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

Reserved on: 26th May, 2025
Pronounced on: 12th August, 2025

\+ CRL.A. 222/2024

HARI RAM ....Appellant

Through: Mr. Vikramjeet Singh and Mr. Paramjeet Singh, Advocates.

versus

THE STATE (NCT OF DELHI) .....Respondent

Through: Mr. Sanjeev Sabharwal, APP for the State SI Praveen Kr. Yadav. P.S. South Campus Mr. Manan Popli and Ms. Neha Chawla, Advocates for Survivor.

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CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') has been filed assailing the judgement of conviction dated 22.09.2023 and order on sentence dated 18.01.2024 passed by the learned Additional Sessions Judge (POCSO), ASJ-01, South District, Saket Courts, Delhi whereby the appellant has been convicted in Sessions Case No. 6706/2016 arising

out of FIR No. 120/2012 under Sections 342/363/376 of the Indian Penal Code, 1860 (for short, 'IPC') registered at Police Station South Campus.

2. The appellant by way of the impugned judgment of conviction dated 22.09.2023 has been convicted for the offences punishable under Sections 363/376 of the IPC and the appellant was acquitted of the charge under Section 342 of the IPC. *Vide* the order on sentence dated 18.01.2024, the appellant was sentenced to undergo rigorous imprisonment for 7 years along with a fine of Rs.20,000/-, for the offence punishable under Section 376 of the IPC, and in default of payment of fine, he was further sentenced to undergo simple imprisonment for 6 months. The appellant has also been sentenced to undergo rigorous imprisonment for 2 years along with a fine of Rs. 10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of 2 months for the offence punishable under Section 363 of the IPC. Benefit of Section 428 of the Cr.P.C. was given to the appellant and both the sentences were directed to run concurrently.

FACTUAL BACKGROUND

3. The brief facts relevant for the disposal of the present appeal are as follows:-

3.1 The case of the prosecution is that on 20.09.2012, on receipt of DD No. 17A/18/A, (Ex. PW-4/A and Ex.PW-4/B), the Investigating Officer Sub Inspector Rita (PW-15) along with Constable Sardool Singh (PW-8) had received information regarding a man being beaten up. Upon reaching the spot of the occurrence, *i.e.,* Shri Ram JJ Camp near Venkateswara College, they found a mob

of public persons who were gathered and beating a person who upon inquiry was revealed to be the present appellant-Hari Ram who was later taken to the Trauma Centre, AIIMS Hospital by Constable Sardool Singh for examination where his MLC No. 330744/2012 was conducted *vide* Ex. PW-5/A and his blood sample was collected *vide* Seizure Memo (Ex.PW-8/A). Later, the crowd was dispersed and the survivor, Ms. 'E', and her mother Mrs. 'A' (PW-1) were present at the spot. The mother of the survivor then gave a complaint (Ex. PW-1/A), where it was revealed that the mother of the survivor who worked as a housemaid, after returning from work, at around 12:00 P.M. when her younger daughter (the 'survivor'), aged about 10 years who had gone to her brother's shop in JJ Camp had not returned home for some time, she went out to search for her daughter who could not be found.

3.2 However, after a while, the survivor came running towards her mother/the complainant and hugged her and she subsequently revealed to her, that the appellant had removed her underwear and had made it wet. When the complainant tried to ask the survivor more questions, she was unable to do so since she was suffering from certain mental ailments since childhood. Then, the complainant came outside and asked the appellant whether he had committed a wrong act with her daughter, to which he denied the said allegations. Based on the aforesaid complaint, the case FIR No. 120/2012 was registered on 20.09.2012 at P.S. South Campus for the offence under Section 354 of the IPC. On 20.09.2012, the first arrest memo of the appellant (Ex. PW-8/B) was prepared after which he was arrested and released on bail.

3.3 During investigation, the Investigating Officer collected exhibits which

were sealed and she further prepared the site plan of the area (Ex. PW15/D). Further, MLC No. 174844/2012 of the survivor was conducted at Safdarjung Hospital *vide* Ex. PW-10/A.

