



2026:DHC:2830



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

Date of reserving Judgment: 27th February, 2026

Date of decision: 06th April, 2026

IN THE MATTER OF:

+ CRL.A. 435/2012

MANOJ @ MONU

.....Appellant

Through: Mr. Nitin Saluja (DHCLSC) with Ms. Shivani Luthra Lohiya Mr. K.S Jaggi & Ms. Pranya Madan, Advs.

versus

STATE

.....Respondents

Through: Ms.Kiran Bairwa, APP for the State for R-1.
Ms.Astha, Advocate for the prosecutrix (DHCLSC)

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Appellant Manoj @ Monu was convicted under section 376(2)(g) and 506 Indian Penal Code (IPC) and was sentenced to undergo Rigorous Imprisonment (RI) for a period of 10 years and to pay a fine of Rs.5,000/- under section 376(2)(g) IPC and to further undergo Simple Imprisonment (SI) for a period of 3 months, in default of payment of fine. Appellant was further sentenced to under RI for a period of 01 year under section 506 IPC.
2. Aggrieved by the aforesaid judgment dated 18.08.2011 and sentence dated 23.08.2011, the instant appeal has been preferred.
3. Before advertng into the details of the grounds taken to assail the



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judgment, the indispensable facts are required to be looked into.

4. The Appellant and the victim both are residents of the same vicinity and knew each other, prior to the incident. According to the victim, the Appellant intended to marry her, but his proposal was rejected by the victim.

5. On 10.09.2007 at about 9:00 pm, while the victim was coming from Monday Bazar (Som Bazar), she found Appellant and two other persons Sonu and Golu, whose names were revealed later, standing on her way and were talking, mocking and pointing out towards the victim. Apprehending some mischief, the victim took another way to go to her home, but she was accosted by the Appellant and two of his associates, who took her to a park, near a 'Peepal' tree surrounded by the debris of demolished houses and raped her. She was threatened also by the trio.

6. The victim did not report the matter to anyone out of fear or shame, without realising that she had become pregnant. After about 5-6 months, she felt severe pain in her abdomen and when it became unbearable, she reported it to her father who took her to the hospital where it was revealed that she was carrying a child. The entire episode was, thus, disclosed by the victim to her father and that is how the case FIR No.75/2008 Ex. PW-4/A came to be registered by PS DBG Road on 02.03.2008.

7. The investigation culminated into a charge sheet, which ultimately, after recording of 13 witnesses, statement of accused and defence witnesses, resulted into the Impugned Judgment dated 18.08.2011 and order on sentence dated 23.08.2011.

8. Incidentally, the other two assailants / co-accused of the Appellant Manoj @ Monu, could not be identified or located albeit the Appellant gave their names in his disclosure statement. Thus, it was only the Appellant Manoj @ Monu who was chargesheeted, tried and punished.



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9. Against the backdrop of all these facts and circumstances, the counsel for the Appellant has come up with following arguments, seeking reversal of the judgment of learned Trial Court.

10. It is submitted by learned counsel for the Appellant that the investigation of the case is very shoddy and defective. No serious attempt was made by the Investigating Agency to locate the other two assailants. It is thus, contended that in fact there was no such incident and that is why those two persons could not be located, arrested, chargesheeted or tried. The Appellant has been falsely implicated in this case, on account of previous enmity as continuous bickering was there between the Appellant and father of the victim.

11. It is asserted that father of victim is a very quarrelsome man and used to create ruckus after taking liquor, which was his daily routine. Notwithstanding the fact that the disclosure statement is not admissible but the names of the co-accused i.e. Sonu and Golu figure in the same, giving some clue to the Investigating Officer (IO) about the co-accused. Despite having the names, the IO did not bother to either investigate *qua* them or arrest them. In fact, it is submitted that there was no such incident involving the Appellant or any other person and that is why in the initial complaint, name of the accused was not given and for that matter during the medical examination, the victim did not disclose that she was raped by two more persons and rather confined it to Appellant only but again did not name him as is evident in MLC Ex.PW.11/A.

