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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 08th October, 2024*+ **CRL.L.P. 519/2019 & CRL.M.A. 36100/2019**

STATEPetitioner

Through: Mr. Ajay Vikram Singh,
APP for the State with
W/SI Dipika, PS Adarsh
Nagar.

versus

MANPAL & ORSRespondents

Through: Mr. Ashwani Sharma and
Mr. Yajuvandra Singh,
Advs.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J (Oral)**

1. The present petition is filed seeking grant of leave to appeal against the judgment dated 18.04.2019 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge (**ASJ**), Special Fast Track Court, Rohini, Delhi in Sessions Case No. 58060/16 arising out of FIR No. 71/11 registered at Police Station Adarsh Nagar, for offences under Sections 376/511 of the Indian Penal Code, 1860 (**IPC**).

2. The learned ASJ, by impugned judgment, had acquitted the respondents.

3. The FIR in the present case was lodged following information about a quarrel on Street No. 4, Lal Bagh. The victim/prosecutrix and her mother were taken to the police station where their statements were recorded. The prosecutrix



stated that her mother worked as a maid in several houses, and on 21.03.2011, when her parents were away at work, she and her younger brother were at home. Around 8:00 p.m., while retrieving a mattress from the rooftop, the prosecutrix alleged that Respondent No. 1, the landlord's son, grabbed her and took her to a hut on the roof, and attempted to commit rape upon her and fled when an alarm was raised. The prosecutrix, then went downstairs and asked her younger brother to call their elder sister, who lived nearby. After disclosing the incident to her sister, they informed their parents.

4. The learned Trial Court framed charges under Sections 341/323/354/376/511 of the IPC against Respondent No. 1 and separate charges under Sections 341/323/34 of the IPC were framed against Respondent Nos. 2 and 3, who are the mother and sister respectively, of Respondent No. 1.

5. 15 prosecution witnesses were examined before the Trial Court and the learned ASJ noted that the prosecutrix was examined-in-chief and cross-examined in part on 27.11.2012. In her examination-in-chief, she supported the case of the prosecution but in the cross-examination on the same day, she deposed that the dispute took place between her family and the family of the accused in regard to vacating the premises. On being asked by the learned Trial Court, she replied that false complaint was filed against the accused persons.

6. It was noted that the real dispute between the parties was with regard to the rent and the prosecutrix had stated that the accused/Respondent No.1 had not attempted to rape her.



7. The mother of the prosecutrix was also examined wherein she deposed that her daughter had told her on phone that the accused persons were beating her and had not allowed her to put the mattress on the roof to dry out in the sunlight.

8. The mother of the prosecutrix admitted that she had stated to the Police that her daughter had told her that while she was coming from the roof with mattress, the accused took her in a hut and tried to rape her. She volunteered that the said facts were told to the Police because the Police was not taking any action.

9. The learned ASJ also noted that the DD entry pursuant to a PCR call, only mentions that there was a quarrel and no allegation of attempt to rape was ever made.

10. The learned ASJ, thus, taking note of all the witnesses, held that there has been material contradictions between the statements which were given to the Police at the initial stage and then subsequently to the Magistrate under Section 164 of the Code of Criminal Procedure, 1973 (**CrPC**).

11. The learned ASJ took note of the affidavits filed by the prosecutrix and her mother which were also exhibited as Ex.PW10/DA and Ex.PW12/DB, wherein the deponents being the prosecutrix and her mother had deposed that the dispute was in regard to the rent and a false complaint was filed. Considering the evidence, the learned Trial Court acquitted the respondents.

12. 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)

13. 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.



14. It is also important to note that the learned Additional Public Prosecutor for the State, in the proceedings before the Rohini Courts, initially opined that the case was not suitable for appeal to the High Court. The Director of Prosecution also shared this view, concluding that the case did not warrant an appeal to the High Court.

15. However, it appears that the Department of Law & Legislative Affairs later proposed filing an appeal.

16. Based on the facts outlined above, no flaws are apparent in the impugned judgment. This Court is unable to understand the reasoning behind the Department of Law & Legislative Affairs recommending an appeal in this case.

17. 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)

18. The learned ASJ, in the impugned judgment, specifically noted that the prosecutrix, in her cross-examination, had admitted that false case was filed and the case essentially relates to dispute over rent. An affidavit to that extent was also filed by the prosecutrix and her mother. Various contradictions were also noted by the learned ASJ, which are set out below:

“

S.N.	<u>BEFORE MAGISTRATE</u>	<u>BEFORE POLICE</u>
(i)	<i>My two younger brothers had accompanied me upstairs to bring mattress.</i>	<i>(i) After coming downstairs, I asked my younger brother to intimate my sister Pinki about the incident.</i>
(ii)	<i>The accused caught me in the stairs.</i>	<i>(ii) He caught me on the roof.</i>
(iii)	<i>Accused slapped my brother.</i>	<i>(iii) No such content.</i>
(iv)	<i>The accused removed inner wears and started caressing my body. He told that if I tried to run away, it would not be good for me. He started doing Jabardasti with me, but I did not allow them to do so.</i>	<i>(iv) There are no such content.</i>
(v)	<i>Thereafter he slapped me twice.</i>	<i>(v) No such allegation.</i>
(vi)	<i>He again started doing Jabardasti with me and after sometime, her mother and sister came there. Her mother beat me with danda. His sister slapped me and started pressing my neck saying that I had taken her brother in a net.</i>	<i>(vi) No such allegation.</i>
(vii)	<i>His mother and sister brought down stairs in a room and there</i>	<i>(vii) No such allegation.</i>



	<i>also, she was beaten and her throat was pressed.</i>	
(viii)	<i>No such allegations.</i>	<i>(viii) He tried to rape her against her will.</i>

”

19. The filing of frivolous cases has a spiral effect on other litigations which are waiting for their turn to be heard before the Courts.

20. Although the present case clearly qualifies as one where costs should be imposed on the prosecution for filing a frivolous appeal, this Court has chosen to refrain from passing such an order with a direction to the Department of Law & Legislative Affairs to exercise greater vigilance and sensitivity in deciding which cases to prosecute. The misuse of the legal process through frivolous litigation wastes judicial time and resources, and the Department must ensure that only meritorious cases are brought before the Court, avoiding unnecessary burden on the judicial system.

21. The filing of frivolous cases has a far-reaching, detrimental impact on the legal system. It not only clogs the Courts with unnecessary litigation but also delays the hearing of genuine cases that are patiently awaiting their turn to be addressed. Such delays undermine the efficiency of the judiciary, causing distress to litigants. Therefore, it is imperative that the prosecution and legal departments exercise due diligence before initiating cases, in order to preserve the integrity of the judicial process and ensure timely justice for those with legitimate grievances.

22. The present petition is, therefore, dismissed. Pending



application(s) also stand disposed of.

23. A copy of this order be sent to the Department of Law & Legislative Affairs for information.

AMIT MAHAJAN, J

OCTOBER 8, 2024

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