



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

% Reserved on : 04.09.2025  
Pronounced on : 08.09.2025

+ **CRL.A. 952/2016**

STATE NCT OF DELHI .....Appellant  
Through: Mr. Pradeep Gahalot, APP for State  
with SI Dinesh Kumar P.S. Nand  
Nagri, Delhi.  
Versus  
KRISHNA PANDEY .....Respondent  
Through:  
Mr. L.B. Rai and Mr. Kartik,  
Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

### **JUDGMENT**

1. By way of the present appeal filed under Section 378 Cr.P.C., the appellant/State seeks to assail the judgment of acquittal dated 01.06.2013 passed by the learned Additional Sessions Judge-01, North East, Karkardooma Courts, Delhi in SC No. 04/2011 arising out of FIR No. 212/2010 registered under Section 376 IPC at P.S. Nand Nagri, whereby the respondent was acquitted of all charges. Notably, the leave to appeal was granted vide order dated 04.10.2016.

2. The facts, in brief, as noted by the Trial Court, are extracted hereunder:-

*“In nutshell, case of prosecution is that on 23.10.2010 a DD No.7-A was recorded at police station Nand Nagri regarding a quarrel at XXX. Copy of DD No.7-A was assigned to W-ASI Kusumlata. On receipt of DD, W-ASI Kusumlata had reached at the spot i.e XXX and found a quarrel between parents of the victim and father of accused was going on and father of*



*victim had told her about the wrong act done by accused with the victim on 22.10.2010. W-ASI had recorded the statement of father of victim Ex.PW2/A and had got the victim medically examined at GTB Hospital vide MLC Ex.PW11/A. W-ASI Kusumlata had put her endorsement on the statement of father of victim vide Ex.PW12/A and got the present case registered vide FIR Ex.PW1/B. Accordingly, FIR No. 212/2010 u/s 376 IPC was registered against accused Krishna Pandey. During the course of investigation police had arrested accused Krishna Pandey.”*

3. Upon committal, the Trial Court framed charges under Section 376(2)(f) IPC against the respondent herein, to which he pleaded not guilty and claimed trial.

### **PROCEEDINGS BEFORE THE TRIAL COURT**

4. The prosecution examined 12 witnesses in support of its case. The prosecutrix/PW-3, after being asked preliminary questions to assess her understanding, was examined in camera without oath, wherein she deposed that while she was studying in Class I, the accused, who resided in the same building as her, took her to his room, removed her undergarment, spat on her private part, and attempted to insert his penis into her vagina. She stated that she felt pain and started bleeding from her vagina. After some time her brother came, upon which the accused dressed himself and her, and then opened the door. Her brother took her downstairs. She further stated that the next morning her father called the police and she was medically examined. Her statement under Section 164 Cr.P.C. was recorded and exhibited as Ex.PW-3/A.

In her cross-examination, she stated that her father was at work and her mother had gone to the market at the time of the incident. She admitted that three uncles had visited her house that day, of whom two left, and one took her into his room. She stated that the accused was not on talking terms



with her parents.

5. The father of the prosecutrix/PW-2 deposed that on 23.10.2010, at about 7:00 a.m., his wife informed him that their daughter was nervous and frightened as the accused had taken her to the first floor and committed a wrong act upon her at about 6:00 p.m. on 22.10.2010. He called 100 number and accompanied the prosecutrix to the police station, where his statement (Ex. PW-2/A) was recorded, and thereafter to GTB Hospital for her medical examination. He further stated that police officials inspected the spot later that night.

In his cross-examination, he admitted that the accused was not known to him earlier, and that the accused lived at some distance from his house. He also admitted that his wife had phoned him from a PCO at about 8:45 a.m. informing him about the incident. He was confronted with his statement about the arrest of the accused, which he denied witnessing. In his examination-in-chief, he stated that the underwear of the prosecutrix, which had been seized by the doctor after her medical examination, was blue in colour and that he would be able to identify it if shown to him. However, when a sealed parcel containing five articles, including a yellow-coloured underwear, was produced in Court, he identified that underwear as the one seized at the hospital.