12. The blood samples were taken and were sent to the FSL for DNA test, but it did not match with the Appellant, as reflected in the FSL Report Ex.PW.8/A. All this goes on to show that it is a false case, argued the learned counsel for the Appellant.



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13. However, the initial contention of learned counsel for the Appellant is incorrect, inasmuch as name of the Appellant is there in the rukka Ex.PW3/B, itself which is the statement of victim recorded by police. However, latter submission is correct that she did not name the Appellant in the MLC Ex.PW11/A, nor she says about two other assailants.

14. Investigation is not in the hand of the victim and if something which ought to have been done by the Investigating Agency, has not been done, then the victim cannot be blamed and for that matter, the case of the prosecution should not be allowed to suffer, provided that lapse in the investigation is not such, which knocks the bottom of the case out. Evidently, the lapse is there, but it is not fatal to the extent that the entire case of the prosecution can be thrown out.

15. While considering the aspect of defective investigation it has been observed in various pronouncements that the cause of justice cannot be permitted to suffer on account of the defects in the investigation and the IO cannot be given such a liberty to dictate the outcome of the legal proceedings. In this context reference can be made to the judgment:

In C. Muniappan Vs. State of T.N. (2010) 9 SCC 567, the Supreme Court held that it was a case of highly defective investigation but this was not the end of the matter, for if primacy was given to omissions and lapses by perfunctory investigation, faith and confidence of the people in criminal justice administration would erode. In such case, there is a legal obligation on the part of the Courts to examine prosecution evidence *de hors* such lapses, to find out whether evidence is reliable or not, and to what extent it is reliable and whether the lapses had affected the object of finding the truth. Reference was made to several decisions in support of said ratio.

In Ganga Singh Vs. State of M.P. (2013) 7 SCC 278, it was held that



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Courts cannot acquit an accused on the ground that there were some defects in the investigation, unless such defects cast reasonable doubt on the prosecution case.

Similar findings were recorded in *Sunil Kundu Vs. State of Jharkhand* (2013) 4 SCC, 422, holding that lapses or irregularities in investigation would not be material if the evidence produced on record, despite the said lapses or irregularities, does not go to the root of the matter and dislodges the substratum of the prosecution case.

In *Surjit Sarkar Vs. State of West Bengal*, (2013) 2 SCC 146, after referring to several earlier decisions, it has been held that deficiencies in investigation by way of omission and lapses by the investigating agency cannot themselves justify total rejection of the prosecution case and where prosecution evidence *de hors* such lapses, when carefully scrutinised and evaluated, does not affect the object of finding of truth.

16. As such, no adverse inference can be drawn against the victim or case of the prosecution, unless the Appellant can show something very drastic having potential to render the case totally unbelievable.

17. In view of the result of the FSL Report, it is submitted on behalf of the Appellant that he cannot be held responsible either for the pregnancy or for the rape.

18. Learned APP for the State, on the other hand, came up with the plea that mere non-matching of the DNA does not necessarily indicate that no rape was committed or falsify the version of the victim. It is further submitted that the FSL result is meant to corroborate the version of victim and the case of prosecution. It cannot be made the sole basis to decide the case either way.

19. The statement made by the victim that she was assaulted by all three of them including the Appellant. As such, there may be a possibility that she



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was impregnated by one of the other two assailants. This does not, however, take away the act of the Appellant nor does it mitigate his misdeed which, according to victim was her rape.

20. The contention on behalf of prosecution is correct to the extent that scientific evidence is there to corroborate and supplement the substantive evidence. But then it definitely dents the case of the prosecution unless cogent answer is there to explain this anomalous situation as referred above. The accused / appellant certainly gets an edge over the prosecution.

