



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

% Reserved on : 05.12.2025
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+ **CRL.A.761/2018**

MANOJ @ KRISHNA @ EILLIAppellant
Through: Mr. Medhanshu Tripathi, Advocate
(Amicus Curiae) with Mr. Tushar Tokas,
Ms. Arvinder Kaur, Ms. Aditi Singh and
Mr. Manas Rai, Advocates
versus
STATE OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State with
Ms. Yusra, Advocate
Ms. Urvi Kuthiala, Advocate (Amicus
Curiae) for victim

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal seeks to assail the judgment of conviction rendered on 26.04.2018 and order on sentence dated 04.05.2018 vide which the appellant was convicted for the offence punishable under Section 376 IPC and sentenced to undergo RI for 7 years along with payment of fine of Rs.20,000/-, in default whereof he would undergo SI for 6 months. It was directed that the fine amount shall go to the victim as compensation. The Trial Court further directed that benefit of Section 428 Cr.PC be granted to the appellant.



2. The facts in a nutshell are that DD No.12A came to be recorded on 24.12.2012 on the information from *St. Stephen Hospital* that an unmarried girl had given birth to a female child, who was declared dead. During investigation, statement of the victim was recorded, resulting in registration of the FIR. In her statement, the victim alleged that on 13.03.2012, there was a marriage function of her uncle. When she came back from tuition and had gone to her second floor to fetch a bucket, the appellant, who was the erstwhile tenant of her paternal grandfather, administered something to her due to which she lost consciousness. When she regained her consciousness, she realized that the appellant had committed wrong act with her. However, she did not disclose the incident to her mother. On 24.12.2012, as she was having stomach ache, she was brought by her parents to the family guru where a lady advised them to go to the hospital. She was taken to the hospital where she gave birth to a dead female child.

3. The exhibits seized were sent for forensic examination, chargesheet came to be filed and charges were framed under Section 376 IPC and Section 6 POCSO Act to which appellant pleaded not guilty and claimed trial.

4. The prosecution had examined a total of 21 witnesses, the material witnesses being the victim herself, examined as PW3. In her deposition, she reiterated her version given at the time of investigation. She categorically stated that when her mother had sent her to the second floor, the appellant called her and gave some smoke type, inhaling which she became unconscious. When she regained consciousness, she stated that she felt something special in herself.



She identified the appellant, as he used to be tenant in the house of her younger grandfather. She stated that her pregnancy test came positive and later when she felt severe pain in her back, her father took her to the house of her *Guruji* where one lady after examining, advised her father to take her to a hospital as she was pregnant. She further deposed that her father got her admitted in St. Stephen Hospital where she gave birth to a female child. The child was declared dead. She further stated that the appellant used to harass her since the time she was in 7th standard, however at no point of time she had shown any interest in him. She, in no uncertain terms, stated that it was the appellant who was responsible for pregnancy.

5. As per the nominal roll, the appellant was released from jail on 19.08.2019 after completion of his sentence. Further, he remained unrepresented despite listing of appeal on a number of dates. Notices were issued, however the same remain unserved. A status report under the signatures of DCP was also placed on record stating that efforts were even made to check the *Mulakat* register as well as the sureties, however, the appellant remained untraceable.

6. Keeping in view the import of decision in Bani Singh & Ors. v. State of U.P.¹, Mr. Medhanshu Tripathi, learned Advocate was appointed as *Amicus Curiae* to represent the appellant. Learned *Amicus*, while assailing the impugned judgment, contended that apparently, the victim had a consensual relationship with the appellant and as such no offence of rape could be established. He further contended that though the incident is stated to be of

¹ (1996) 4 SCC 720



13.03.2012, the medical documents would indicate that at the time of birth, the pregnancy was 7 and half months old.

7. Learned APP for the State as well as Ms. Urvi Kuthiala, learned *Amicus Curiae* for the victim, opposed the aforesaid contentions. Learned Amicus for the victim stated that there is no dispute on the appellant's identity and further suggestions have been given and during cross-examination, the appellant has denied having any physical relations with the prosecutrix and rather took the defence of false implication. The defence taken is falsified by the FSL report as per which on DNA analysis, the appellant was opined to be the biological father of the stillborn female child. Further, in his statement under Section 313 Cr.P.C, the appellant has taken the plea of *alibi* and also examined two witnesses in support of the same.

8. The victim in her examination-in-chief reiterated her statement given at the time of investigation. In cross-examination, it was suggested to her that she was in love with someone else and to save that person, had falsely implicated the appellant. This suggestion was denied. It was also suggested that on the day of the alleged incident, the appellant had already vacated the premises, which was also denied. It was further suggested that on 13.03.2012, the appellant had not done any sexual intercourse with the victim, the victim denied the suggestion.

9. Dr. Kulbhushan Goyal, Aruna Asaf Ali Hospital, Rajpur Road, Delhi, was examined as PW 14. He deposed that he had conducted postmortem on the dead body of newly born female child on 26.12.2012. The sternum bone and the blood sample in gauze piece were preserved, sealed and handed over to



police for DNA studies.

10. Ms. *L. Babyto Devi*, Senior Scientific Officer (Biology) was examined as PW 17, who deposed that in the FSL examination, DNA profile (STR) analysis was performed on Ex. 2 (blood gauze of new born baby), Ex.3 & 4 (blood sample of accused) and as per the DNA examination, one set of allele from the source of Ex.3 and Ex.4 was found present in the allele from the source of Ex.2.

11. The mother (PW-2) and father of the victim (PW-8) were also examined who deposed about taking the victim to the hospital and delivery of a dead female child.

12. The contentions made regarding a consensual relationship between appellant and the victim are found misplaced. At no point of time, any suggestion in this regard was ever given to the victim. On the contrary, the appellant's case is of not having any physical relations with her. In fact, it was suggested that the victim was in love with someone else from who she got pregnant and in order to save the said person, the appellant was falsely implicated. It was next contended that the pregnancy was found to be seven and a half months old at the time of birth, that falsifies the allegations of rape committed on 13.03.2012. In this regard, it is noted that no such medical record was exhibited and no such question was ever put to the doctors who were examined. This contention also loses significance in light of positive DNA report. In fact, in the cross-examination, the witness stated that it was 100% match of LOCI.

13. In view of the clear and categorical testimony of the prosecutrix,



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accompanied by the corroborating scientific evidence, the prosecution case is established beyond reasonable doubt. There is no infirmity in the impugned judgement or order on sentence.

14. Finding no merit in the present appeal, the same is dismissed.

15. A copy of this judgment be sent to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 18, 2025

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