6. The mother of the prosecutrix/PW-5 deposed that when she returned from the market in the evening, she found her daughter nervous and not having eaten food. On enquiry, the prosecutrix told her about the incident, and she thereafter informed her husband, who called the police. She accompanied her daughter to the police station and to the hospital. In her cross-examination, she admitted that the accused resided on the upper floor



of the same house as her. She further admitted that there had been a quarrel between her and the accused about drying clothes on the roof ten days before the incident, and another quarrel between her husband and the accused. She admitted that her husband had tutored her to depose according to his instructions.

7. The brother of the prosecutrix/PW-7, examined without oath being a child witness, deposed that he saw the accused with the prosecutrix on the roof of his house. After half an hour, he found the accused in a towel and the prosecutrix in her underwear, and he heard the accused tell her to not disclose anything to anyone. He stated that in the evening, his mother noticed blood on the prosecutrix's underwear. In his cross-examination, when asked whether he had told his mother that the prosecutrix had been raped by the accused, he replied in the negative.

8. PW-1/HC *Anil Kumar* proved the registration of the FIR on the basis of *rukka* (Ex. PW-1/A) and DD No. 7A (Ex. PW-1/C). PW-4 Ct. *Babu Lal* corroborated preparation of *rukka*, registration of FIR, and stated that the accused was arrested on the pointing out of PW-2 at 3:30 p.m. from Anandgram bus stand.

9. PW-6/HC *Manoj Kumar*, the MHC(M), produced Register No. 19, the relevant extracts of which are Ex. PW-6/A. PW-8/Ct. *Ramesh* stated that he took sealed parcels from MHC(M) and deposited the same at FSL Rohini. PW-9 proved recording of the prosecutrix's statement under Section 164 Cr.P.C. (Ex. PW-3/A). PW-10 proved the MLC of the accused (Ex. PW-10/A). PW-11 proved the MLC of the prosecutrix (Ex. PW-11/A) on behalf of the examining doctor.

10. The Investigating Officer/PW-12, W/ASI *Kusumlata* deposed that



upon receipt of DD No.7A on 23.10.2010, she reached the spot and found a quarrel between the parents of the prosecutrix and the father of the accused. She recorded the statement of PW-2 and got the FIR registered. She proved seizure memos (Ex. PW-4/C and Ex. PW-12/B), the arrest memo of the accused (Ex. PW-2/B), his personal search memo (Ex. PW-4/A), and the site plan (Ex. PW-12/C). She stated that both the prosecutrix and the accused were medically examined, and that the prosecutrix had told her the incident happened at about 6:00 p.m. on 22.10.2010. In her cross-examination, she admitted that the accused was not residing in the upper floor of the same house as the prosecutrix, and that the house was old and unclean.

11. After completion of prosecution evidence, the statement of the accused under Section 313 Cr.P.C. was recorded. He denied all allegations and evidence against him but did not lead any defence evidence.

### **CONTENTIONS**

12. Learned APP for the State submitted that the Trial Court erred in discarding the testimony of the prosecutrix/PW-3, which was clear and consistent on the act of sexual assault. He argued that minor discrepancies in the statements of other witnesses ought not to have led to acquittal, and that the refusal of medical corroboration by itself does not discredit the testimony of the victim.

13. Learned counsel for the respondent submitted that the prosecutrix's testimony was contradicted on material particulars by her family members. He pointed out that there were contradictions regarding the residence of the accused, the colour of the undergarment seized, the presence of the father in the house, the timing and manner of disclosure to the father, and the arrest of the accused. He argued that the medical evidence did not support the



allegation, as no fresh injuries or signs of bleeding were noted. It was further submitted that there were prior quarrels between the families, and the possibility of false implication could not be ruled out in the circumstances.

### **DISCUSSION & ANALYSIS**

14. The versions of the three primary witnesses, i.e., the prosecutrix/PW-3, her father/PW-2, and her mother/PW-5, are inconsistent on core particulars. The prosecutrix deposed that the accused took her to his room, removed her undergarment, and attempted to insert his penis into her vagina, causing pain and bleeding. She further stated that after some time her brother came, whereupon the accused dressed both himself and her, opened the door, and her brother took her with him saying their father was calling. She added that the next morning her father called the police and she was medically examined. In cross-examination, however, she admitted that her father was away at work and her mother had gone to the market at the time of the incident.