3.4 On 25.09.2012, the mother of the survivor/complainant came to the Police Station after which her supplementary statement under Section 161 of the Cr.P.C. was recorded *vide* Ex.PW-15/E, wherein, she stated that the survivor informed her that she had gone to shop in the *jhuggi* to buy something when the appellant called her towards him and took her in his *jhuggi.* Thereafter, the appellant removed the survivor's underwear and tried to perform a wrongful act with her due to which her underwear became wet and the latter started crying. It was stated by the complainant that the appellant tried to commit '*galatkaam'* with her daughter, after which the latter ran towards her home.

3.5 After the statement of mother of the survivor was recorded, Sections 376/366/342/511 of the IPC was added to the case FIR. Disclosure Statement of the appellant was also recorded *vide* Ex. PW15/H. On 25.09.2012, a Medical Examination of the appellant was conducted to assess his capability/incapability to perform sexual intercourse *vide* Ex. PW-9/A. Thereafter, medical examination of the appellant was conducted *vide* MLC No. 180763/2012 at Safdarjung Hospital (Ex. PW-15/K) on 26.09.2012. A second arrest memo (Ex.PW-15/F) was prepared on 26.09.2012, after which the appellant was arrested. Further, the DNA samples of the appellant and the survivor were also seized and sent to the Forensic Science Laboratory for examination on 27.09.2012. The said DNA reports were received from the FSL, Rohini on 04.12.2012 (Ex. PW-12/A and PW-12/B).

3.6 On 05.10.2012, the survivor was examined at the Department of Psychiatry, AIIMS, for determination of her mental age *vide* Ex. PW-11/A, wherein, it was opined that she had a mental age of 4 years and an IQ of 40. In the said report, it was also noted that she suffered from moderate mental retardation.

3.7 After the completion of investigation, chargesheet was filed under Sections 376/342/363 of the IPC on 07.12.2012. Learned Trial Court *vide* order dated 31.08.2013 framed charges under Sections 376/342/363 of the IPC, against the appellant- Hari Ram who pleaded not guilty and claimed trial.

3.8 The prosecution examined 16 witnesses to prove the charges levelled against the appellant, which was closed on 10.11.2022. The statement of the appellant under Section 313 of the Cr.P.C. was recorded on 20.05.2023 and appellant did not opt to lead any evidence in his defense. The appellant in his statement stated that the case was registered against him on the false accusations by the complainant because of his caste. In his statement, the appellant further stated that during the time of the incident, he was working as a guard on night duty in South Extension and on 20.09.2012, he was apprehended by police officials who came to his house while he was sleeping after his night shift. After hearing final arguments on behalf of the parties, and examining the evidence on record, the impugned judgment of conviction dated 22.09.2023 and order on sentence dated 18.01.2024 was passed. Hence, the present appeal has been filed assailing the aforesaid impugned judgement of conviction and order on sentence.

SUBMISSIONS ON BEHALF OF THE APPELLANT

4. Learned counsel for the appellant submits that at the very outset the prosecution has been unable to prove the charges levelled against the appellant. The initial complaint dated 20.09.2012 on the basis of which the FIR under Section 354 of the IPC was registered at P.S. South Campus did not consist of any allegation involving the offence of rape. It is further submitted that no history of sexual assault has been recorded in the MLC of the survivor (Ex. PW-10/A) as well as in the Gynaecological report (Ex.PW-7/A). It is submitted that during the course of the trial the factum of penetration has not been proved either by way of medical evidence which suggests sexual assault or through the statements of the PW-1/the complainant who is considered to be the star witness. It is, therefore, submitted that the learned Trial Court has erred in convicting the appellant for the offence of rape punishable under Section 376 of the IPC.

5. It is submitted by the learned counsel that PW-1, *i.e.,* the mother of the survivor, cannot be considered as a reliable witness as there are material contradictions in her testimony. It is further stated that the site plan which was made during the investigation is contradictory to the statement of PW-1. Learned counsel submits that during her initial statement dated 20.09.2012, PW-1 stated that the alleged spot of the incident was *Jhuggi* No. 113, where the appellant used to reside. The same was reiterated by PW-1 in her supplementary statement dated 25.09.2012. However, during her examination before the Court, she had stated the alleged place where the offence had occurred was *Jhuggi* No. 136, which is where PW-1 resided herself. During her examination dated 15.05.2014, PW-1

claimed to be an eyewitness to the incident, which was not mentioned in her previous statements given to the police. The charge of kidnapping against the appellant was framed on the basis of the place of occurrence, *i.e., Jhuggi* No. 113, however, later during her examination before the Court, PW-1 stated that the offence occurred at her own residence *i.e., Jhuggi* No. 136 which was contrary to her earlier statements as well as the site plan. Thus, the appellant was held guilty for the offence of kidnapping punishable under Section 363 of the IPC by the learned Trial Court on the basis of the place of occurrence.

