



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

% Reserved on : 13.08.2025
Pronounced on : 18.08.2025

+ **CRL.A. 26/2017, CRL. MA 11808/2017**

TUKUN DASAppellant
Through: Mr. Azhar Qayum, Mr. Tara Chand,
Mr. Narender Kumar, Advocates.

versus

STATERespondent
Through: Mr Pradeep Gahalot, APP for State
with SI Asha PS Sarita Vihar, New
Delhi.
Mr. Anil Kumar Singh, Advocate for
victim with victim in person.

AND

+ **CRL.A. 42/2017**

VINOD KUMAR GUPTAAppellant
Through: Mr. Devendra Singh, Advocate with
appellant in person.

versus

STATE GOVT. OF NCT OF DELHIRespondent
Through: Mr Pradeep Gahalot, APP for State
with SI Asha PS Sarita Vihar, New
Delhi.
Mr. Anil Kumar Singh, Advocate for
victim with victim in person.

AND

+ **CRL.A. 45/2017**

PAWAN KUMAR TANWARIAppellant



Through: Ms. Anu Narula, Advocate
(DHCLSC)

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Asha PS Sarita Vihar, New
Delhi.

Mr. Anil Kumar Singh, Advocate for
victim with victim in person.

AND

+ **CRL.A. 49/2017**

DEV KANT GIRI @ DEO KANT

.....Appellant

Through: Mr. Ajay Garg, Mr. Uday Garg, Ms.
Anusha Garg and Ms. Vanita
Kukreja, Advocates with appellant in
person.

Versus

STATE OF NCT OF DELHI

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with SI Asha PS Sarita Vihar, New
Delhi.

Mr. Anil Kumar Singh, Advocate for
victim with victim in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the above-noted appeals, appellants seek to assail the judgment of conviction dated 30.11.2016 and the order on sentence dated 15.12.2016 passed by the learned Additional Sessions Judge, Special Fast



Track Court, Saket Court, New Delhi in SC No. 235/2014 & 2003/2016 arising out of FIR No.618/2014 registered under Sections 452/354/323/506/34 IPC at P.S. Sarita Vihar, Delhi.

Vide the impugned judgment, the appellants have been convicted for the offence punishable under Sections 452/354/323/34 IPC and vide order on sentence they have been sentenced to undergo RI for 1 year with fine of Rs.5,000/- each for the offence punishable under Section 452 IPC and in default of payment of fine to further undergo SI for 3 months, sentenced to undergo SI for 6 months for the offence punishable under Section 323 IPC and further sentenced to undergo RI for 1 year with fine of Rs.5,000/- each and in default of payment of fine to further undergo SI for 3 months for the offence under Section 354 IPC. All the sentences have been directed to run concurrently. The benefit of Section 428 Cr.P.C. has also been given to the appellants.

2. As the impugned judgment on conviction and order on sentence are common, as well as common submissions have been addressed on behalf of the appellants, the above-noted appeals are taken up together for consideration and are disposed of by this common decision.

3. The first information about the incident came to be registered in the intervening night of 14th/15th September, 2014, at about 12.43 am vide DD No. 4A through a wireless message from the PCR that a quarrel has taken place and the condition of a woman is not well. The next information was recorded at 6.15 am on 15.09.2014 vide DD No.10-B with the information that one injured lady aged about 40 years in a quarrel is admitted in the Trauma Centre. At about 10.40 am, a statement (Ex.PW1/A) of the injured victim was recorded wherein it was alleged that on the intervening night of



14th/15th September, 2014 at about 12.15 am, the appellants being neighbours, had entered her house and started abusing her by stating '*...tu is colony ke neta banti hae, aaj teri netagiri hum log nikalenge, dekhta tu aaj hum logo se tujhe kaun bachata hae, tu aaye din chhoti chhoti baton ko lekar hum logo ki police main shikayat. Tune pehle bhi vinod ko band kara diya tha...*'

When the victim asked them to behave properly, the appellants *Pawan* and *Tukan Das* grabbed her from her hair and pushed her on the ground and tried to break the string of her *salwar*, the other two appellants *Vinod Kumar Gupta* and *Dev Kant* gave her fist and kick blows and also tore her clothes. While leaving, the appellants further threatened her with dire consequences. The victim dialed 100 number.

