



2026:DHC:8370



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

Date of reserving order: 18th August, 2026

Date of decision: 28th September, 2026

CNR No. DLHC010928832010

+ **CRL.A. 91/2012**

STATE

.....Appellant

Through: Mr. Mukesh Kumar, APP for State
with SI Aarti, PS Model Town.

versus

OM PARKASH @ KALLU

.....Respondent

Through: Mr. Shiv Charan Garg and Ms.
Jahanvi Garg, Advocates with
Respondent-in-person.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Physical violation is not the sole violation, rather may be a kind of soul violation which takes place in an offence of rape as it transcends the physical boundaries and enters into the psychological and mental realm as well. The social stigma and ostracization is such in some of the societies and regions that the victim is unfortunately blamed for what she has undergone. Instead of having sympathy, support and empathy for the victim together with social, psychological and mental support, in some of the societies, the victim is treated as an outcast, a person of questionable character and what not. Ignominy with all its synonyms like disgrace, dishonour, shame, humiliation, odium, disrepute, scandalization, stigma and opprobrium are faced lived and undergone by a victim of rape. Then, if the family medical,



psychological and social support is not there, then the life virtually becomes a living hell, and at times the victim instead of resorting to legal recourse finds it easy to end her own life. One cannot possibly imagine and visualize the kind of mental state, where the victim shudders from the very thought of recounting the experience before Law Enforcement Authorities/Courts and then to face the onslaught of cross-examination.

2. The young woman, apparently could not withstand the trauma of being raped and out of shame coupled with perceived and actual social ostracization and may be the taunts back home in the village etc. decided to end her life instead of coming to the court and depose. A suicide note is there to the effect that out of shame, she took this drastic step of committing suicide.

3. The females, especially young girls are very vulnerable in our society and it is nearly impossible to trust anyone, as even the neighbours / relatives take advantage of the vulnerability of the female. In the instant case, the victim 'P' was alone in her jhuggi on the fateful night of 29.05.2006 while her father had gone to their native place, whereas, her brother was on his night shift duty. Her neighbour i.e. Om Prakash @ Kallu, (Respondent herein) sensed an opportunity for his carnal desires and somehow gained the entry in the jhuggi of the victim. But once he gained entry, he bolted the door of the Jhuggi and committed rape upon the victim. Thereafter, he went away. The victim informed her brother and by that time, it was late in the night since the offence of rape took place around 10.30 pm – 11.00 pm.

4. Matter was however reported to the police and statement of the victim (Ex.PW-3/B) was recorded which resulted in registration of FIR bearing no.337/2006 under section 376 of the Indian Penal Code, 1980 ('IPC') at PS Model Town. The victim was taken for her medical



examination where the sexual assault kit was prepared and her undergarments were seized. Similarly, all other requisites of the investigation, including arrest of the respondent, his medical examination and seizure of clothes, ultimately culminated into filing of chargesheet under section 376 IPC.

5. After compliance of section 207 Criminal Procedure Code, 1973 ('Cr.P.C') the respondent was served with the charge under section 376 IPC on 05.12.2006 to which he pleaded not guilty and claimed trial. The case of the prosecution traversing through the examination of 18 witnesses, recording of statement of accused, ultimately resulted into the 'acquittal' of the Respondent Om Prakash @ Kallu.

6. Being dissatisfied with the verdict i.e. "Judgement of Acquittal" dated 02.09.2009, the State preferred the instant Appeal, whereby it is submitted that the learned Trial Court has not appreciated the facts in its correct perspective and got entangled into the trivialities while recording acquittal. It is further elaborated that the circumstances prevented the prosecution from examining the victim, as she before her examination committed suicide due to this incident itself. However, her statement under section 164 Cr.P.C recorded by a Judicial Magistrate 'under oath' is very much there and so is the position with regard to the statement which laid foundation of the FIR, which again, is a signed statement. Both the statements have been ignored by learned Trial Court whereas these should have been read in-conjunction with the MLC Ex.PW-7/A. It is further argued by Ld. APP that learned Trial Court should have also considered the suicide note as together with the testimony of her brother and father, more particularly, of her brother, then it would not have fallen into the error of recording the judgment of acquittal. It is thus submitted that the Respondent who had committed the offence of



rape, should be held accountable with the commensurate punishment.

7. Learned APP essentially submitted that in the absence of the direct evidence, due to the death of the victim, the available evidence on record in the shape of statement under section 164 Cr.P.C, can be looked into coupled with the other evidence on record.