15. The prosecutrix's father/PW-2 deposed that on 23.10.2010, at about 7:00 a.m., his wife informed him that the accused had committed a wrong act with the prosecutrix at about 6:00 p.m. on 22.10.2010. He stated that he thereafter called 100 number, following which police officials reached the spot, and later he, along with his daughter, went to the police station where his statement (Ex. PW-2/A) was recorded. In cross-examination, however, he admitted that his wife telephoned him from a PCO at about 8:45 a.m., and further that he was working on the date of the incident and returned only the next morning. Notably, the DD entry No. 7A dated 23.10.2010 (Ex. PW-1/C) records only a quarrel and does not mention any allegation of rape.

16. The mother/PW-5 gave yet another version. She deposed that when



she returned from the market on the evening of 22.10.2010, she found her daughter nervous, and on enquiry was told of the incident. She stated that she then informed her husband, who came home and called 100 number. In cross-examination, she admitted that her husband had tutored her to depose according to his instructions. She also admitted that quarrels had earlier taken place between their family and the accused, including a quarrel about drying clothes on the roof ten days before the alleged incident, and another quarrel between her husband and the accused.

17. The brother/PW-7, examined as a child witness, deposed that he saw the accused with the prosecutrix in a room and, after about half an hour, found the accused in a towel and the prosecutrix in an undergarment. He stated that in the evening his mother noticed blood on the prosecutrix's undergarment. In cross-examination, however, he admitted that he did not tell his mother about the incident and that it was his mother who later informed his father on phone. Significantly, he contradicted PW-2 by stating that their father had returned home at about 9:00 p.m. on 22.10.2010, whereas PW-2 maintained that he only returned the following morning.

18. There is also a contradiction regarding the seized undergarment. In his examination-in-chief, PW-2 stated that the underwear of the prosecutrix seized by the doctor was blue in colour and that he could identify it if shown. However, when a sealed parcel containing five articles, including a yellow-coloured underwear, was produced in Court, he identified that yellow underwear as the one seized at the hospital.

19. On the issue of the accused's residence, the witnesses gave divergent versions. PW-5 stated that the appellant resided on the first floor of the same house as the prosecutrix's family, along with his wife and brother. PW-2



deposed that the accused lived in his own house at some distance from theirs and had no visiting terms with the prosecutrix's family. PW-7, however, stated that the accused was residing with two other persons on the upper floor of the same house as the prosecutrix's family. The Investigating Officer (PW-12) further admitted in cross-examination that the accused was not residing in the room on the upper floor of the same house, and also conceded that the said house was old and unclean.

20. The arrest narrative is equally inconsistent. PW-2 stated that the accused was arrested while he and his family were at the hospital, whereas PW-4 deposed that the accused was arrested at about 3:30 p.m. from *Anandgram bus stand* on the pointing out of PW-2 (arrest memo Ex. PW-2/B). These two accounts do not align.

21. The medical evidence does not support the prosecution case. The MLC of the prosecutrix (Ex. PW-11/A) records no fresh injuries or signs of bleeding, contrary to her deposition of pain and bleeding.

The test results on the underwear and other samples of the victim seized and sent to FSL remained inconclusive and did not connect the accused with the offence in any manner.

22. Furthermore, the law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage, after his acquittal by the Trial Court, is settled. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as (2022) 8 SCC 536, wherein it was observed as under:

*"8. ...We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)*



“25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.””

23. The Supreme Court has also categorically held in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal against an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179], this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

‘...’

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)], the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.’

...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to



*him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

*(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.’’*

24. The material contradictions between the testimonies of PW-2, PW-3, PW-5 and PW-7, the inconsistencies regarding disclosure of the incident, presence of family members, residence of the accused, and the arrest, as well as the discrepancy concerning the seized undergarment, significantly erode the credibility of the prosecution version. The medical evidence likewise does not lend credence to the allegations, and in the backdrop of prior quarrels between the families, the possibility of false implication cannot be ruled out. These circumstances, taken together, create a reasonable doubt which enures to the benefit of the respondent.

25. In view of the foregoing discussion, this Court is of the considered view that no interference is warranted with the impugned judgment of acquittal. The present appeal, along with pending applications, if any, is accordingly dismissed.

26. The personal bond and surety bond furnished be cancelled and the surety stands discharged.

27. A copy of this judgment be communicated to the Trial Court.

**MANOJ KUMAR OHRI  
(JUDGE)**

**SEPTEMBER 08, 2025**

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