



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

% Date of Decision: 25.08.2025

+ **CRL.A. 142/2016 and CRL.M.A. 3932/2022**

STATE

.....Appellant

Through: Mr. Pradeep Gahalot, APP for State

versus

VINOD KUMAR

.....Respondent

Through: Mr. Abhishek Kumar and Ms. Amita Rajput, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

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 26.03.2013 passed by the learned Additional Sessions Judge (SFTC), East, North East & Shahdara Districts, Karkardooma Courts, Delhi in SC No. 148/2013 arising out of FIR No. 45/2011 registered under Sections 376/506 IPC at P.S. Harsh Vihar, whereby the respondent was acquitted of all charges. Notably, the leave to appeal was granted vide order dated 05.02.2016.

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

“The facts in brief of the prosecution case are that accused Vinod is cousin (father's elder brother's son) and XXX, here in after referred to as the prosecutrix is wife of XXX. The prosecutrix and her husband were residing at XXX. On 20.03.2011 it was a day of Holi. At about 12 - 1 p.m. the prosecutrix was taking rest as she was having pregnancy of 5-6 months.



The accused came in their house and took her husband XXX on the roof and they consumed liquor. Her husband came under the influence of intoxication and could not come down. Accused came down and entered into her house and committed sexual intercourse forcibly with her without her consent. None came to her rescue despite of crying and raising alarm as there was a noise in the street due to Holi festival and her husband was under the influence of intoxication. Accused threatened her not to disclose this fact least he would kill her and her husband. She was terrorized. In the evening her husband came out of the intoxication and came down. She told about the incident to him but he was scared. On 22.03.2011, she disclosed this fact to her mother who took her to the P.S. at about 6 p.m. Police recorded her statement. IO recorded endorsement on her statement and got the FIR No. 45/11 recorded u/s 376/506 IPC. The I.O. inspected the place of occurrence and prepared site plan. The prosecutrix was sent to GTB Hospital where she was medically examined. Doctor also took samples and handed over the same to W/Ct. Shashi Bala. Ct. Shashi Bala handed over the same to I.O. who received the same by preparation of seizure memo. IO also seized clothes which were worn by the prosecutrix and bed sheet vide separate seizure memo and deposited the exhibits in the Malkhana. Accused was arrested on 23.03.2011. In the evening his arrest memo and personal search memo were prepared. On the same day he was also taken to GTB hospital. for his medical examination. Doctor also took his samples and handed over to Ct. Virender who handed over the same to the I.O. and those were also seized vide separate seizure memo. It was observed by the doctor that there was nothing suggestive of the fact that the patient was incapable of performing sexual intercourse. Accused was also interrogated and his disclosure statement was recorded. The samples were sent to FSL and report was collected. IO recorded statements of witnesses and filed a charge sheet against the accused for his trial for the offences punishable u/s 376/506 IPC."

3. Upon committal, the Trial Court framed charges under Sections 376/506 IPC against the respondent herein, to which he pleaded not guilty and claimed trial.

PROCEEDINGS BEFORE THE TRIAL COURT

4. The prosecution examined 11 witnesses in support of its case. The prosecutrix/PW-5 deposed that on 20.03.2011, during Holi, the accused consumed liquor with her husband on the terrace of their house. As her



husband became intoxicated and did not come down, the accused entered her room, committed forcible sexual intercourse against her will, and threatened her with dire consequences if she disclosed it to anyone. She further stated that she narrated the occurrence to her husband when he came down later in the evening, and subsequently also disclosed it to her mother on 22.03.2011, after which the complaint was recorded.

In her cross-examination, PW-2 admitted that she had a mobile phone on the date of incident and that her parents were residing only about 700–800 yards away, but she neither called them nor informed them immediately after the incident. She also admitted that though soon after, she had interacted with her landlady, she did not narrate the incident to her. She further admitted that when the landlady saw her weeping and asked the reason, she only stated “*Vinod ne mere saath battamiji se Holi kheli*”.

5. The husband of the prosecutrix/PW-6 deposed that after coming out of intoxication in the evening, he found his wife absent from home. His landlord informed him that she had gone to her brother-in-law’s house. He further deposed that his sister-in-law informed him that something wrong had happened, and that when he later met the prosecutrix, she narrated that the accused had committed a foul act. He added that his in-laws and others had assaulted him on account of him not taking care of his wife.

In his cross-examination, PW-6 admitted that the landlord told him no such incident had taken place in his house. He further stated that he did not believe the accused would commit such an act. He also admitted that the prosecutrix had previously levelled allegations of dowry harassment against his father.



6. The mother of the prosecutrix/PW-7 deposed that the incident was disclosed to her by her daughter on 22.03.2011, after which she accompanied her to the police station.

7. The MLC of the prosecutrix (Ex. PW-3/A) was proved by PW-3. In her cross-examination, she stated that the medical examination of the prosecutrix took place nearly 72 hours after the alleged incident, by which time there was no possibility that any evidence of rape would be found. She further stated that no conclusive proof of rape was discovered during the prosecutrix's medical examination.