6. To support this contention, learned counsel has placed reliance on the judgement of the Hon'ble Supreme Court in **Suraj Mal v. State (Delhi Administration)**[1]**,** wherein, it has been held that when there are two inconsistent statements by a witness either at one stage or two stages, the testimony of such witness becomes unreliable and unworthy of credence and in the absence of special circumstances, no conviction can be based on the evidence of such witness.

7. Learned counsel for the appellant further submits that the prosecution has failed to produce the case property (*i.e.,* the underwear) as the same was material evidence which ought to have been produced and proved by the prosecution. Reliance has been placed upon the judgement of a learned Division Bench of this Court in **Krishan Kumar v. State**[2]**,** wherein, it has been held that effect of non-production of case property during trial before the Court is to be held to be a serious infirmity being fatal to the prosecution case.

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[1] **AIR 1979 SC 1408**
[2] **1987 SCC OnLine Del 318**

8. It is further submitted that the medical and forensic evidence are inconclusive, insofar as the MLC of the survivor (Ex. PW-10/A) as well as the Gynaecological Report (Ex.PW-7/A) shows that there were no injuries, abrasions, bleeding or swelling in the private parts of the survivor and the hymen was found intact upon examination by the doctor. It is submitted that medical and forensic evidence are not conclusive pieces of evidence and merely corroborative in nature subject to other material evidences. The forensic and medical reports are neither corroborating nor supplementing each other and, therefore, the conviction of the appellant by the learned Trial Court cannot sustain.

9. It is further submitted that the learned Trial Court has erred in invoking the amended provisions of Section 375 of the IPC which came into force on 13.02.2013. The law which ought to have been applicable on 20.09.2012 was not invoked in the present case even though the charges were framed on the basis of Section 375 of the IPC as it existed on 20.09.2012. Prior to the 2013 amendment, under Section 375 of the IPC, penetration was one of the key ingredients to prove the offence of rape, however, since there was no evidence of penetration in the present case, the appellant has been wrongly convicted in the instant case.

10. Learned counsel for the appellant further submits that the survivor has not been examined by the police and neither was she examined as a prosecution witness before the learned Trial Court. Further, other material witnesses have also not been examined by the prosecution. Thus, it has been finally submitted that the case of the prosecution is filled with material contradictions, and is based on conjectures and surmises. There are inconsistencies in the statements of

prosecution witnesses especially PW-1, the complainant, who is a wholly unreliable witness.

SUBMISSIONS ON BEHALF OF THE STATE/PROSECUTION

11. *Per contra,* learned APP for the State assisted by the learned *Amicus Curiae* appearing on behalf of the survivor submits that the appellant was medically examined on 25.09.2012 to assess his capability to perform sexual intercourse, where it was opined that there was nothing to suggest that the appellant is not capable of performing sexual intercourse. The commission of the offence of rape was corroborated by forensic evidence *vide* Ex. PW-12/A, wherein, the DNA profile generated from the microslides as well as the underwear of the survivor matched with the blood of the appellant. The survivor had categorically described as *'galatkaam'* or a wrongful act being committed upon her by the appellant which caused her undergarment to become wet.

12. It is submitted that the semen which was found on the underwear of the survivor suggests the commission of the offence of rape. It is submitted that the said garment containing the semen of the appellant was promptly recovered during investigation. Despite no external injury or bleeding or swelling was found in the MLC of the survivor and the hymen was intact, the presence of semen on the latter's underwear is not disputed. It is also submitted that the medical jurisprudence is also settled insofar as the offence of rape can be committed without causing any injury to the genitals of the victim and even slight penetration is sufficient to convict an accused for the offence of rape.