21. It was next contended on behalf of the Appellant that the timeline of the alleged incident and the abortion, do not match. The alleged incident took place on 10.09.2007 about which the prosecutrix is very sure and the abortion took place on 02.03.2008 which roughly comes to about 6 months. However, while pointing out to the testimony of Dr. Laqa Sultan examined as PW-11, attention is drawn to the fact that at the time of abortion, the age of foetus was 'five months'. It is thus argued that the Appellant cannot be the person responsible for causing the pregnancy even if the case is taken on its face value and certainly not responsible for committing the rape as well. If the victim is hiding true facts or stating incorrect facts at one point of time, then there is no reason why she would not stick to incorrect facts, even otherwise. This in any case cast a doubt on the version of the victim. In this context the relevant extract of the Examination-in-Chief of PW-11 is reproduced below:

“On 2.3.2008 I was working as CMO in the said Hospital and at about 8.05 am I examined Km. Sushma D/o Sh. Suresh Chand, aged about 19 years who was produced for her examination with the alleged history of rape by a boy on 10.9.2007 in a park, Dev Nagar. At the time of examination she was five months pregnant and in the process of expulsion of fetus. MLC Ex.PW11 /A is in my handwriting and bears my signature at point A.”



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22. The contention raised by learned counsel for the Appellant has substance in it, inasmuch as the victim is pretty sure about the date of incident and the evidence is scientific, therefore, cannot be doubted, so far as the age of the foetus is concerned. There is a difference of about one month, which remains unexplained and makes the case of the prosecution vulnerable to doubt and suspicion.

23. Additionally, testimony of PW-11 Dr. Laqa Sultan points out towards the age of victim as 19 years. Meaning thereby that victim was above 18 years at the time of the incident.

24. It is further contended that the alleged incident took place in a thickly populated and crowded area where shops, temple and rickshaw stand all were there. In such circumstances, it is highly improbable rather nearly impossible that such an incident could take place. It is asserted that learned Trial Court has imported its own knowledge which is beyond evidence to conclude that the area was deserted where the incident took place.

25. The anomaly may be on account of misreading the evidence either by learned Trial Court or by learned Counsel for the Appellant. The shops are there on the main road but in the back lanes, no such shops were there and nor were they pointed out. The existence of a rickshaw stand does not necessarily means that rickshaw pullers would also be there. Incidentally nothing of that sort has been put forth either. Rickshaw stands are usually manned by one or two persons or at times, nobody is there when the rickshaws are parked in such a manner that they are chained with one another and locked. Therefore, it cannot be presumed that it was a crowded area where the incident took place. Incidentally, the place of the incident was in the process of demolition and as such it was likely to be deserted at that hour as can be inferred from presence of debris. Thus, the inference by



learned Trial Court is correct that it was a deserted area where such incident can easily take place especially when the victim has been threatened with the knife and surrounded and subdued by three young persons.

26. It is argued vehemently that there is considerable delay in lodging the FIR. The alleged incident took place on 10.09.2007 and the FIR came to be recorded on 02.03.2008. It is contended that such a long gap between the incident and the registration of FIR is more than enough to manipulate the facts and things. If the victim was so aggrieved at the hands of the Appellant, then what prevented her from lodging the FIR on that very day? What prompted her to name the Appellant after about six months of the alleged incident?

27. Answer to this has been put across by learned APP by saying that the victim was under the threat extended to her by Appellant and his associates. If not all three, then the Appellant at least was living in the same vicinity, thus, she was under constant pressure which, in all probability, forced her to keep quiet. But then the pregnancy and the pain in a way compelled her to disclose the facts, which she had buried deep down in her heart, apparently due to the threat given by the Appellant and the fear of social ostracization etc.

28. The victim / prosecutrix was about 19 years of age. It is unbelievable that she may not be acquainted with the changes in the body resulting out of the pregnancy and if that is with regard to an unmarried girl, then fear, shock and social stigma were the facts which had some role to keep her quiet. Therefore, in these circumstances, delay in the FIR to some extent stood explained. No adverse inference can apparently be drawn against the case of the prosecution, unless, of course, the Appellant can point out the prejudice caused to him.



