existence of such mental state. Of course, the accused can take a defence and prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. It may further be noted that though as per sub-section (2) of Section 30, for the purposes of the said section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability, the Explanation to Section 30 clarifies that "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. Thus, on the conjoint reading of Sections 7, 11,*



29 and 30, there remains no shadow of doubt that though as per the Explanation to Section 11, “sexual intent” would be a question of fact, the Special Court, when it believes the existence of a fact beyond reasonable doubt, can raise a presumption under Section 30 as regards the existence of “culpable mental state” on the part of the accused.

(emphasis supplied)

28. In the present case, since the prosecution has failed to prove beyond reasonable doubt that the alleged incident actually occurred, the presumption regarding the existence of culpable mental state under Section 30 of the POCSO Act cannot be invoked against the respondent. The burden to disprove this presumption does not arise unless the prosecution first establishes that the alleged incident actually occurred.

29. Considering the infirmities in the testimony of the witnesses, coupled with the fact that there is an absence of any independent witnesses to corroborate the case of the prosecution, it is held that the prosecution has not been able to prove its case beyond reasonable doubt.

30. In view of the aforesaid discussion, this Court is of the opinion that the State has not been able to establish a *prima facie* case in its favour and no credible ground has been raised to accede to the State’s request to grant leave to appeal in the present case.

The leave petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 08, 2025

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