8. Learned counsel for the Respondent on the other hand, came up with the plea that the most vital testimony i.e. of the victim is not on record and there is no direct evidence. Therefore, in the absence of any direct evidence, the remaining evidence, which otherwise is full of contradictions, is not capable to bind the Respondent with the alleged offence. The Respondent was, thus, rightly acquitted in the absence of direct evidence. However the circumstantial evidence could have been looked into but then even that is not up to the mark in order to hold the Respondent guilty. There is no scientific or medical evidence, which may connect the Respondent with the offence inasmuch-as the FSL Result is neither here nor there being inconclusive. Learned counsel for the Respondent submits that clothes of neither the Respondent nor the victim, were seized by the police or was subjected to scientific investigation or forensic examination.

9. The alleged incident, it is asserted, took place in a thickly populated area within the Jhuggis, where even a light banter attracts the attention of the neighbours. In such circumstances, if something as drastic as alleged, took place then why none of the neighbours came to know and why the victim did not raise alarm. All this go on to show that the allegations are false and the learned Trial Court has reached to the right conclusion of acquittal of the Respondent.

10. Learned counsel for the Respondent asserts that the genesis of framing the Respondent lies in the fight, which took place between the



parents of the victim and her brother, in which the Respondent sided with the brother of the victim to the chagrin of the parents of the deceased which enraged the parents of the victim. They were nursing the grudge against the Respondent and finding the opportune situation, the Respondent has been falsely implicated in this case.

11. Learned counsel for the Respondent has, in order to strengthen his argument stated that the statement under Section 164 Cr.P.C. cannot be substituted as substantive evidence as its role is confined to corroboration or contradiction of the witness in question. He has placed reliance on the judgment titled as **Baij Nath Sah Vs. State of Bihar**, 2010 (6) SCC 736.

It is further submitted that the Judgment of acquittal cannot be set aside where two views are possible, unless it is shown that the view taken by the Trial Court has been totally contrary to record and perverse. In this context he has placed reliance on the Judgment in **Bhupatbhai Bachubhai Chanda vs. State of Gujrat**, 2024 SCC OnLine SC 523 and emphasised specifically on Para No. 6 of the Judgment, which is as below:

“It is true that while deciding an appeal against acquittal, the Appellate Court has to reappreciate the evidence. After re-appreciating the evidence, the first question that needs to be answered by the Appellate Court is whether the view taken by the Trial Court was a plausible view that could have been taken based on evidence on record. Perusal of the impugned judgment of the High Court shows that this question has not been adverted to. Appellate Court can interfere with the order of acquittal only if it is satisfied after reappreciating the evidence that the only possible conclusion was that the guilt of the accused had been established beyond a reasonable doubt. The Appellate Court cannot overturn order of acquittal only on the ground that another view is possible. In other words, the judgment of acquittal must be found to be perverse. Unless the Appellate Court records such a finding, no interference can be made with the order of acquittal. The High Court has ignored the well-settled principle that an order of acquittal further strengthens the presumption of innocence of the



accused. After having perused the judgment, we find that the High Court has not addressed itself on the main question."

12. It has been emphasized in various judgments right from privy counsel to the present day that Appellate Courts should be very careful, restrictive and slow in reversing a judgment of acquittal unless there are substantive and compelling reasons to do so. In ***Surender Singh v. State of Uttarkhand***, (2025) 5 SCC 433 while referring various binding precedents provided the underlying principle on this issue in the following words :-

"24. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial Judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

Hon'ble Supreme Court in ***Shivaji Sahabrao Bobade And Anr v. State of Maharashtra***, (1973) 2 SCC 793 observed in the following words on this very issue:-

"In Sanwat Singh v. State of Rajasthan, AIR 1961 SC 715 after an exhaustive review of cases decided by the Privy Council as well as by this Court, this Court considered the principles laid down in Sheo Swarup case and held that they afforded a correct guide for the appellate court's approach to a case against an order of acquittal. It was again pointed out by Das Gupta, J., delivering the judgment of five Judges in Harbans Singh v. State of Punjab, AIR 1962 SC 439:

"In many cases, especially the earlier ones the Court has in laying down such principles emphasised the necessity of interference with an order of acquittal being based only on 'compelling and substantial reasons' and has expressed the view that unless such reasons are present an appeal Court should not interfere with an order of acquittal (vide Suraj Pal Singh v. State, 1952 SCR 194; Ajmer Singh v. State of Punjab, (1952) 2 SCC 709: 1953 SCR 418; Pawan v. State of Punjab, (1952) 2 SCC 454 AIR 1953 SC 459). The use of the words 'compelling reasons' embarrassed some of the



High Courts in exercising their jurisdiction in appeals against acquittals and difficulties occasionally arose as to what this Court had meant by the words 'compelling reasons'. In later years the Court has often avoided emphasis on 'compelling reasons' but nonetheless adhered to the view expressed earlier that before interfering in appeal with an order of acquittal a court must examine not only questions of law and fact in all their aspects but must also closely and carefully examine the reasons which impelled the lower courts to acquit the accused and should interfere only if satisfied after such examination that the conclusion reached by the lower court that the guilt of the person has not been proved is unreasonable.

