



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

% Reserved on : 17.11.2025
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+ **CRL.A.1060/2018**

V

.....Appellant

Through: Mr. S.S. Ahluwalia and Ms. Rimp
Rohilla, Advocates

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
Ms. Bahuli Sharma, Advocate
(Amicus Curiae) with Ms. Ridhi
Arora, Advocate for victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal pertains to the judgment of conviction dated 29.05.2018 and order on sentence dated 03.07.2018 rendered by the Sessions Court in relation to the trial held in the context of FIR no.75/2015 registered under Sections 376(2)(f),(i),(j),(n)/506 IPC and 6 of POCSO Act at PS: Timarpur, Delhi.

While convicting the appellant under the aforesaid Sections, the Sessions Court also sentenced him to undergo Rigorous Imprisonment (RI) for ten years along with fine of Rs.5000/- and in default thereof, to undergo Simple Imprisonment (SI) for six months for the offence punishable under Section 6 POCSO Act; RI for two years along with fine of Rs.2000/- and in



default thereof, SI for two months for the offence punishable under Section 376(2)(f)(i)(n) IPC and SI for two months for offence punishable under Section 506 IPC. It was also directed that all the sentences shall run concurrently. Benefit of Section 428 Cr.P.C. was also given to the appellant.

The sentence of the appellant was suspended by this Court on 30.11.2018.

2. The investigation commenced with the recording of DD 20A on 29.01.2015 at 11.00 AM on information furnished by the school teacher where the victim was studying *qua* the victim being raped by her step father since many days. The victim's statement was recorded under Section 161 and 164 Cr.P.C. in which she claimed that she was reading in Class-III and her step father used to do *badtameezi* with her. She clarified that the appellant would come home drunk and after disrobing her, he would lie upon her. He also put his urinating part into her urinating part at the night time. She further alleged that this was done when her brother was sleeping and when her mother came to know he had also beaten her. The appellant had also threatened her not to disclose the incident or else he would cut her into pieces with a knife. She further claimed that she had informed her school teacher 'J' in school, her own mother and the mother of her friend 'S' and that the incident was repeatedly done on alternate day for past one month.

3. The child victim's medical examination was carried out and on completion of the investigation, the charge-sheet came to be filed. Charges were framed under Sections 376(2)(f)(i)(n)/506 IPC and Section 6 POCSO Act, to which the appellant claimed not guilty and prayed for trial.

4. In the present case, learned counsel for the appellant has assailed the



impugned judgment by stating that the testimony of the victim does not inspire confidence as the same not only carries improvements, but in her cross-examination, she had categorically stated that no *galat kaam* was ever done with her by her father. She further denied the case of the prosecution against the appellant, claiming it to be false implication done at the instance of her teacher 'J'.

It was next contended that *dehors* above, the medical examination of the child victim also does not reveal any recent sexual activity as no fresh injury was noted in spite of the allegation that the rape was repeatedly committed for past one month. It was also submitted that the FSL report also does not support as no semen could be detected on any of the exhibits. Lastly, it was contended that even the teacher 'J' as well as the mother who had been examined had also not fully supported the case of the prosecution.

5. The submissions of the counsel for the appellant were contested by the learned APP as well as learned *amicus*, Ms Bahuli Sharma, Advocate appointed to represent the child victim. Learned Amicus contended that the present case needs to be considered in the socio-economic background of the child victim who had stated that her father had expired and that the appellant is her step father. The cross-examination of the victim also needs to be seen in the light of the fact that the same was carried out after one year after recording of her testimony. Further, the MLC of the child victim does record that her hymen was torn.

6. As noted above, during the investigation, statement of the prosecutrix was recorded under Section 161 as well as Section 164 Cr.P.C. In the latter statement, she claimed that she had informed about the incident to her friend 'S' who then told about the incident to her mother and her mother advised



her to tell about the incident to her teacher.

7. The child victim was examined as PW-8. In her testimony, she stated that the appellant used to disrobe her and also did *galat kaam*. On being asked, she clarified that: “*mere Papa apna susu mere susu wali jagah per dalta tha*”. Further, she clarified that the act of rape was done during night and when her mother asked him to desist from his wrong acts, the appellant threatened her mother to the extent that he would kill her by knife in the night if she would disclose the same to anyone. She deposed that she had conveyed to her friend ‘S’ about the incident and thereafter to her teacher ‘J’. She stated that prior to informing the school teacher, the appellant had done *galat kaam* with her for about one month. The teacher ‘J’ had called the police on 100 number and the teacher had also called her mother to school. She further stated that the appellant used to be under the influence of liquor and when she tried to raise alarm, the appellant used to gag her mouth. She also stated that first she informed about the incident to her friend ‘S’ who then told her mother, who advised her to speak to teacher about the incident. She further admitted that she had earlier visited the court and her statement was recorded, and identified her statement under Section 164 CrPC as Ex. PW8/A. She also identified the appellant.