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29. When the evidence on record other than the testimony of the prosecutrix is juxtaposed to her testimony then there are certain unanswered questions and circumstances. There is indeed a considerable delay in lodging the FIR. A very strong corroborative piece of evidence, which could have clinched the issue is amiss inasmuch as the foetus, according to the narration of the prosecutrix, should have been about six months whereas it was only five months. The DNA examination did not connect the foetus with the Appellant. The silence of the prosecutrix for months together puts a question mark as to why it was not revealed to anyone. Then apparent bodily changes are to be there if a female is pregnant, even if the woman is malnourished. The pregnancy of six months cannot go unnoticed. The event come to the light of the day due to the acute pain in the stomach being suffered by the prosecutrix. However, certain other indicators are there of pregnancy i.e. discontinuation of the menstrual cycle which any female is aware of and cannot ignore. In the Indian Society, the stigma attached to such offence is so strong that a lot of cases go unreported. The silence of the prosecutrix could be the outcome of such social pressure, apart from the fear of harm from the Appellant. But where the pregnancy occurred then the silence was meaningless, tall-tale signs and evidence was there. It could not have been silenced, and ultimately the prosecutrix had to reveal. This she could have done after a month or so, if not immediately after the offence.

30. Thus it is evident that the prosecutrix was aware of her pregnancy but did not disclose it to anyone. It is the case of the prosecutrix that she was raped by three persons including the Appellant but she, either, could not muster the courage or acquiesced to the act and for that matter other probabilities may also be there.

31. The silence of the prosecutrix in such circumstances becomes



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questionable and put her own testimony under cloud. The circumstances warrant that sole testimony of the prosecutrix should not be relied upon, in view of the fact that there is a considerable delay in the registration of the FIR, the other two co-accused are not traceable and the DNA test result fails to connect the Appellant with the foetus. The delay in lodging the FIR would not have mattered, had the FSL Result connected the Appellant with the foetus and that there would not have been a difference in the age of foetus and the date of incident. The age of the foetus as opined by the doctor, was 5 months, whereas, if the date of incident, as disclosed by the prosecutrix, was 6 months prior to her medical examination.

32. The overall circumstances reflect that there were reasons with the prosecutrix and her family to notice the changes in the body and to probe it if she was not forthcoming. The prosecutrix waited till her pain became unbearable inasmuch as she at least knew about her pregnancy and according to the prosecutrix it was on account of the gang rape committed by the Appellant and his two associates Sonu and Golu. In such a situation why she would keep quiet. Whether, she wanted to save the Appellant or some other reason was there. All this remains a riddle. Additionally the circumstances in which the incident took place, as deposed by the victim, the same also become a bit doubtful since the place where the incident took place is surrounded by a populated area. According to the version of the prosecution herself a weekly bazaar (Som Bazar) was a regular feature and it was that 'Som Bazar' day when the incident took place. It is a matter of common knowledge that weekly bazaars in Delhi are a common phenomenon and that a lot of people throng such markets to make purchases. In these circumstances, the prosecutrix could have chosen a path to go home where people were there. What made her to choose a way where



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from she was in a way taken forcefully under threat. It was possible only when she was away from crowd or not visible to people who could have otherwise noticed the acts of the trio.

33. Taking into account the entire gamut of facts and circumstances, specially the testimony of the victim being not credible enough to allow finding against the Appellant to continue when there is no corroborative evidence and what is there in the shape of DNA report, incidentally stands in favour of the Appellant.

34. Consequently, the judgment of conviction dated 18.08.2011 and the order on sentence dated 23.08.2011 are set aside and the Appellant stands *acquitted* of the said charge.

35. Bail bond (if any) stands cancelled and surety stands discharged. Documents / FDR (if any) on record be released, upon acknowledgment. Pending applications if any, stands disposed of.

36. Copy of this judgment be transmitted to the court concerned and Prison Authorities, for necessary compliance.

VIMAL KUMAR YADAV, J

APRIL 06, 2026

Bj/tng