



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

Date of reserving Judgment: 01st October, 2026

Date of Decision: 8th October, 2026

IN THE MATTER OF:

+ CRL.A. 967/2009

RAJESH KUMAR

.....Appellant

Through: Appellant-in-person with Mr. Tarun Sood, Mr. Rajesh Kaushik and Mr. Vikas Kaushik, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Raj Kumar, APP for the State with SI Rubie Singh PS Tilak Nagar. Ms. Sowjhanya Shankaran, Advocate (DHCLSC) with Ms. Anuka Bachawat, Ms. Akanksha Bisht and Mr. Shashanka Tewari, Advs.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. A complete turn-around by the most vital witnesses of the prosecution was sought to be capitalized upon by learned counsel for the Appellant while assailing the judgment of conviction dated 20.10.2009 and consequently seeking intervention in the order of sentence dated 21.10.2009.
2. However, before advertng into the details of the case any further, it seems indispensable to have a brief idea of the factual background of the instant appeal. According to the statement made by the prosecutrix to the police (Ex.PW-1/A) narrating about the incident which took place in the



intervening night of 13th – 14th January 2007, to the effect that a neighbour, namely, Rajesh Kumar had barged into her room and raped her. She had detailed about the injuries sustained by her and also made the assertion that Appellant had consumed alcohol at the time of incident. She somehow raised hue and cry which brought her mother-in-law to the scene, who too raised alarm and that made the assailant flee from the spot.

3. When the husband of the victim, who had ventured out looking for a job, returned home, the entire incident was reported to him. A call to the police control room, set the criminal justice system into motion, pursuant thereto, the local police took the reins of the investigation. The medical examination of the prosecutrix was conducted and ultimately the FIR No. 24/2007 which was registered at PS Tilak Nagar under Section 376 Indian Penal Code, 1860 ('IPC') moved further with the investigation. Since the assailant was named, being a neighbour, therefore, he was arrested and proceedings qua his medical examination were also carried out. Matter was, thereafter, further investigated and mopped up, resulting into a charge sheet which was filed against the Appellant herein, namely, Rajesh Kumar s/o Bhan Singh.

4. Post compliance of Section 207 of Code of Criminal Procedure, 1973 ('Cr.P.C'), a formal charge under section 376 IPC was framed to which the Appellant pleaded not guilty and claimed trial.

5. The case of the prosecution, traversing through the examination of 12 witnesses and affording an opportunity to the Appellant to explain the incriminating circumstances under section 313 Cr.P.C, ultimately resulted into the impugned judgment of conviction and order on sentence dated 20.10.2009 and 21.10.2009 respectively, wherein he was sentenced to undergo Rigorous Imprisonment ('RI') for 07 years along with fine of



Rs.1,500/- and in default of payment of fine he was to further undergo RI for 06 months.

6. Against the backdrop of aforesaid facts, learned counsel for the Appellant has focussed and agitated only on the aspect that all the public witnesses including the victim / prosecutrix herself, had washed-off their hands from the case setup by the prosecution, therefore, the Appellant deserves to be acquitted, with an alternative submission in the event of dismissal of appeal, taking lenient view, to release the Appellant against the period of incarceration already undergone by him during trial and post conviction.

7. Learned APP for the State, ably assisted by learned counsel for the Prosecutrix, came up with the plea that the victim / prosecutrix is consistent not only in her statement to the police but also in her examination in chief recorded by learned Trial Court. It is only when the victim was cross-examined, she turned hostile and absolved the Appellant of his criminal liability.

8. It is pertinent to mention here that the examination in chief of the prosecutrix took place on 30.10.2007, whereas, her cross examination took place on 06.02.2008 i.e. after a gap of about 3 months, which according to the learned APP for State and learned counsel for the Prosecutrix was utilized by the Appellant, to win her over. It is further contended that mother-in-law and husband of the victim had also been won-over by the Appellant or on his behalf. There is a gap in the examination-in-chief and cross-examination of the husband also, which goes on to establish that he too was, seemingly won-over by the Appellant.

9. It is submitted that notwithstanding the deposition of the victim, her mother in law and her husband, it can be seen that there is sufficient and



cogent evidence to substantiate the case of the prosecution in the shape of MLC (Ex.PW-11/A) of the victim as well as that of the Appellant, together with the FSL result (Ex.PW-7/I). The medical examination of the prosecutrix took place on the night of 14.01.2007 itself at about 1:50 am, whereas the incident took place on 13.01.2007 at about 11:00 pm. This indeed rules out any scope of manipulation in any manner so far as the medical examination is concerned, more particularly about presence of human semen on not only the clothes of the prosecutrix, but in the vaginal smear also taken by the doctor. The MLC (Ex.PW-11/A) clearly reflects that the victim had sustained some injuries and her clothes together with slides of vaginal smear were seized and were handed over to the Investigating Agency, which in-turn were sent for scientific examination to Forensic Science Laboratory (FSL). This brings the FSL Report (Ex.PW-7/I) in picture.