8. The aforesaid examination-in-chief was recorded on 04.03.2016. The child victim was cross-examined on 25.05.2017, in which she stated that her house consists of one room and that the appellant did not commit any wrong act with her and in fact, she was instigated. She denied the suggestion that prior to one week from the present complaint, her father visited the school and her step father met with the teacher and there were heated arguments amongst a male teacher, teacher ‘J’ and her father. She stated that her father



had never visited her school. She further denied that her family had strained relations with the family of 'S', to the contrary she stated that they did not even know each other. She admitted as correct the suggestion that she was annoyed with her father as he used to ask her strictly to focus on studies due to her bad grades and that is why she implicated him. She further claimed to be correct that she had made a complaint against her father at the instance of teacher 'J'. She further admitted to be correct that she had never made any complaint against her step-father either to her mother or to her friend 'S' prior to the present complaint. She also admitted to be correct that her marriage got solemnized after recording her statement on 04.03.2016.

9. The child victim's mother was examined as PW-7. She stated that her earlier husband 'P' was dead and after her death, she remarried the appellant. The victim was born out of her earlier marriage. She turned hostile and stated that the behaviour of the appellant was good towards her children and he had not done anything wrong with the victim. She stated that the thumb impression of the victim and of her was taken forcibly. She was declared hostile and in cross-examination by the learned APP, she stated that the appellant had not done any wrong act with the victim at any point of time. She further denied any incident of threat being given to her. She was confronted with her earlier statement under Section 161 CrPC, exhibited as Ex. PW7/C, wherein it was stated otherwise.

On the aspect that she was called to school, she admitted the same, but claimed to have no knowledge if any statement was given by the victim. She was again cross-examined after few days when she again denied all the suggestions pointing to the guilt of the appellant. She also did not identify the clothes of the child victim. In cross-examination, on behalf of the



appellant, she admitted to be correct that her daughter had never told her if any wrong act was done by the appellant with her.

10. The mother of the 'S' (the friend of the victim) was examined as PW-9. She claimed that the victim told her daughter that her step father had committed wrong act with her. As she did not support further aspects of her statements, she was cross-examined by learned APP wherein she admitted to be correct that she had gone to school to pick up her daughter as the victim had told about the incident to her daughter in the school. The child victim had told her in school that her father used to remove her clothes and climb on top of her, and that her mother knew but she was threatened by the appellant. However, in cross-examination by the appellant, she stated that the victim had not stated about wrong act by the appellant either to her or to her teachers in her presence. She categorically deposed that she had not seen the child victim deposing against her father in the school about any wrong act. She was re-examined by APP as to which of her statement was correct, her examination-in-chief or her cross examination on the aspect of her presence when the child told about the *galat kaam* to her teacher, to which the witness answered that the second version was correct.

11. School teacher 'J' was examined as PW-2. She deposed that the child victim had told her that her father used to do *badtamizi* with her. Upon enquiry, she explained that removing her clothes, her father used to lie upon her. She informed the same incident to the Principal of school.

As she did not state about the act of penetration, she was cross-examined by the APP wherein she denied that the victim told about the insertion of penis into the vagina of the child victim. She also denied the suggestion that the mother of the child victim in her presence disclosed to



the Principal that that two days before 04.02.2015, she had seen accused committing sexual assault on victim and when she objected, the appellant beat the mother of the victim and also threatened to kill her. She was confronted with her statement under Section 161 CrPC, exhibited as PW2/A, with respect to her various deviations.

12. The Principal of the school was examined as PW-3. He deposed that on 29.01.2015, the victim had informed the teacher 'J' that her father used to commit rape with her. He deposed that he had also inquired from the victim and she narrated the same thing to him, on which he called the mother of the victim in the school. He also proved the age of the child victim through the admission/withdrawal register (Ex.PW3/A), as per which the victim was admitted in the school on 06.04.2013 in 2nd Class and her date of birth was 04.11.2005. In cross-examination, nothing which can be extracted except that while he was visiting the class room, the victim was studying in Class-III/B.

13. That brings us to the medical examination report of the child victim (Ex. PW4/A), which was proved through the testimony of Dr Kamini Singhal (PW-4) and Dr Sony Sohanee (PW-6). PW-6 stated that on inspection of child victim's genital area, her hymen was torn, and vaginal discharge was present. However, the appellant had already taken bath and changed clothes since last incident of sexual assault.

In cross-examination, she stated that though she did not mention that the hymen was old torn, but on examination, she found that the hymen was old torn. There was no sign of fresh injury and the hymen torn suggested an old tear. She denied the suggestion that she did not medically examine the victim and the medical report was prepared at the dictation of police. It was



also denied that she was deposing falsely.

14. As per the FSL report, semen was not detected on any of the exhibits.

15. In his statement under Section 313 CrPC, the appellant claimed false implication, He said that the victim used to go to school early at 6.30 AM whereas her school started at 7.30 AM, due to which he had an altercation with 'J' in the school office. Since he repeatedly cautioned and warned the victim who was not focussing on studies, 'J' used this resentment to falsely implicate him.