8. The Investigating Officer/PW-10 W/ASI *Suman* proved the site plan (Ex. PW-10/B), the arrest memo of the accused (Ex. PW-2/A), his personal search memo (Ex. PW-2/B), and the seizure of the prosecutrix's clothes and the bedsheet (Ex. PW-5/C). She also exhibited the FSL report (Ex. PW-10/E) and biological division report (Ex. PW-10/F).

9. The remaining witnesses were police officials who deposed as to various aspects of the investigation.

10. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. He admitted that he was the cousin of the prosecutrix's husband. He stated that the prosecutrix and her husband had borrowed Rs.20,000/- from him, which they failed to repay, and that heated exchanges had taken place on 18.03.2011. He alleged that he had been falsely implicated due to this dispute. He opted to lead defence evidence but did not produce any defence witnesses before the Trial Court.

CONTENTIONS

11. Learned APP for the State submitted that the Trial Court erred in not relying upon the testimony of the prosecutrix/PW-2, which is consistent and



inspires confidence. It was argued that the delay in lodging of the FIR was reasonably explained, as the family first attempted to approach other police stations before the case was registered at P.S. Harsh Vihar. It was further contended that the discrepancies in the evidence were minor in nature and did not go to the root of the matter, and that there was no evidence on record to show why the prosecutrix would falsely implicate the respondent.

12. Learned counsel for the respondent submitted that the conduct of the prosecutrix was unnatural, inasmuch as she did not inform her parents or the landlady despite opportunity. He pointed out that her testimony was contradicted by her husband/PW-6 on material particulars. He further argued that the delay in lodging the FIR was not satisfactorily explained. It was also submitted that the medical evidence does not support the prosecution case, and that the surrounding circumstances, including a monetary dispute between the parties, indicate the possibility of false implication.

DISCUSSION & ANALYSIS

13. The prosecutrix/PW-2, in her cross-examination, admitted that she was carrying a mobile phone on the date of the incident but did not make any call to her parents. She further admitted that her parents were residing about 700–800 yards away from her house, but she did not inform them about the incident on the same day. She also admitted that her landlady met her immediately after the alleged occurrence and asked the reason for her weeping, but she did not tell her about the incident and only stated that the accused had played Holi with her in an indecent manner. The prosecutrix's mother/PW-7, to the contrary, stated in her testimony that the prosecutrix did not have a mobile phone.



14. The husband of the prosecutrix/PW-6 gave a version different from that of the prosecutrix. He stated that after regaining his senses in the evening, he found that his wife was not present at home. He deposed that his landlord told him that his wife had gone to her brother-in-law's house, and that his sister-in-law informed him that something wrong had happened with her. He further stated that later on, his wife had narrated the allegation to him. In cross-examination, he admitted that his landlord told him that no such incident had taken place in his house. He also stated that he did not believe that the accused would commit such an act. The prosecutrix, on the other hand, stated in her testimony that she narrated the incident to her husband on the same day in the evening around 6:00 pm, when he came down from the terrace after coming out of his state of intoxication.

15. The medical evidence on record also does not support the case of the prosecution. The MLC (Ex. PW-3/A) was prepared by PW-3, who admitted in her cross-examination that no proof of rape was discovered. The FSL report (Ex. PW-10/E), on the other hand, remained inconclusive. The prosecutrix deposed that the clothes she was purportedly wearing at the time of the alleged offence had been washed by her before being handed over to the police. Despite this, the FSL report records that human semen was detected on the prosecutrix's *salwar*. The Biology Division report (Ex. PW-10/F), on the other hand, shows that testing of the said *salwar* using various serological techniques did not yield any reaction. Moreover, no officer from the concerned FSL was examined by the prosecution to explain the results of the report.

16. Furthermore, the respondent, in his statement under Section 313 Cr.P.C., stated that the prosecutrix and her husband had borrowed



Rs.20,000/- from him and, upon their failure to repay the same, heated exchanges ensued on 18.03.2011, leading to his false implication in the present case on account of the said money dispute.

17. On a perusal of the record, this Court finds that the testimony of the prosecutrix does not inspire confidence, particularly as her version stands contradicted by her husband/PW-6 on material particulars. Her failure to inform either her parents or her landlady, despite having the opportunity and means to do so, further weakens her account. The negative MLC and the inconclusive FSL report also fail to support the prosecution case. While the defence plea of a monetary dispute remains unsubstantiated by evidence, it cannot be wholly ruled out in the backdrop of the inconsistencies noted above. Cumulatively, these circumstances give rise to reasonable doubt regarding the prosecution version. Though the appellant's presence on the day of the incident is not in dispute, and the prosecutrix is stated to have told her landlady that he had played Holi with her in an indecent manner, these facts, by themselves, do not lead to a conclusive inference of rape. The Trial Court, on appreciation of evidence, reached the conclusion of acquittal.

18. Furthermore, in an appeal against acquittal, it is well settled that the appellate court must be slow to interfere unless the Trial Court's view is perverse. 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.””

19. 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.'''

20. 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, accordingly stands dismissed.
21. The personal bond and surety bond furnished are cancelled and the surety stands discharged.
22. A copy of this judgment be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 25, 2025

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(corrected and released on 08.09.2025)