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

*Reserved on : 20<sup>th</sup> August, 2025*  
*Date of Decision : 25<sup>th</sup> August, 2025*

+ CRL.A. 40/2007

MITHLESH @ RAJU

.....Appellant

Through: Ms. Mallika Parmar, Advocate with  
Appellant in person.

versus

THE STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for the  
State with SI Ajay, PS-Narela.

**CORAM:**

**HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA**

### **JUDGMENT**

#### **RAJNEESH KUMAR GUPTA, J.**

1. The present appeal is filed on behalf of the Appellant under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "*CrPC*") against the judgment dated 26<sup>th</sup> October, 2006 (hereinafter referred to as the "*impugned judgement*") and against the Order-on-Sentence dated 06<sup>th</sup> November, 2006 (hereinafter referred to as the "*impugned Order on Sentence*") passed by the court of Additional Sessions Judge, Rohini Courts, Delhi (hereinafter referred to as the "*Trial Court*") in Sessions Case bearing No. 161/2006 arising out of the FIR bearing No. 130/2004 registered at Police Station-Narela, Delhi. The Appellant *vide* the impugned judgement was held guilty for committing the offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as the "*IPC*"). The Appellant *vide* the impugned Order on Sentence dated 06<sup>th</sup>



November, 2006 was sentenced to undergo Rigorous Imprisonment for a period of 10 years along with a fine of ₹10,000/-, and in default of payment of fine, convict was sentenced to undergo Simple Imprisonment for a period of one year.

2. Briefly stated, the Prosecution's case as reflected in the impugned judgment is as follows:

*“Prosecutrix and her mother had appeared in the PS, where statement of prosecutrix was recorded to the effect, that she resided at Narela and worked in a factory at Kundli. Her father was a drunkard and separated from her mother. About five years earlier her mother had fallen sick and her co-worker namely Mithlesh @ Raju had helped in her treatment. Her mother had started living with said Mithlesh and the prosecutrix resided with her grandmother in Village-Karala. About two years earlier prosecutrix also shifted with the mother. The mother was then residing in Qutubgarh. At Qutubgarh when her mother was away for work, accused Mithlesh @ Raju during the day tied her mouth and hands with dupatta and committed rape upon her. He had also threatened that in case, she told any person, he would kill her mother. He had regularly been repeating this offence. About six months earlier, they shifted from the Qutubgarh house to the house at Narela. At this house, also he had committed raped upon her on several occasions. The prosecutrix had not told this to any person on account of fear. The accused also used to beat her mother and did not permit the prosecutrix to go her gran mother's house. About a week earlier he had repeated the offence despite resistance by the prosecutrix. He pressed her neck and she had sustained nail injury on her neck. On the day of the complaint as well, her mother was away to deliver stitching material, when the accused entered the house and committed rape upon her. He also threatened her to marry him. When he left the house she narrated the entire occurrence to her mother and they had then both come to the PS. On the basis of the complaint, offence under Section 376/506 IPC. Thereafter an FIR was registered.”*



3. During the investigation, the Prosecutrix was medically examined, the Appellant was arrested and was also medically examined. Upon completion of Investigation, the chargesheet was filed under Sections 376/506 IPC in the Court. Charge under Sections 376/506 IPC was framed against the Appellant to which he pleaded not guilty and claimed trial. The Prosecution, in order to prove its case, examined 10 witnesses. The statement of the Appellant was recorded under Section 313 of the CrPC, wherein the Appellant had denied incriminating evidences and pleaded innocence and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the Appellant.

4. I have heard the learned Counsel for the Appellant and learned APP for the State and have examined the record.

5. Learned Counsel for the Appellant has argued that the Trial Court has passed the impugned judgment on the basis of surmises and conjectures, and which is against the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution doubtful. It is further argued by the learned Counsel for the Appellant that PW-2, mother of the Prosecutrix, was well aware of the entire relationship and she was a party to the offence with the Appellant. The Prosecutrix had voluntary physical relations with the Appellant. From the evidence on record, prosecution has failed to prove its case beyond reasonable doubt against the Appellant. On these grounds, it is prayed that the impugned judgement be set aside and the Appellant be acquitted.

6. On the other hand, learned APP for the State has argued that the Trial Court has passed the impugned judgment after considering the evidences on record. The evidences produced on behalf of the prosecution have proved the



case beyond reasonable doubt. The arguments of the Appellant are without any merits. The appeal is liable to be dismissed.