16. It is trite law that the evidence of prosecution witnesses who turn hostile cannot be washed off or rejected *in toto*. The evidence merits closer scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. After employing caution and separating the truth from the exaggeration, lies and improvements, the Court can come to the conclusion that the residuary evidence is sufficient to secure a conviction. Whether the testimony of the hostile witness can be relied upon stands answered by the Supreme Court in Selvamani v. State Rep. by the Inspector of Police¹, wherein it has been held as under:-

"10. This Court, in the case of C. Muniappan and Others v. State of Tamil Nadu¹⁰, has observed thus:

"81. It is settled legal proposition that :(Khujji case, SCC p. 635, para 6) '6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.'

82. In State of U.P. v. Ramesh Prasad Misra, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused

¹ 2024 SCC OnLine SC 837



but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *BaluSonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia v. State of Punjab*, (2006) 13 (2010) 9 SCC 567 : 2010 INSC 553SCC 516], *Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh v. State*, (2009) 6 SCC 462.

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. *Vide Sohrab v. State of M.P.*, (1972) 3 SCC 751, *State of U.P. v. M.K. Anthony*, (1985) 1 SCC 505, *BharwadaBhoginbhaiHirjibhai v. State of Gujarat*, (1983) 3 SCC 217, *State of Rajasthan v. Om Prakash*, (2007) 12 SCC 381, *Prithu v. State of H.P.*, (2009) 11 SCC 588, *State of U.P. v. Santosh Kumar* (2009) 9 SCC 626 and *State v. Saravanan*, (2008) 17 SCC 587”

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the



prosecutrix in her examination-in-chief.”

17. In the present case, the child victim has, from her initial statement to the police on 29.01.2015, stated that the appellant used to commit rape upon her at night since last month on alternate days. She has again described the act of penetration in her statement under Section 164 CrPC recorded on the next day, and even in her examination-in-chief, recorded on 04.03.2016. Not just the act, even other aspects of her account also remained consistent through these three statements. However, in her cross-examination, which was conducted on 25.05.2017, i.e. almost 1 year and 3 months after examination-in-chief, she turned hostile and herself stated that no *galat kaam* was committed with her. She admitted that her marriage had been solemnised after her examination-in-chief.

18. Pertinently, though during cross-examination the victim did not speak in line with her examination in chief, she also did not admit the suggestion given by defence that a week prior to the complaint, the appellant met ‘J’- the school teacher and had an altercation with her. Interestingly, the appellant had taken the defence that he had an altercation with the teacher ‘J’, who got him falsely implicated. In fact, the child victim deposed that the appellant never even visited her school, thus, taking the wind out of the appellant’s sail. She also denied any strains between her friend ‘S’ and her family. Thus, overall, she has remained consistent and the cross-examination appears to be a lone aberration. Her entire testimony cannot be effaced from the record only on this account. In this regard, it has been held by the Supreme Court in Khujji v. State of M.P.², that:-

² (1991) 3 SCC 627



“6. ...But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court — Bhagwan Singh v. State of Haryana [(1976) 1 SCC 389 : 1976 SCC (Cri) 7 : (1976) 2 SCR 921] , Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233 : 1976 SCC (Cri) 566 : AIR 1977 SC 170] and Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59 : (1980) 1 SCR 95] — that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

7. ...The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination-in-chief. Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor is his statement that he had come to purchase vegetables unacceptable. We do not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness who had no cause to give false evidence against the appellant and his companions. We are, therefore, not impressed by the reasons which weighed with the trial court for rejecting his evidence. We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.”

19. The teacher ‘J’, examined as PW2, has corroborated the child victim’s deposition to the extent of the victim telling her that the appellant committed *badtameezi* with her, which she described as removing his clothes and laying down on top of her. However, she turned hostile on the aspect of stating about penetration. The Principal, examined as PW3, has also stated that ‘J’ told her that the appellant used to committed rape on the victim.



Thereafter, the Principal himself interacted with the victim who narrated the same thing to him. The same fact was also narrated to him by the mother of the victim.

20. Support for the prosecution case can also be found in the MLC of the child victim, prepared on the same day and hence a contemporaneous document, which records history of sexual assault by the father. In medical examination, the child victim's hymen was found torn. Since the last incident was a day before the examination, the clothes seized were not what was worn at the time of incident, and she had also taken a bath, which would explain the negative FSL report.

21. On an overall view of the facts and circumstances, it appears that, after subjecting the testimony of the prosecutrix to close scrutiny, the residuary evidence which remains after dealing with the version where she turns hostile, accompanied by the residuary evidence of PW2 and PW3, and corroborated by the MLC, is enough to uphold the conviction.

22. Consequently, the appeal is dismissed and the impugned judgment convicting the appellant, as well as the order on sentence, are upheld.

23. The appellant's bail bonds are cancelled and sureties discharged. He is directed to be taken into custody to serve the remainder of his sentence.

24. Copy of the judgment be communicated to the Trial Court, as well as concerned Jail Superintendent for information and necessary compliance.

25. Before parting, this Court records its appreciation for the valuable assistance rendered by Ms. Bahuli Sharma, learned Amicus Curiae (pro bono).

**MANOJ KUMAR OHRI
(JUDGE)**

NOVEMBER 27, 2025/pmc