10. Learned APP for the State and learned counsel for the Prosecutrix while referring to the evidence on record, argued that the MLC and FSL result leaves no doubt about the complicity of the Appellant in the offence, notwithstanding the fact that not only the prosecutrix, her husband and mother-in-law have turned hostile. In this context, learned counsel for the Prosecutrix has placed reliance on the judgment passed by Hon'ble Apex Court in case titled ***Selvamani vs. The State Rep. By the Inspector of Police***, 2024 19 SCC 112, wherein, on an almost identical set of facts, the appeal was dismissed.

11. Having considered the rival contentions advanced and after going through the record, two essential elements are to be seen by the Court as to whether the prosecution is able to bring home its case:-



- (i) Whether incident of rape took place as per the charge framed?
- (ii) Whether it was the Appellant who had committed the crime?

12. PW-1 in her examination in chief recorded on 30-10-2007 stated that the Appellant, by specifically naming him, had entered her room and committed "*galat kaam*" with her. Upon being asked what she meant by "*galat kaam*", she stated that the appellant had removed her clothes and violated her modesty. She further deposed that she was assaulted on her hand as well as her mouth by the appellant. She further stated that her mother-in-law came upon hearing her cries and that the appellant was present when she arrived. She also identified the accused/appellant.

13. During her further examination-in-chief recorded on 06.02.2008 when the material exhibits were shown to her, she identified the same.

14. Though in the cross examination recorded on the same day she did not merely omit certain details and expressed her inability to remember the incident. She denied the prosecution's version. She stated that the appellant had not come to the room and that some other person had come. She further stated that the statement attributed to her had been given under police pressure and that the statement recorded by the police had not been made by her.

15. The subsequent version given by PW-1 during cross-examination is materially inconsistent with her initial account. She completely negated the complicity of the Appellant and to a great extent disowned her own case. A significant circumstance, however, is that PW-1 did not disclose during her examination-in-chief that her earlier statement had been given under police pressure. Her examination-in-chief was recorded in-camera. She had an



opportunity before the Court to disclose such alleged pressure. No such allegation was made at that stage. The allegation of police pressure emerged only during her cross-examination, which took place after about 3 months of her examination-in-chief, which indicates that she was won over by the Appellant/accused in the intervening period.

16. Hon'ble the Supreme Court in a catena of judgments has held that even where a major portion of the evidence of a witness is deficient, the Court is required to separate the grain from the chaff and, where the residue is sufficient to establish guilt, conviction can be maintained.

17. Hon'ble the Supreme Court in a catena of judgments has also held that the testimony of a prosecutrix, if found trustworthy and reliable, can by itself form the basis of conviction.

18. Applying the aforesaid principle to the present case. The core allegation in her examination-in-chief is clear, specific and consistent that is, the Appellant came to her room, subjected her to the sexual assault and was present when her mother-in-law came upon hearing her cries.

19. Further the testimony of the prosecutrix finds some degree of support from the testimonies of her mother-in-law, husband and to a great extent in the medical and forensic evidence.

20. Though the mother-in-law (PW-2) did not support the prosecution and was declared hostile, but in her testimony she admitted that upon hearing the cries/noise of the prosecutrix she went towards her room and that the prosecutrix told her that somebody had caught hold of her and, upon her raising an alarm, that person ran away.

21. The husband of the victim (PW-8) initially supported the prosecution's case and stated that when he returned home, his wife informed him that Rajesh @ Kala had entered the house and raped her. He further



stated that he noticed blood-stained clothes and broken bangles. But during his cross-examination, PW-8 substantially resiled from his examination-in-chief. He even stated that the appellant had not visited the house and had not raped his wife.

22. However, corroboration to the incident and initial deposition of victim can be found in the MLC (Ex.PW-11/A) of the prosecutrix which reflects an abrasion on the left side of her face/cheek. The MLC also records that her hymen was ruptured. This may not be vital as the prosecutrix is a married woman.

23. The Appellant was medically examined vide MLC (Ex.PW-11/B) wherein abrasion was found on his lower lip. The medical evidence thus provides circumstances consistent with the prosecution's version regarding resistance and physical assault.

24. Another circumstance which assumes significance is the recovery of three pieces of broken bangles, during investigation, from the bed, at the place of occurrence. The recovery of broken bangles is consistent with the testimony of PW-1 that she resisted the appellant and that physical force was used against her. The Investigating Officer (PW-7) proved the recovery of the broken bangles from the bed.

25. Jwala Singh (PW-4) took photographs Ex.PW-4/A-1 to A-7 of the spot, which clearly show blood stains on the ground and broken bangles on the floor.