(Vide Chinta v. State of Madhya Pradesh, Criminal Appeal No. 178 of 1959 decided on November 18, 1960; Ashrafkha Haibakha Pathan v. State of Bombay Criminal Appeal No. 38 of 1960 decided on December 14, 1960.) "... On close analysis, It is clear that the principles laid down by the Court in this matter have remained the same. What may be called the golden thread running through all these decisions is the rule that in deciding appeals against acquittal the court of appeal must examine the evidence with particular care, must examine also the reason on which the order of acquittal was based and should interfere with the order only when satisfied that the view taken by the acquitting Judge is clearly unreasonable. Once the appellate court comes to the conclusion that the view taken by the lower court is clearly an unreasonable one that itself is a 'compelling reason' for Interference. For, it is a court's duty to convict a guilty person when the guilt is established beyond reasonable doubt, no less than it is its duty to acquit the accused when such guilt is not so established."

In the light of the above guidelines, the instant case is also required to be examined since this is a case where the acquittal of the Respondent is under challenge.

13. Having taken into account the submission made by the rival sides and the material on record, what is evident is that there is no direct evidence on record. It would have come from the mouth of the victim alone, who unfortunately committed suicide after about 03 months of the incident and before she could depose, primarily due to this offence as can be inferred from the suicide note Ex.PW-3/A left behind by her. The Courts are bound to take into consideration the evidence and evidence alone to come to any



conclusion. Evidence has been defined in Section 3 of the Indian Evidence Act, 1872, which is reproduced herein below:

“Evidence” – “Evidence” means and includes -

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court] [Substituted by Act 21 of 2000, Section 92 and Sch.II, for the all documents produced for the inspection of the Court.]; such document are called documentary evidence.

14. As can be seen that the deposition made before the Court is the substantive statement, which alone can be looked into and so far as the statement under Section 164 Cr.P.C. or other statements are concerned, they have a limited role for the purpose of contradiction or some sort of corroboration.

15. If what was stated by the victim to the police and to the learned Magistrate is taken into consideration then the appeal of the State is fully acceptable but for the fact that these two statements do not fall into the definition of evidence. Therefore, notwithstanding, the apparent sufficient material indicative of the complicity of the Respondent Om Prakash, he cannot be held responsible in the absence of substantive statement. It is a very unfortunate part of the instant case that the victim could not depose as in that eventuality, the assailant Om Prakash would have certainly been held responsible, had the victim been able to depose what was stated by her to the police and to the learned Magistrate subject to the cross-examination and its impact. In that case the MLC Ex. PW-7/A would have been taken into consideration to draw corroboration. The MLC Ex. PW-7/A indicates that the victim had certain injury marks i.e. abrasions on her breast which, in a way, could have corroborated the potential substantive deposition of the



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victim, had it been there. Hymen was also found torn by the Doctor while examining the victim at 02:30 pm on 30.05.2006 as can be seen from the MLC Ex. PW-7/A. All these would have cemented the case against the assailant Om Prakash @ Kallu, had there been the statement of the victim, as has been stated by her in her statement to the police and to the Magistrate under Section 164 Cr.P.C. But in the given set of facts and circumstances, the Court finds itself in a situation where there appears to be a very strong possibility of the victim being raped by the assailant Om Prakash @ Kallu, but then a possibility, howsoever strong it may be, cannot be substituted for evidence. Section 6 and 32 of the Indian Evidence Act also do not come to the rescue of the case of prosecution either, in any manner, whatsoever.

16. The same constraint, seemingly, was very much there before the learned Trial Court as well and therefore, the learned Trial Court has rightly taken the call and being left with no choice but to acquit the Respondent Om Prakash delivered the impugned judgment. Therefore, in such circumstances, the Impugned Judgment cannot be faulted with, resultantly, the appeal is bound to fail and accordingly stands declined.

17. Together with appeal, application(s), if any, stand dismissed /disposed of.

18. Bail bond(s) stands discharged.

19. Copy of the Judgment be transmitted to the learned Trial Court and Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J.

SEPTEMBER 28, 2026/bj/ps/my