13. Learned counsel further submits that the defence of the appellant regarding forcible procurement of his semen and planting of the same also cannot stand ground. Further, the claim of the appellant that he was falsely implicated due to a caste bias has not been supported by him or proved in any manner. It is further contended that the offence of rape can be committed without causing any injury to the *genitalia* or without leaving any seminal stains. It is settled law that even partial or slight penetration or an attempt to penetrate or emission of semen would be enough to attract the provisions under Sections 375 and 376 of the IPC. It is also submitted that corroboration is not a *sine qua non* in the conviction for the offence of rape and the learned Trial Court was justified in convicting the appellant for the offence punishable under Section 376 of the IPC.

14. It is also submitted by the learned counsel that the complainant/PW-1 had stated that her daughter, *i.e.,* the survivor had been suffering from some psychiatric illness since childhood due to which her statement was not recorded before the police and neither did she testify before the Court due to her mental condition. It is thus submitted that the prosecution has proved its case beyond reasonable doubt through medical and forensic evidence as well as through the testimonies of relevant witnesses.

15. Reliance has been placed on the following judgments:

i. **Aman Kumar v. State of Haryana**[3]

ii. **State of U.P. v. Babul Nath**[4]

[3] **(2004) 4 SCC 379 (Paras 7-11)**
[4] **(1994) 6 SCC 29 (Para 8)**

iii. **Koppula Venkat Rao v. State of Andhra Pradesh**[5]

iv. **Madan Lal v. State of Jammu & Kashmir**[6]

v. **Om Prakash v. State of Haryana**[7]

vi. **Tarkeshwar Sahu v. State of Bihar**[8]

vii. **Radhakrishna Nagesh v. State of Andhra Pradesh**[9]

viii. **State of Maharashtra v. Bandu alias Daulat**[10]

ix. **Tulshidas Kaolkar v. State of Goa**[11]

FINDINGS AND ANALYSIS

16. Heard learned counsel for the parties and perused the records.

17. As noted herein before, the FIR in the present case was registered on 20.09.2012, under Section 354 of the IPC on the statement given by the mother. Subsequently, her supplementary statement was recorded on 25.09.2012 wherein she stated that after much persuasion the survivor, who is stated to be not mentally fit, told her that she was violated by the appellant who removed her underwear and in that process, her underwear got wet. Subsequently, Section 376 of the IPC was added. The mother of the survivor was examined as PW-1 before the learned Trial Court, who during her deposition claimed herself to be the eye witness to the sexual assault committed by the appellant. Her claim as an eye-witness was

[5] **(2004) 3 SCC 602 (Paras 8-11)**
[6] **(2004) 3 SCC 602 (Paras 8-11)**
[7] **(2011) 14 SCC 309 (Paras 7-10)**
[8] **(2006) 8 SCC 560 (Paras 10,13,14,21)**
[9] **(2013) 11 SCC 688 (Paras 28-34)**
[10] **(2018) 11 SCC163 (Paras 3,8)**
[11] **(2003) 8 SCC 590 (Paras 1,3, 6-8)**

not rightly believed by the learned Trial Court with the following observations:

> "49. Thus, from the said statement of the mother of the victim there are contradictory averments in the complaint / statement made to the police and in her testimony before the Court. The version of PW1 so far as being the eye witness is concerned appears to be non-plausible as in the Court appearing as PW1 she has stated that her statement was not recorded by the police whatever she stated. However, the perusal of alleged history recorded in the MLC of the victim Ex.PW7/A, PW10/A and Ex.PW15/A clearly suggests that since beginning she has never stated that she was the eye witness but it is the victim who have stated to her that the accused removed her underwear in his jhuggi and after receiving the said information, she confronted the accused, public gathered and beaten him.
> 50. Thus, it appears that there is exaggeration by the PW1 while transposing her as an eye witness instead of the witness who heard about the alleged offence immediately after the occurrence of offence and upon the confrontation, the accused was apprehended and beaten by the public person."

18. The MLC of the appellant (Ex.PW-5/A), which shows external injuries found on him in form of laceration and abrasion in body, corroborates the statement given by PW-1 that he was beaten by public persons on the date of the incident. This fact also stands corroborated by DD No. 17A, Ex. PW-4/A, wherein report was made about appellant being beaten. PW-3, who is neighbour of the survivor also deposed that on the date of the incident, he was at home and upon hearing the noise, he came out and was informed by women present that the appellant was doing *galatkaam* with the survivor and subsequently he apprehended the appellant along with other persons and handed over his custody to Police.