4. On the basis of the said statement, the FIR came to be registered under Sections 452/354/323/506/34 IPC. After 4 days of the incident i.e., on 19.09.2014, the victim's statement under Section 164 Cr.P.C came to be recorded in which she stated that on the day of the incident while she was alone at her home, her husband had gone to his native village. She further stated that appellant/*Tukan Das* had inserted his finger in her vagina without opening the *salwar*. The 3rd Supplementary statement of the victim came to be recorded under Section 161 CrPC on the aforesaid lines on the same date, wherein the factum of tenants was mentioned for the first time.

5. On completion of investigation, charge was framed against all the appellants for the offence punishable under Sections 452/376 (D)/323/506/34 IPC to which they pleaded not guilty and claimed trial. The complainant was examined as PW1. Mr. *Uday Narain Singh*, who was stated to be the tenant of PW1, was examined as PW4. The rest of the



witnesses were formal in nature who deposed as to various aspects of the investigation. In their statements under Section 313 Cr.P.C., the appellants claimed false implication. They did not lead any evidence in their defence.

6. Learned counsels for the appellants have raised multifold contentions, the first being that no history of sexual assault given in the first information recorded vide DD No. 4-A and DD No. 10-B or in the history of assault recorded in the MLC. Learned counsels have sought to discredit the testimony of the victim by terming it as motivated with a view to falsely implicate the appellants on account of a prior complaint given on behalf of about 25 neighbours. The testimony is further sought to be discredited for being full of material improvements as well as contradictions when compared to the deposition of police witnesses regarding which suggestions were given to her during cross-examination. It is next contended that though the victim had stated that there were two tenants living in her house on the day of incident however, only one was examined as PW4 and even his testimony is not trustworthy and reliable, as he is a planted witness. It is next contended that though the MLC recorded the victim to be conscious at the time of the medical examination and the appellants being neighbors were already known to her, however their names were stated after nearly 10 hours of the incident. The Investigating Officer did not examine the staff of the PCR and CAT ambulance who were the first ones to reach the spot.

7. *Per Contra*, learned APP for the State, who is duly assisted by learned counsel for the victim has defended the impugned judgment. It is contended that as the victim was beaten up and threatened by the appellants, and, therefore, the delay in naming the appellants stands explained. The victim has constantly stated that appellants had motive as she had filed a *Kalandra*



against one of the appellants, namely Vinod Kumar Gupta and the appellants had, in fact, wanted the victim to withdraw the said complaint, and when she refused for the same, the offence in the present case was committed.

8. The prosecution examined its star witness that is the victim who was examined as PW1. In her deposition, she stated that she was married and having one son. In the year 2014, she was employed in a garment factory. All the appellants were residing in her neighborhood. At the time of the incident, two tenants were also residing at the first floor of her house, however, she was not sure as to whether the tenants were present at the time of the incident. On the day of the incident, she was alone in her house, while her husband had gone to his native village and her son was living with her sister at Patna. The door of the house was open. The appellants entered the house and hurled abuses at her. She tried to shut the door of the room, however, she was pushed by the appellants. She jumped on the bed. The appellant/*Pawan* dragged her from the bed, appellant *Tukan Das* pulled her hair and pinned her down on the floor and also tore her clothes, the salwar kurta that she was wearing. Appellant/*Tukan Das* also pressed her breast forcibly. Appellant/*Dev Kant* gagged her mouth with his hands while appellant/*Vinod Kumar Gupta* gave repeated kicks and fist blows to her. This time appellant/ *Tukan Das* also inserted his finger in her genital. He had also tried to break the string of her salwar. She further stated that appellant/*Vinod Kumar Gupta* told her '*Aaj tera ye hall nahi hota agar tu mere neeche let gai hoti, Dekhte hai tumhe police kitni bacha rahi hai*' the appellants thereafter, fled away from the spot. She was frightened and called the police and could only tell the police that the '*mere ko ghar me gus ke maara hai. Meri raksha ki jaye*'. When she regained her consciousness on



