



2025:DHC:9394



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

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Reserved on : 06.10.2025
Pronounced on : 27.10.2025

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CRL.A. 820/2017

RAMPHAL

.....Appellant

Through: Mr. Sundeep Sehgal, Advocate.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
SI Sachin Kumar, P.S. Kalkaji. New
Delhi.

Mr. Abhimanyu Singh, Amicus
Curiae (pro bono) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 374 Cr.P.C., the appellant seeks to assail the judgment of conviction dated 05.08.2017 and the order on sentence dated 10.08.2017 passed by the learned ASJ, SFTC, Saket Courts, New Delhi, in SC No. 62/2017 arising out of FIR No. 892/2014 registered under Section 354A IPC at P.S. Kalkaji.

Vide the impugned order on sentence, the appellant was directed to undergo RI for a period of 2 years alongwith payment of a fine of Rs.25,000/-, and in default thereof to undergo SI for 4 months, for the offence punishable under Section 354 IPC. The benefit under Section 428 Cr.P.C. was extended to the appellant.



2. The prosecution case, as emerging from the statements of the prosecutrix, is that she is a visually impaired woman, aged about 50 years, who had been living for the past 15-16 years near the Kalkaji temple. On the intervening night of 28/29.09.2014, at about 12:00 midnight, during the period of *Navratri*, there was a heavy rush of devotees in and around the temple premises. The prosecutrix, along with her daughter, went to *dharamshala* no. 7 and spread her jute bag in front of its gate to sleep. The appellant, who ran a flower shop nearby, advised her to sleep inside the *dharamshala* since devotees were still moving about. She alleged that sometime later, while she was asleep, she felt someone lifting her *saree* and touching her thighs. She caught hold of the person's hand and said, "*Kaun hai, kya kar raha hai?*" The person replied, "*Kuch nahi kar raha hoon*", upon which she recognized the voice to be that of the appellant. Hearing the commotion, the appellant's wife and other persons nearby reached the spot. On her complaint, an FIR was registered under Section 354A IPC, and her statement under Section 164 Cr.P.C. was also recorded on 29.09.2014 itself.

On the following day, i.e., 30.09.2014, the prosecutrix alleged that the appellant had not only lifted her *saree* and touched her thighs the previous night but had also committed forcible sexual intercourse with her. In her earlier statement, she had not narrated the complete facts, and when her husband came to Delhi from the village, she informed him of the incident, whereafter he asked her to disclose the entire occurrence. Consequently, Section 376 IPC was added, and after filing of the chargesheet, a charge under Section 376(2)(l) IPC was framed by the Trial Court against the appellant, to which he pleaded not guilty and claimed trial.

3. In support of its case, the prosecution examined a total of 9 witnesses,



the material witnesses being the prosecutrix as PW-2, her minor daughter as PW-1, and her husband as PW-3. One *Surender*, an independent person, was examined as PW-4. The MLC of the prosecutrix was proved through Dr. *Karthik*, Senior Resident, who was examined as PW-7. The I.O. of the case, SI *Sanjeev Kumar*, was examined as PW-9, and Inspector *Anupam Bhushan*, who had recorded the earlier statements, was examined as PW-5.

The appellant claimed false implication at the instance of *Surender*, who was also in the business of selling flowers and with whom the appellant had pending litigation. The appellant examined two defence witnesses in support of his case, asserting that no such incident had taken place.

4. Mr. Sundeep Sehgal, learned counsel for the appellant, contends that the Trial Court ought to have completely disregarded the testimony of the prosecutrix, since her allegation regarding the offence of rape was disbelieved and the appellant was consequently acquitted of the charge under Section 376 IPC. It is submitted that the prosecutrix levelled false allegations against the appellant at the behest of *Surender*, who was running a competing business and had prior litigation with the appellant. He has further argued that, even otherwise, the testimony of the prosecutrix does not inspire confidence, as at one stage she stated that she had not taken a bath, whereas at another she stated to the contrary. He has also submitted that the allegations are inherently improbable, as the alleged incident is stated to have occurred in a public place frequented by devotees. Moreover, according to the prosecutrix herself, besides her daughter, the appellant's wife and son were also present at the spot. He contends that the prosecution did not examine any independent public witness apart from *Surender*. It is further urged that the Trial Court failed to properly appreciate the testimony



of the two defence witnesses, one of whom categorically stated that he had been present with the appellant at his shop till the early morning hours of 29.09.2014, whereas the other stated that he had slept in the *dharamshala* on the day of the alleged incident and nothing untoward had happened.

5. The aforesaid contentions are disputed by the learned APP for the State as well as by Mr. Abhimanyu Singh, learned *Amicus Curiae* appointed to represent the victim. Learned APP contends that the testimony of the prosecutrix stands corroborated by the deposition of her daughter.