7. The Prosecutrix has been examined as PW-1 and she has deposed that in the year 2002 she was living with her grandmother at Shiv Vihar, Karala. They were very poor people. Her father was a drunkard and was not earning well, so her mother started living separately at Qutubgarh. They stayed at Qutubgarh till 2003. In the year 2003, her mother started living at Swatantra Nagar, Narela and she also started living in house no. 681, Gali No. 4A on rent. Accused-Mithlesh used to work with her mother at Qutubgarh when they were living at Qutubgarh and when they shifted to Swatantra Nagar, Narela, Accused-Mithlesh also started living with them. Accused-Mithlesh used to live near her mother in the house at Qutubgarh as well. He used to commit rape upon her at Qutubgarh as well as Narela and had been committing rape upon her for two years since the year 2002 till 31<sup>st</sup> March, 2004. Accused-Mithlesh used to beat the prosecutrix and her mother with *chappals* and belts, and threatened her not to tell anyone about these incidents. Due to fear, she did not inform anyone until 31<sup>st</sup> March, 2004. Accused used to tie her mouth and hands and legs with *chunni* and then used to commit rape upon her. Accused did not allow her to come to her house or tell about the incident to anybody. One week prior to 31<sup>st</sup> March, 2004, accused tied her neck with *chunni* as a result of which she got injury on her neck and then he committed rape upon her under the influence of liquor. On 31<sup>st</sup> March, 2004, at about 12 noon/1 p.m., her mother had gone outside the house to supply some articles to someone when accused entered the house under the influence of liquor and then he tied her hands and committed rape upon her without her consent and told her that “*TU MERI RAHEGI*” and



also told her that if she married someone else, he would spoil her life and then he went away. When the mother of the prosecutrix came back to her home, prosecutrix along with her mother somehow gathered some courage for filing a report in P.S. and her statement was recorded by the police which is Ex. PW 1/A. Thereafter, she was medically examined.

In cross-examination on behalf of the Appellant, PW-1 has deposed that her mother was living as a wife of the accused and that all of them used to sleep in the same room. The first time the accused committed rape upon her, it was at night while she was sleeping beside her mother, and the accused was sleeping on the floor. Her mother was not aware of the first sexual intercourse and, therefore, did not wake up. Prosecutrix deposed that her mother later woke up and went to sleep on the floor in the same room. She did not tell her mother about the first incident because the accused had threatened to kill her mother if she told anyone. She further deposed that she had told about the incident broadly to her mother. She denied the suggestion that she was having love relation with the accused and that she had sexual intercourse with the accused with her own consent. She had also denied the suggestion that her mother became aware of this relationship and under her pressure, she went to the P.S. and lodged a complaint against the Accused.

8. The mother of the Prosecutrix was examined as PW-2 and she has deposed that she used to do labour work and used to earn her livelihood, as her husband did not do any work and used to gamble. About five years ago, she left her matrimonial home along with the prosecutrix and started living at Qutubgarh. She brought her daughter (Prosecutrix) from her matrimonial home to the house of the accused. After one and half month of stay of her daughter with her and accused, her daughter told her that accused had teased



her. Thereafter, her daughter did not tell anything. After about two years, they shifted to house no. 681, Gali No. 4A, Swatantra Nagar, Narela. One day prior to 31st March, 2004, her daughter told her that the accused had been raping her since 2-3 years at the house at Qutubgarh as well as at the house at Narela and the accused used to tell her not to tell her mother about the incident, or else he would kill her. The mother of the Prosecutrix was shocked to hear about this and took the Prosecutrix to the P.S. to lodge a report.

In cross-examination on behalf of the Appellant, PW-2 has deposed that she cannot say whether the accused had committed rape upon her daughter in the night as she used to sleep in the same room. Her daughter had disclosed the incident of rape for the first time on 31st March, 2004. Her daughter also wanted to marry the accused and she was very disturbed over this fact as it was morally incorrect, as she was already living as a wife of the accused. Because of this reason, she went to the police and filed a complaint against him. She cannot admit or deny whether her daughter had any physical relationship with the accused with her own consent as it may have been possible since her daughter wanted to get married to the accused. The accused was looking after her daughters including her married daughter as a father and was discharging his duties as father. She only came to know about physical relations between her daughter and the accused when they were staying at Qutubgarh. When she objected and asked them to stop such activities, the accused told her several times that he wanted to marry the prosecutrix. She also pressured her daughter to file the present complaint because the accused, who was living as her husband, wanted to marry her.

9. PW-3, Dr. N. Masand has proved the MLC of the Prosecutrix as Ex.



PW3/B and has deposed that she has found no external injury on the person of the Prosecutrix and had referred the patient to the department of Gynaecology for further examination.

10. PW-1 has deposed that the Appellant used to commit rape upon her at Qutubgarh as well as Narela from the year 2002 till 31<sup>st</sup> March, 2004. She has further testified that the Appellant used to threaten her with dire consequences in case she disclosed the incidents to anyone, and therefore, she remained silent till 31<sup>st</sup> March, 2004. PW-1 has also specifically deposed about the incident of rape happened to her on 31<sup>st</sup> March, 2004 at about 12:00 noon/1:00 p.m. She denied the suggestion of the Appellant that she was having love relationship with the Appellant. She further denied the suggestion of the Appellant that she had sexual intercourse with the Appellant on her own consent and that her mother, upon discovering such alleged relationship, compelled her to approach the Police Station and lodge a complaint against the Appellant.