19. It is a matter of record that the statement of the survivor could not be

recorded as she was unfit to give a statement. Medical report, Ex.PW-11/A was placed on record, which assessed that the IQ level of the survivor is at 40 and mental age at 4 years and therefore her incapability of being examined as witness in the Court.

20. The most incriminating material on record qua the present appellant is the FSL report, Ex.PW-12/A, which gives the opinion that exhibits '1g-2' and '1g-3' both microslide of swab belonging to the survivor and '2b'(underwear of the survivor) both holding similar DNA as exhibit '4' (blood gauze of the appellant).

21. It is pertinent to note that the gynaecological report, Ex.PW-7/A of the survivor was prepared on 20.09.2012, when her vaginal secretion was taken as sample which was subsequently sent for analysis. It is further pertinent to note that the present appellant was arrested on 25.09.2012 on the basis of supplementary statement given by PW-1 with regard to the sexual assault.

22. It has been argued on behalf of the appellant that the MLC of the survivor Ex.PW-10/A as well as gynaecological report Ex. PW-7/A, shows that there are no injuries, abrasions, bleeding or swelling on the private parts of the survivor and the hymen was found to be intact. It has been argued that the said material does not corroborate the allegations made by PW-1. It was thus, argued that since amended Section 375 of the IPC came into force on 30.02.2013 and in view thereof, pre-amended provision Section 375 of the IPC would be applicable in the present case and for that penetration is one of the key ingredients for commission of offence of rape. It is thus been argued that in view of the aforesaid MLC as well as the Gynaecological report, there is no evidence of penetration in the

present case.

23. At this stage, it will be apposite to refer to the following judgments of the Hon'ble Supreme Court rendered in context of pre amended provision of Section 375 of IPC;

(a) **In Wahid Khan v. State of M.P.**[12]**,** it was observed and held as under;

> "19. It was also contended by learned counsel for the appellant that since hymen of the prosecutrix was found to be intact, therefore, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as the offence of rape has been defined in Section 375 IPC.
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> Explanation to Section 375 reads thus:
>
> "Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."
>
> It has been a consistent view of this Court that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial.
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> 20. It is appropriate in this context to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (22nd Edn.) at p. 495 which reads thus:
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> "Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a

[12] (2010) 2 SCC 9

medical one.

21. Similarly in Parikh's Textbook of Medical Jurisprudence and Toxicology, "sexual intercourse" has been defined as under:
"Sexual intercourse.—In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.""

(b) **In Parminder v. State of Delhi[13],** the Hon'ble Court followed **Wahid Khan (*supra*)** held as under;

"10. PW 15, the doctor who conducted the medical examination of the prosecutrix on 31-1-2001, however, has stated that there was no sign of injury on the prosecutrix and the hymen was found intact. The High Court has considered this evidence and has held that the non-rupture of hymen is not sufficient to dislodge the theory of rape and has relied on the following passage from Modi in Medical Jurisprudence and Toxicology (21st Edn.):
"Thus, to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genital or leaving any seminal stains."

11. Section 375 IPC defines the offence of "rape" and the Explanation to Section 375 IPC, states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. This Court has accordingly held in Wahid Khan v. State of M.P. [(2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. In the aforesaid case, this Court has relied on the very same passage from Modi in Medical Jurisprudence and Toxicology (22nd Edn.) quoted above. In the present case, even though the hymen of the

[13] **(2014) 2 SCC 592**

> prosecutrix was not ruptured the High Court has held that there was penetration which has caused bleeding in the private parts of the prosecutrix as would be evident from the fact that the underwear of the prosecutrix was stained by blood. In our considered opinion, the High Court was right in holding the appellant guilty of the offence of rape and there is no merit in the contention of the learned counsel for the appellant that there was only an attempt to rape and not rape by the appellant."

In view of the above, the presence of the appellant's DNA in the vaginal secretion of the survivor along with other corroborative circumstances as pointed out herein before, the case of the appellant will fall within the definition of Section 375(unamended) of IPC. The presence of the appellant's DNA in the vaginal secretion establishes penetration even if it was a partial penetration.