6. Mr. Singh, learned *Amicus Curiae*, submits that the victim, though visually impaired, identified the appellant by recognizing his voice. It is submitted that the prosecutrix has been residing near the place of the incident for the past 15-16 years, and as the appellant runs a flower shop in the same vicinity, he was well known to her. It is further contended that the prosecutrix identified the assailant through his voice both at the time of the commission of the offence and during trial. The testimony of a disabled prosecutrix cannot be considered weak or inferior in any manner, and in this regard, reliance is placed on the decision of the Supreme Court in Patan Jamal Vali Vs. State of Andhra Pradesh, reported as (2021) 16 SCC 225.

VOICE IDENTIFICATION

7. The prosecutrix, in her deposition, stated that she used to beg at Kalkaji temple and had been living in the temple premises for the last 15-16 years. She was blind in both eyes and used to sleep in front of *dharamshala* no. 7. On 28.09.2014, at about 12:00 midnight, it being the 5th day of *Navratri*, there was a long queue outside the temple. The temple was closed, and the police were dispersing the crowd. She went to the *dharamshala* along with her daughter and, after spreading a jute bag, lay down there. The



appellant, who was running a *phoolmala* shop at the *dharamshala*, woke her up and told her to lie down at another place as customers had been coming. She went towards the *chabutra* and lay down to sleep there. After some time, when she was asleep, she felt some wetness in her *saree* and some sensation on her thighs. She caught hold of that person's hand and asked him what he was doing, to which the person replied that he was looking for his slippers. She recognised the voice to be of the appellant. At this, her daughter, who was also present, started crying. The appellant's son then called his mother. She further stated that when the appellant did the act, she was asleep, and as he was trying to put down her *saree*, she realized that a wrong act had been committed. During the recording of her testimony, the Trial Court made the prosecutrix hear the voices of other persons present in Court; and when the appellant spoke, she identified his voice.

In her cross-examination, she admitted that *Surender Singh*'s flower shop was in the same *dharamshala* where the appellant also had a shop. She denied the suggestion that she was aware of any court cases pending between the two. She stated that she realized the wrong act only when the appellant was putting down her *saree*. She further claimed that she had not taken a bath when she was taken for medical examination and had not bathed for the entire day and night. She denied the suggestion that no incident had taken place and that she and her daughter had been tutored by *Surender Singh* to falsely depose against the appellant.

8. The victim's daughter, aged about 11 years, was examined as PW-1. During her deposition, she stated that while her father was living at their village in *Mahoba*, her mother resided at Kalkaji temple. On the intervening night of the incident, she and her mother were sleeping. When she woke up



on hearing her mother's voice, she saw the appellant asking her mother to keep quiet. She started weeping. She saw the appellant lifting the *dhoti* of her mother. She also stated that there was a long queue at the temple and identified the appellant.

In her cross-examination, she stated that though she usually lived with her father, she had been staying with her mother for about two days at the time of the incident. She reiterated that she saw the appellant lifting the *dhoti* of her mother when she woke up on hearing the noise made by her. She denied the suggestion of tutoring.

9. *Surender*, the independent witness, deposed that he sells flowers and garlands near *dharamshala* no. 7, Kalkaji temple, and that while his shop was on one side of the *dharamshala*'s gate, the appellant's shop was situated on the other side of the gate. On 28.09.2014, at about 12:00 midnight or 01:00 AM, he heard the voice of a lady coming from the said *dharamshala*. He, along with other shopkeepers, went inside the *dharamshala* and met the prosecutrix, who informed them that the appellant had raped her. The appellant, along with his wife, was present at the spot.

In his cross-examination, he stated that about 20-25 persons had gathered at the *dharamshala* on hearing the noise. He admitted that there were two cases pending between him and the appellant. His statement was recorded two days after the incident. A suggestion was given that he had accompanied the prosecutrix on the day of recording of her testimony on 10.04.2017. Pertinently, the Trial Court had not issued summons for *Surender*'s appearance for that day. Though he initially denied the said suggestion, he later admitted that he had taken diet money from the Court for 10.04.2017. He then admitted that on that day he had come to Court late,



after the evidence of the prosecutrix had been completed. He further admitted that he had brought the prosecutrix to the Court at about 10:00 AM, dropped her there, and thereafter went to his own work in *paan mandi*. He denied the suggestion that he had involved the appellant owing to acrimonious relations arising from pending litigation between them. A further suggestion was put to him that the prosecutrix had been used by him to falsely implicate the appellant, which he denied.

10. The husband of the prosecutrix was examined as PW-3. His testimony is not relevant as he was not a witness to the incident in question. He deposed that he was living in *Mahoba* and that the prosecutrix told him about the alleged incident of rape on 28.09.2014; however, the testimony of the prosecutrix is silent on this aspect.