10.1. From the cross-examination of Prosecutrix, it is evident that the defence of the Appellant is that the Prosecutrix had voluntarily maintained physical relations with the Appellant as she was having love relationship with him, but this defence is liable to be rejected as the Prosecutrix in her testimony has deposed that the Appellant used to commit sexual act with her against her consent and also used to threaten her. Also, in the cross-examination of the Prosecutrix, nothing has been come on record to show that the Prosecutrix was consenting party in their physical relationship. There is also no evidence on record to prove that the Prosecutrix had any enmity with the Appellant which could have motivated her to falsely implicate him in the alleged offence.



The testimony of the Prosecutrix is also corroborated by her statement which is Ex. PW1/A, on the basis of which, the FIR was registered and is also corroborated by her MLC which is Ex. PW3/B which shows her hymen was torn. In the absence of any cogent reason to disbelieve her version, this Court finds no sufficient reasons to discard the testimony of the Prosecutrix.

10.2 The testimony of PW-2 that she has pressurised the Prosecutrix to lodge the complaint against the accused, does not make the case of the Prosecution doubtful as it is pertinent to note that as PW-2 was living with the Appellant as his wife, and therefore, it is quite probable that she may have in her testimony tried to save the Appellant. Moreover, it also does not impact the credibility of the testimony of the prosecutrix which is found to be reliable and trustworthy.

11. It is a well-settled law that the Appellant can be convicted on the sole testimony of the Prosecutrix, provided that such testimony is unimpeachable, consistent, and without any ambiguity. In this respect, it is relevant to mention some of the judgements which are as under:

In *State of Himachal Pradesh Vs. Manga Singh, (2019) 16 SCC 759*, the Hon'ble Supreme Court held that:

*“10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*”



*11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”*

Also, the Hon’ble Supreme Court in ***Deepak Kumar Sahu Vs. State of Chhattisgarh***, 2025 SCC OnLine SC 1610 held that:

*“5.5.2. This Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction could base solely on the evidence of the prosecutrix. It was further observed that as a general rule there is no reason to insist on the corroboration accept in certain cases, it was stated.*

*5.5.3. The medical evidence may not be available in which circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction.*

*“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”*

The Hon’ble Supreme Court in Criminal ***Appeal No. 1231/2016*** titled as ***State of Himachal Pradesh v. Sanjay Kumar*** held that:



“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.”

12. It was further contended on behalf of the Appellant that the MLC does not support the prosecution case as no external injuries were found on the person of the Prosecutrix. This contention has no merits for the reason that the presence of injuries is not a *sine qua non* for determining whether the offence of rape has been committed.

It has been observed by the Hon'ble Supreme Court in **Lalliram & Anr. v. State of M.P., (2008) 10 SCC 69** that:



*“11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa [(1977) 3 SCC 41: 1977 SCC (Cri) 447] where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration.”*

13. In view of the above-mentioned facts and circumstances, this Court finds that the testimony of the prosecutrix is clear, reliable and trustworthy, which in terms of the settled legal position, is sufficient to prove beyond reasonable doubt that the Prosecutrix was sexually assaulted by the Appellant. Accordingly, the conviction of the Appellant by the learned Trial Court does not warrant any interference by this Court and it is upheld.

14. The Appellant has, however, prayed for modification of the sentence seeking reduction to the period already undergone. In support of his plea, the Appellant submitted that he has a wife and three minor daughters aged about seven, nine and twelve years, respectively and that he is a poor person and he is the sole earning member of his family. This Court has considered these contentions and perused the relevant material.

14.1. As per the Nominal Roll, the Appellant has already undergone sentence for approximately four years, seven months and ten days (excluding the remission earned by him). It is also noted that here has been no allegation of misuse of liberty during the pendency of the appeal and the Appellant's jail conduct during his incarceration has been reported to be satisfactory. This Court is also conscious of the fact that the present case relates to an incident which is stated to have occurred about 21 years ago, while the impugned judgment itself was delivered nearly 19 years ago.



15. In view of the aforesaid mitigating circumstances, the sentence of the Appellant is modified to rigorous imprisonment for a period of six years along with a fine of Rs. 10,000/-. In default of payment of fine, the Appellant shall undergo simple imprisonment for a period of one month. This reduction of sentence is on account of the mitigating circumstances noticed above and it does not, in any manner, impact the seriousness of the offence for which the Appellant was convicted.

16. The Appellant is directed to surrender within a period of three days before the concerned Jail Superintendent and serve his remaining sentence as ordered. His bail bond will thereupon stands cancelled.

17. The concerned Jail Superintendent is directed to file a compliance report with regard to the surrender of the Appellant before the concerned Trial Court. In case the Appellant fails to surrender, then the concerned Trial Court shall take appropriate steps, in accordance with law, to execute the sentence as ordered.

18. In view of the above, the present appeal is disposed of. All pending applications, if any, are also disposed of.

19. A Copy of this judgment be communicated forthwith to the concerned Trial Court as well as to the concerned Jail Superintendent for necessary information and compliance.

**RAJNEESH KUMAR GUPTA  
JUDGE**

**AUGUST 25, 2025**

*MR/TP*