the next day, she found herself in the Trauma Center, AIIMS. The lady constable brought her to Sarita Vihar Police Station, however, as she was feeling unwell, she came back to her house. On the same day, four police officials came to her house and recorded her statement (PW1/A). She identified the torn suit which was seized vide seizure memo Ex. PW1/C. She however, stated that the police had not sealed the same in her presence. She also deposed that about two weeks prior to the incident i.e. on 28.08.2014, when she was coming to a shop to purchase something, the appellant/*Vinod Kumar Gupta* had abused her in the street. He was under the influence of alcohol and when she objected, she was pushed and manhandled. She informed the police and her statement was recorded. A Kalandra was filed and appellant/*Vinod Kumar Gupta* was released on bail. After the registration of the case, threats were received for withdrawal of the case which was again reported to the police. The victim was cross-examined. She stated that her house was constructed only upto the first floor and after the incident one room was constructed at second and third floor each. At the time of the incident, she stated that two tenants namely *Uday Narayan Singh* (PW-4) and *Subodh* were residing at her house who ran away after seeing the incident after vacating their rooms. This aspect she came to know in the evening. Both tenants were living with their respective families including children. She cannot remember the date on which the tenants had vacated the premises. On the aspect of earlier complaints against *Vinod Kumar Gupta*, she stated that he met her on the way who had hurled abuses at her. In her cross-examination by the other accused persons, she denied the suggestion that she had ever lived in the house of the appellant/*Tukan Das* or that she had any dispute with him and *Pawan*. She clarified that after



28.08.2014, both *Tukan Das* and *Dev Kant* had come to her house asking her to withdraw the complaint against appellant *Vinod Kumar Gupta* and when she did not accede to their request, appellant *Dev Kant* had stated that '*tera bura haal hoga*'. She further stated that though the tenants were living in the house at the time of the incident, however, none of them came to save her. She was confronted with her earlier statement, where there is no mention of the insertion of finger in her vagina. She denied the suggestion that the FIR was registered as a counterblast to the complaint given by the accused persons on 14.09.2014. She also denied the suggestion that she had registered a false case against the appellants on account of her acquaintance with police.

9. Prosecution has claimed that *Uday Narain Singh* was the victim's tenant. He was cited as a prosecution witness and examined as PW4. He stated that on the night of the incident, he was going for sleep after taking food when he heard the sound '*bachao bachao*'. When he came downstairs, he saw four people running away. He identified the appellants as the one who had entered the house. He heard them saying '*hum logo ne aisa kar diya ki ab vo samaj me sar uthane ke chal nahi sakti.*' He also found the clothes of the victim torn. He got scared and came back. The police personnel reached the spot. He further stated that on 15.09.2014, the police came and made inquiries from him.

In cross-examination of the witness carried out by appellant/*Vinod Kumar Gupta*, he stated that he resided as a tenant for two years and there was one another tenant, the name of whom he did not know. He vacated the premises on 10/15 days prior to the incident. He stated that the next day of the incident, the victim came back to her house. The police came at about



11.00 am on 15.09.2014 to his room. He had also given a statement to the police. He admitted that he had not seen any quarrel between the victim and the appellants. He also denied the suggestion that he had come in the premises after the incident. In further cross-examination by the other accused persons, he stated that there was no rent document and he never took rent receipts from the victim.

10. Notably, the prosecution had cited another witness, 'B' a neighbour who had claimed to have seen the appellants and she was examined as PW13, however, in her deposition, she did not support the prosecution's case and turned hostile. She was cross-examined by the learned APP for the State and denied the suggestions given.

11. The next witness is the initial IO, PW14, who had gone to the Trauma Centre and recorded the first statement (Ex.PW-1/A) on 15.09.2014 of the victim x as well as the second supplementary statement on 17.09.2014, by which the torn clothes of the victim were seized. Further investigation was carried out by SI *Josepha Kujur*, who was examined as PW17. She recorded the third supplementary statement of the victim on 19.09.2014. In cross-examination, she admitted that no statement of any PCR official or tenant was recorded as the latter had already left the house of the victim when the case was assigned to her.

12. Pertinently, the victim was medically examined on 15.09.2015 at 2.49 am with the history of assault. As no injuries or sexual assault was noted, victim was only referred to Orthopedics department. The FSL report (Ex.PW7/C) remained inconclusive.

13. In the aforesaid backdrop of evidence, the Court proceeds to examine the contentions raised by the appellants. The first one pertains to whether the



testimony of the victim is credible and reliable. In this regard, it is noted that the first information of the incident came to be recorded through DD No.4-A which was registered on the basis of facts narrated by the victim to the PCR officials about a quarrel. Neither, any names of assailants were given nor the incident of sexual assault recorded. Though learned counsels for both sides have referred to the MLC, it is worth noting that the same was not proved during the trial, as the doctor concerned was dropped by the prosecution, as it finds mention in the order dated 01.08.2016 passed by the Trial Court. Concededly, the said order wrongly records that the victim was gynecologically examined.