24. The learned counsel on behalf of the appellant also contended that the statement made by PW-1 cannot be relied upon as there were material improvements in her statement before the Learned Trial Court which makes it unfit for acceptance. In this regard, it is well settled that it is the duty of the court to analyse evidence and the testimony being false in some respect cannot be a ground to reject it in toto. The Hon'ble Supreme Court while analysing evidence of a witness in similar circumstances in **Nisar Ali v. State of U.P**[14]**,** observed and held as;

> "9. It was next contended that the witnesses had falsely implicated Qudrat Ullah and because of that the court should have rejected the testimony of these witnesses as against the appellant also. The well-known maxim falsus in uno falsus in omnibus was relied upon by the appellant. The argument raised was that because the witnesses who had also deposed against Qudrat Ullah by saying that he had handed over the knife to the appellant had not been believed by the courts below as

[14] **1957 SCC OnLine SC 42 : AIR 1957 SC 366**

against him, the High Court should not have accepted the evidence of these witnesses to convict the appellant. This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded. One American author has stated: This maxim has not received general acceptance in different jurisdictions in India nor has this maxim come to occupy the status of a rule of law. It is merely a rule of caution. All that it amounts to is that in such cases the testimony may be disregarded and not that it must be disregarded.

10. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence"."

25. The scientific and circumstantial evidence brought on record by the prosecution with respect to the appellant was put to him under Section 313 of the Cr.P.C., and the appellant answered it in the following manner:

"Question 60: Do you want to say anything else?

Ans: I am innocent and have been falsely implicated in the present case. I have not done anything wrong. This false case has been registered against me on the false accusation by the complainant because of my caste. 1 was wrongly apprehended from my house by the police and later I was wrongly and falsely arrested by the police. The investigation is false, wrong and the chargesheet has been filed after wrong investigation. I was working as a guard in South Extension, New Delhi and was doing night duty in the year 2012. It was my night shift and when I came back from my night shift to my house in the morning of 20.09.2012, I slept in my house and thereafter, police officials came to my house and apprehended me. 1 asked them why they were taking me and they replied that my statement was required in a case. Later on, I came to know about the false and fabricated complaint and the present case against me. I remained in the judicial custody for more than two years on the false accusation against me."

26. The aforesaid defence is clearly contrary to the prosecution's case, as

pointed out hereinbefore. It has come on record that the appellant was apprehended on the spot and was beaten by the public which stands corroborated by his MLC as well and the statement given by PW-3, who was the neighbour of the survivor. The gynaecological report dated 20.09.2012, Ex.PW-7/A was conducted at the very first opportunity. It is noted that in the present case, even if the portion of the statement given by the mother of the survivor claiming to be an eye-witness is discarded, the other circumstances as pointed out herein before are sufficient to prove the guilt of the appellant.

27. Another contention raised by the learned counsel for the appellant that the underwear of the survivor was never produced during the course of the trial and therefore the sample from the same which was analysed and found to be similar with the DNA of the present applicant cannot be read against him. In the considerable opinion of this Court, the aforesaid lacunae on the part of the prosecution will not come to the aid of the appellant inasmuch as the vaginal secretion which was taken *vide* Ex.PW-7/A also shows the presence of the appellant's DNA.

28. In these circumstances, in view of the aforesaid evidence on record, this Court is of the considered opinion, that the prosecution has successfully established its case against the appellant for committing offences punishable under Sections 363/376 of the IPC, and therefore, the appeal *qua* the judgment of conviction dated 22.09.2023 stands dismissed.

29. This Court has also perused the order on sentence dated 18.01.2024, whereby the appellant has been sentenced to undergo rigorous imprisonment for

7 years. The appellant is already being given the minimum provided punishment for offence punishable under Section 376 of the IPC. Even the punishment provided to the appellant for the offence punishable under Section 363 of the IPC for two years does not need any interference.

30. In view of the above, the present appeal is dismissed and disposed of.

31. Pending application(s), if any, also stand disposed of.

32. Copy of the judgment be communicated to the concerned Jail Superintendent for necessary information and compliance, *forthwith*.

33. Copy of the judgment be also sent to the Secretary, Delhi High Court Legal Services Committee, who shall apprise the appellant regarding the legal remedy and assistance of legal aid counsel available to him in respect of the present judgment.

34. Judgment be uploaded on the website of this Court *forthwith.*

AMIT SHARMA, J.

AUGUST 12, 2025*/bsr/dj*