26. The clothes (Kurta, chunni, salwar) undergarments alongwith 2 microslides of vaginal smear of the prosecutrix were sealed and sent for forensic examination. Blood samples and undergarment of the accused were also sent for forensic examination. The FSL report (Ex.PW-7/I) reflects that semen was detected on salwar, 2 microslides and kurta all pertaining to



victim. Serological report reflects that the semen found on salwar and kurta belongs to blood category of Group A and the blood group of the accused is also Group A category.

27. The FSL result, medical evidence, injuries, blood stains at the spot and recovery of broken bangles, therefore, have to be considered cumulatively with the direct testimony of PW-1 alongwith the testimonies of PW-2 and PW-8.

28. Evidently, as held by learned Trial Court, the prosecution has been successful in driving home its case on the strength, to sum up, of the followings:-

- i. *PW-1 specifically named and identified the appellant in her examination-in-chief;*
- ii. *She gave a specific account of the sexual assault and physical assault;*
- iii. *She stated that she raised an alarm and that her mother-in-law came to the room;*
- iv. *PW-2 corroborates the fact that she heard the noise and reached the room immediately thereafter;*
- v. *PW-8 initially corroborated the disclosure made to him by the prosecutrix and the condition of the clothes and bangles when he returned home.*
- vi. *Medical evidence records injuries on the prosecutrix;*
- vii. *The Appellant himself was found to have an abrasion on his lower lip and smell of alcohol was detected in breath with level of 34 mg/100 ml, which came in deposition of the prosecutrix too, strengthening the case further;*
- viii. *Broken bangles were recovered from the bed at the place of occurrence;*



ix. *Human blood at the spot;*

x. *FSL report detected human semen on the relevant exhibits and the date and time of incident and the medical examination rules out any scope or possibility of any sort of manipulation, more particularly, qua the human semen being found not only on the clothes of the victim, but in the vaginal smear too;*

29. The above circumstance cannot be viewed in isolation. The appellant relies heavily upon the subsequent statements of PW-1, PW-2 and PW-8. But the fact that witnesses have subsequently departed from their earlier testimony does not mandate rejection of the entire prosecution case.

30. The Supreme Court has repeatedly cautioned against applying the maxim *falsus in uno, falsus in omnibus* as a rigid rule of law. The Courts are directed and are duty bound to assess what portion of the evidence is reliable and whether the reliable residue is sufficient to establish guilt. Hon'ble the Supreme Court again reiterated in ***K.P. Tamilmaran vs. State*** (2025) SCC OnLine SC 958 as under:

36. It is though trite and much overstated but the maxim “falsus in uno, falsus in omnibus”³, is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the depositions of a hostile witness. Courts can rely upon that part of the deposition of a hostile witness which is corroborated by other evidence on record. This Court in Bhajju v. State of Madhya Pradesh, (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

“36. It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence...”

If part of the evidence of a hostile witness corroborates with other reliable evidence, then that part of the evidence is admissible. Once a prosecution witness has been declared hostile



and then cross-examined by the prosecution, then it is for the Court to evaluate the veracity of the testimony. There can be several reasons for a witness to turn hostile and the court must also look into these factors while evaluating the evidence given by a hostile witness. It is an uncomfortable reality in our criminal Courts for a prosecution witness to turn hostile. But then the purpose of a Trial Court is to go to the truth of the matter. Whatever evidence is there before the Court must be examined, tested, corroborated (whenever necessary), before a verdict can be finally given.

31. In the present case, the reliable residue is not founded upon a solitary uncorroborated assertion. The material portion of PW-1's testimony is supported by the testimony of PW-2 and PW-8, medical evidence, forensic result and surrounding circumstances. This Court is, therefore, satisfied that the subsequent resiling of the witnesses does not create a reasonable doubt sufficient to displace the prosecution's case.

32. The judgment relied upon by learned counsel for the prosecutrix in ***Selvamani's case*** (supra) reiterates and recognizes situations where a witness turns hostile and there was a considerable gap between examination in chief and cross examination, giving window to the Appellant or the persons interested with the Appellant, to manipulate the scene. It seems that Appellant has been able to do so. Nevertheless, prosecution is able to bring home its case.

33. Hon'ble Supreme Court in ***Selvamani's Case*** (supra) while taking into account various pronouncements on the subject, made following observation:-

"20. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under



Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.”

34. The instant case, more or less, stands on the same footing where the statement to the police and examination in chief is totally supportive of the prosecution’s case, which gets strength and corroboration from the medical and forensic evidence, therefore, notwithstanding the stand taken by the witnesses in their cross examination, the case of the prosecution is found credible against the Appellant.

35. As a result, the instant appeal filed by the Appellant is dismissed being bereft of any merits. Appellant to surrender forthwith to serve the remaining sentence. He shall be entitled to the benefit of set-off under Section 428 Cr.P.C.

36. Appeal stands disposed of accordingly.

37. Copy of the judgment be transmitted to the learned Trial Court and Prison Authorities for information and requisite compliance.

VIMAL KUMAR YADAV, J

OCTOBER 08, 2026/bj/ny