14. As noted above, the FIR was registered on 15.09.2014 at 10.40 A.M on the basis of the statement of the victim wherein the names of the assailants were mentioned however, there was no allegation of insertion of finger by *Tukan Das*. Concededly, the first supplementary statement of the victim was recorded on the same day i.e., 15.09.2014, wherein she had given a history of prior quarrel with *Vinod Kumar Gupta* and also pointed towards the spot on the basis of which the site plan was prepared. The second supplementary statement of victim was recorded on 17.09.2014, vide which the clothes worn at the time of the incident were seized. Till this date there was no allegation of insertion of finger by the appellant/*Tukan Das*. It is only on 19.09.2014, when their statement of victim was recorded under Section 164 Cr.P.C when the said allegation surfaced for the first time. It was followed by third supplementary statement recorded under 161 Cr.P.C wherein the victim reiterated her allegations made in her statement recorded under Section 164 Cr.P.C. It is pertinent to note that on the basis of this statement, the charge-sheet was filed and a charge under Section 376(D) IPC



was framed, however, finding it to be a material improvement, the appellants were acquitted of the said charges. Admittedly, the acquittal of the appellants under the said charge is not assailed either by the State or the complainant.

15. The testimony of the victim is now to be examined on the aspect of two tenants being present in the house and one of them having heard and seen the appellants entering the house and hurling abuses. In this context, it is worth noting that the presence of the tenant in the house was not stated by the victim in the first three statements recorded under Section 161 Cr.P.C or in the statement recorded under Section 164 Cr.P.C. This aspect was stated for the first time by the victim in her third supplementary statement under Section 161 CrPC recorded on 19.09.2014, i.e., the day the allegation with respect to insertion of finger came to be levelled.

16. Examining the testimony of the victim further, it is noted that though she had stated that at the time of the incident the tenants were residing on the upper floor, who had run away on seeing the incident, she clarified that she came to know this fact in the evening that her tenants ran away after vacating the room without informing her. At no stage of her testimony, she stated that any of the tenants had met her at the time of or after the incident.

Contrasting this with the testimony of the tenant (PW4), wherein he had stated that after hearing the commotion, he came downstairs and saw the appellants abusing the victim, whereafter he met the victim and found that her clothes were torn. The tenants had further stated that on 15.09.2014, police had come and made inquiries. While the victim had stated that at the time of the incident, there was only the ground floor and first floor and she



constructed the 2nd floor after the incident, the tenant claimed that at the time of the incident, he, along with his family was residing at the second floor.

17. Further, looking in the testimony of the tenant, he deposed that on 15.09.2014, the police had come and made enquiry. He also stated that his statement was also recorded, but the record reveals that no such statement on 15.09.2014 exists. He also admitted that there was no record of tenancy and no rent receipts were executed.

On the other hand, the cross-examination of *Ct. Dinkar More* (PW15) who accompanied PW14 after receipt of DD No.4A, would show that on reaching the spot, they met a tenant family residing at the first floor and on being enquired, stated that they heard some noise and when they came downstairs, they saw a CAT Ambulance taking the victim to the hospital. Neither the details of the incident nor any mention of the appellants was made. PW17, the subsequent I.O., however, claimed that he came to know that two tenants were residing, however, no statement could be recorded as both had left.

18. From the above, it is apparent that the victim has made considerable improvements at all stages of the case. The improvements are material and cast shadow of doubt on the trustworthiness. The testimony is not supported by the medical or forensic evidence. Indeed, the uncorroborated statement of the victim is sufficient to bring home the charge against the appellants, however, the same is subject to the condition that it is cogent, consistent and reliable. The witness should be a sterling witness, whose testimony should



be natural and consistent with the prosecution case. In this regard, the Supreme Court in *Rai Sandeep v. State (NCT of Delhi)*,¹ has held as under:-

22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.] . In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness..

...Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. ..

I am afraid it is not so in the present case. Part of the testimony is disbelieved by the Trial Court in the context of allegation pertaining to offence under Section 376(D) IPC. Her testimony is full of material improvements at all stages and also carries contradictions when contrasted with the testimony of police witnesses and alleged tenant. The prosecution case is not only riddled with gaps but also the witness in the form of tenant

¹ (2012) 8 SCC 21



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who is planted and completely untrustworthy. Once this court reaches a conclusion that the testimony of victim is neither credible nor reliable, the same is to be wholly discarded and in the present facts and circumstances, it is not severable and to be discarded as a whole.

19. Accordingly, all the above-noted appeals are allowed and impugned judgment of conviction as well as order on sentence are set aside and the appellants are acquitted of the said offences. The bail bonds filed by them are cancelled and their sureties stand discharged.

20. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

21. Copy of this judgment be also uploaded on the website forthwith.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 18, 2025

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