MLC

11. Dr. *Karthik*, Senior Resident, Department of Obs. & Gynae, AIIMS, New Delhi, was examined as PW-7. He stated that he had medically examined the prosecutrix, who was brought to the hospital on 30.09.2014 with an alleged history of sexual assault. During examination, her hymen was found torn. He collected the requisite samples and handed them over to Ct. *Amita*. In his cross-examination, he stated that no internal or external injury was noted by him during the medical examination of the prosecutrix.

12. Inspector *Anupam Bhushan*, who was on duty at Kalkaji temple on 29.09.2014 on account of a *mela* being held during the period of *Navratri*, was examined as PW-5. In his deposition, he stated that at about 10:00-10:30 a.m., the prosecutrix came to the temporary police post and alleged only molestation. He recorded her statement, endorsed it, and sent the *rukka* for registration of the case. He further stated that the prosecutrix's statement



under Section 164 Cr.P.C. was recorded by the concerned Magistrate on the same day.

He deposed that on the following day, i.e., 30.09.2014, the prosecutrix again came to the P.S. and gave another statement, alleging that the appellant had raped her on the intervening night of 28/29.09.2014.

In his cross-examination, he admitted that he had made inquiries from 20-25 persons but had not recorded their statements. He further admitted that he had not issued any notice under Section 160 Cr.P.C. to any of those persons.

FSL

13. Surprisingly, though the samples collected during investigation were sent for FSL examination and the FSL report was also received, for reasons best known to the I.O., it was not exhibited. A perusal of the same shows that it records non-detection of any semen stains on the exhibits collected from the prosecutrix.

14. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case, stating that a false case had been instituted against him on account of animosity with *Surender*. He examined two witnesses in his defence viz. *Kailash* and *Vasudev*, who stated that on the intervening night of 28/29.09.2014, they had come to offer prayers at the temple and supported the case of the appellant.

Kailash (DW-1), a resident of New Delhi, stated that he had gone to the shop of the appellant at about 10:30 p.m., where they remained till about 02:30-03:00 a.m. Throughout that time, the appellant was at his shop selling flowers and coconuts to customers, as there was a heavy crowd around the temple due to the festivities. In his cross-examination, he denied the



suggestion that he had not gone to the Kalkaji temple on 29.09.2014. He stated that he was deposing truthfully in defence of the appellant at the request of his son, as he was present with the appellant on the date of the alleged incident.

Santosh Kumar (DW-2), also a resident of Delhi, stated that on 28.09.2014, he had visited the Kalkaji temple and, as he could not perform *darshan* that day due to the crowd, he stayed back overnight in the *dharamshala*. There were about 40-50 people sleeping there that night in the open veranda, and no untoward incident had occurred. He left the temple premises at about 5:00 a.m. and did not meet the appellant during his stay. In cross-examination, he stated that he used to visit the temple twice a year during *Navratri* and denied the suggestion that he had not gone to the temple or stayed in the *dharamshala* on the night of 28.09.2014.

15. It is pertinent to note that the Trial Court acquitted the appellant of the charge under Section 376 IPC, noting that the prosecutrix had not alleged commission of rape by the appellant in her initial statement on which the FIR came to be registered. She also did not make any such allegation in her statement recorded under Section 164 Cr.P.C. The allegation of rape, having surfaced for the first time on 30.09.2014, was held to be an afterthought and a material improvement. Accordingly, disbelieving the allegations of rape, the Trial Court convicted the appellant only for the offence under Section 354 IPC.

16. Bearing in mind the aforesaid material improvement, this Court proceeds to analyse the testimony of relevant witnesses in the light of the facts and contentions raised. A careful perusal of the testimony of the prosecutrix shows that she had stated that at the time of the alleged incident,



she was sleeping in an open place near the *chabutra* outside the *dharamshala*, though there is some variance on this aspect. At one place, it has come on record that she was sleeping inside the *dharamshala*, while at another, that she was sleeping near the *chabutra* outside it. Be that as it may, it is conceded that the place where she was sleeping was an open space; that it was the 5th day of *Navratri*; and that there was a large crowd of devotees around at the time when the incident is stated to have taken place, i.e., about 12:00 midnight on the intervening night of 28/29.09.2014. Regardless of the presence of crowd, the prosecutrix herself stated that when the incident occurred, the appellant's son and wife were also present. She alleged that the appellant committed a wrong act by lifting her *saree* and at that time she was asleep. She realized the act only when the appellant was trying to put down her *saree*. According to the witness, her daughter was sleeping beside her.

The daughter, in her deposition, stated that she was sleeping beside her mother and, on hearing her mother's voice, woke up and saw the appellant asking her mother to keep quiet. She saw the appellant lifting the *dhoti* of her mother. However this part of her testimony is in complete contrast to the version of prosecutrix. Concededly, as per the prosecutrix, she realized about the incident only when the appellant put down her *saree*, upon which she raised an alarm and the appellant's wife also reached the spot, at which stage the appellant asked her to keep quiet. Thus, from the above sequence of events, it is clear that the daughter of prosecutrix did not witness any incident. Her statement that she had seen the appellant lifting the *dhoti* of her mother is in complete contrast to the testimony of the prosecutrix, as she had claimed to have woken up when she heard the voice



of her mother.

17. There is no quarrel with the proposition that a disabled witness is as competent and credible as any other witness. The Supreme Court has already held it to be so in Patan Jamal Vali (supra), a relevant extract from which is reproduced hereunder:-

"48. This kind of a judicial attitude stems from and perpetuates the underlying bias and stereotypes against persons with disabilities. We are of the view that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered weak or inferior, only because such an individual interacts with the world in a different manner, vis-à-vis their able-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight. It goes without saying that the court appreciating such testimony needs to be attentive to the fact that the witness' disability can have the consequence of the testimony being rendered in a different form, relative to that of an able-bodied witness. In the case at hand, for instance, PW 2's blindness meant that she had no visual contact with the world. Her primary mode of identifying those around her, therefore, is by the sound of their voice. And so PW 2's testimony is entitled to equal weight as that of a prosecutrix who would have been able to visually identify the appellant."

18. Another material aspect concerns the reporting of the incident. The occurrence is stated to have taken place on the intervening night of 28/29.09.2014. The prosecutrix, a married woman aged about 50 years, lodged her complaint the following morning, initially alleging only molestation, with the allegation of rape surfacing only subsequently. Her MLC, prepared soon thereafter, does not reflect any internal or external injuries. In these circumstances, and bearing in mind that a portion of her testimony regarding the offence of rape has already been disbelieved by the Trial Court, it is now to be seen whether the remaining portion of her testimony can be considered reliable enough to uphold the appellant's



conviction under Section 354 IPC.

19. In the aforesited backdrop of facts and position of law, this Court has noted that the daughter of the prosecutrix had not seen the incident and had only seen a crowd, including the appellant. The appellant's presence at the spot is natural, as he had a flower shop that was carrying on business at that point of time, it being *Navratri*. The only other key witness examined, i.e., *Surender*, had also not witnessed the incident and merely claimed to have reached the spot after hearing the noise. The MLC and the FSL report do not lend any support to the case of the prosecution.

On the other hand, to prove his innocence, the appellant has examined two witnesses in his defence, one of whom stated that he was with the appellant at the relevant time, while the other had claimed that he had slept in the *dharamshala*. Both of the defence witnesses have claimed that no incident as alleged had occurred involving the appellant. It is the contention of the appellant that the conduct of the independent witness, *Surender*, casts a shadow of doubt on his credibility, as he admitted to having remained present during the deposition of the prosecutrix even though he had not been summoned. The incident is stated to have occurred in an open place near the *dharamshala* at about 12:00 midnight, when there was a large crowd of devotees around. In such circumstances, the occurrence of the alleged act, as narrated, appears inherently unlikely. The prosecutrix has been living in Delhi for the past 15-16 years and begging near the Kalkaji temple, while her husband resides in his native village. Notably, the allegation of rape was made only after the husband's arrival the next day. There are also inconsistencies *inter se* the versions, and neither the independent witness nor the daughter provide direct ocular support to the prosecution case.



20. The testimony of a victim can be classified into three categories: (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. It is settled law that insofar as the third category of cases is concerned, the Court must be circumspect and look for corroboration of material particulars by direct or circumstantial evidence, as a rule of prudence. In this regard, gainful reference can be made to the decision of Supreme Court in Nirmal Premkumar & Anr. v. State Rep. by Inspector of Police, reported as **2024 SCC OnLine SC 260**, wherein while analyzing law on this aspect, it was observed as under:-

"15. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis of the incident. The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded."

21. On a holistic reading of the entire evidence, this Court is of the opinion that the testimony of the prosecutrix falls in the third category, being wholly unreliable, not only because the material aspect of it is found to be untrustworthy but also because it does not find any corroboration on the allegations against the appellant qua which he has been convicted. Though it is settled law a conviction can rest on sole testimony of prosecutrix but considering the fact-situation noted hereinabove, this Court is of the considered opinion that benefit of doubt ought to be extended to the appellant.



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22. In view of the above, the present appeal succeeds. The impugned judgment and the order on sentence are set aside, and the appellant is acquitted of the charge.
23. The present appeal is disposed of in the above terms.
24. The bail bonds furnished by the appellant stand cancelled and his surety is discharged.
25. This Court also puts on record its appreciation for the valuable assistance provided by the learned *Amicus Curiae* appointed to represent the victim.
26. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

**MANOJ KUMAR OHRI
(JUDGE)**

OCTOBER 27, 2025

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