



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

% Date of Decision: 28.08.2025

+ **CRL.A. 1023/2017**

STATE GOVT OF NCT OF DELHIAppellant

Through: Mr. Pradeep Gahalot, APP for State

versus

DEEPAKRespondent

Through: Mr. Biswajit Kumar Patra and Ms.
Khushboo Gupta, 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 08.06.2016 passed by the learned Additional Sessions Judge (SFTC), Saket Courts, New Delhi in SC No. 240/2014 arising out of FIR No. 659/2014 registered under Section 376 IPC at P.S. Govind Puri, whereby the respondent was acquitted of all charges. Notably, the leave to appeal was granted vide order dated 07.11.2017.

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

“On an information regarding rape vide DD No. 23B dated 21.06.2014, the police party reached the spot at XXX where they met the prosecutrix (name withheld to protect her identity). She got recorded her statement alleging that she is a widow and mother of two sons. Her husband has expired about four years ago. About 10/15 days ago, her brother-in-



law(devar) Deepak forcibly committed sexual intercourse with her. When she told the incident to her mother-in-law, she fought with her and threatened to turn her out from the house. She alleged that her mother-in-law used to quarrel with her.”

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

PROCEEDINGS BEFORE THE TRIAL COURT

4. The prosecution examined 8 witnesses in support of its case. The prosecutrix/PW-2 deposed that she is a widow and mother of two children. On the date of the incident, her *sasural* members, including her mother-in-law, her sister-in-law, her brother-in-law and her younger son, had gone to Kaithal, Haryana, leaving her, her elder son and her *devar*/accused *Deepak*, at home. She stated that her mother-in-law, who worked as a cook, had asked her to go in her place to cook food at Govindpuri. She returned home around 7:00 p.m., while the accused came from duty around 8:00 p.m. Her son was unwell, and after he fell asleep, the accused gagged her mouth with the *chunni* of his sister and forcibly committed sexual intercourse with her throughout the night and again the following morning. She deposed that she begged for mercy, but the accused slapped her and threatened to kill her and her son if she disclosed the matter. After her mother-in-law and others returned, she narrated the incident to her mother-in-law, who dismissed it as a family matter, blamed her instead, and told her not to disclose it outside. She further stated that she overheard the accused telling his mother that he would rather set himself on fire with a gas cylinder than marry her. She also stated that her mother-in-law did not allow her to leave the house for three days, after which she escaped and went to the police station, where her



complaint (Ex. PW-2/A) was recorded. Her statement under Section 164 Cr.P.C. was exhibited as Ex. PW-2/D.

In her cross-examination, PW-2 admitted that she had made a 100 number call before her statement was recorded. She admitted that she had not handed over to the police the *chunni* allegedly used to gag her. She also admitted that her house was in a narrow *gali* where voices could be heard outside if spoken loudly. She further admitted that she did not mention in her earlier statements certain facts that she later deposed. She denied suggestions that she wanted to marry the accused and had threatened to implicate him when he refused.

5. The Investigating Officer/PW-6 SI *Madhu Sharma* deposed regarding the investigation. She stated that on 21.06.2014, upon receipt of DD No. 23B, she reached the spot of the incident. She recorded the statement of the prosecutrix (Ex. PW-2/A), prepared the site plan (Ex. PW-6/B), arrested the accused vide memo Ex. PW-6/C, conducted his personal search and prepared memo Ex. PW-6/D, and seized articles vide memo Ex. PW-6/E. In her cross-examination, she admitted that no *chunni* was found at the spot.

6. The doctor who examined the prosecutrix at AIIMS deposed as PW-8 and proved the MLC of the prosecutrix (Ex. PW-2/B). She stated that since the prosecutrix was not willing to undergo any examination, the same was not conducted. She further stated that a urine pregnancy test was carried out, which came out negative.

7. The remaining prosecution witnesses were formal in nature and deposed as to various aspects of the investigation.

8. After closure of prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. He admitted that the prosecutrix



was married to his brother, who had committed suicide due to family tensions, and that she continued to live at her in-laws' house. He denied all allegations and stated that he had been falsely implicated because the prosecutrix wanted to marry him and, upon his refusal, she made a false complaint. He did not lead any defence evidence.

CONTENTIONS

9. Learned APP for the State submitted that the Trial Court erred in not believing the testimony of the prosecutrix/PW-2, which is consistent and inspires confidence. He argued that the delay in lodging the FIR was reasonably explained, that the discrepancies in her statements were minor and did not go to the root of the matter, and that her refusal to undergo internal examination could not, by itself, discredit her entire testimony. It was further contended that there was no evidence on record to show that the prosecutrix had attempted to falsely implicate the respondent.

10. Learned counsel for the respondent submitted that the conduct of the prosecutrix was unnatural, inasmuch as she did not seek help from neighbours despite the alleged incident continuing throughout the night and the following morning. He pointed out that in her cross-examination she admitted that the *chunni* allegedly used to gag her was never handed over to the police. He further argued that the delay in lodging the FIR was not satisfactorily explained, and that the medical and forensic evidence did not support the prosecution case. It was also submitted that the defence plea of false implication on account of the prosecutrix wanting to marry the accused was plausible in the circumstances.

DISCUSSION & ANALYSIS

11. In her initial complaint (Ex. PW-2/A) recorded on 21.06.2014, the



prosecutrix alleged that the incident had taken place about 10–15 days earlier. In her statement under Section 164 Cr.P.C. (Ex. PW-2/D), she again stated that the accused had committed forcible sexual intercourse with her on one earlier occasion. However, in her deposition before the Trial Court she improved upon her earlier statements and deposed that the accused had forcibly committed sexual intercourse with her throughout the night and again the following morning.

12. In her cross-examination, she admitted that the *chunni* with which she claimed the accused had gagged her was never handed over to the police. She also admitted that her house was situated in a narrow *gali* where sounds could be heard outside if spoken loudly. Yet she did not call out for help, though she alleged that the incident continued for several hours through the night and into the morning.

13. The medical evidence on record does not support the prosecution case. The MLC of the prosecutrix (Ex. PW-2/B) records that she denied any examination. No obvious external injuries were noted. The MLC of the accused (Ex. PW-7/A) merely records that he was capable of performing sexual intercourse under normal circumstances, which does not advance the prosecution case.

14. The timeline of events also raises doubt. In her deposition, the prosecutrix stated that after the incident her mother-in-law did not allow her to leave the house for 3 days, and that she thereafter managed to go to the police station where her statement was recorded. However, in her complaint dated 21.06.2014 (Ex. PW-2/A) she alleged that the incident had occurred 10–15 days earlier. She further deposed that her medical examination, by which the MLC (Ex. PW-2/B) was prepared, took place the day after her



statement was recorded, whereas the MLC itself bears the date 21.06.2014. Significantly, the history recorded by the examining doctor, no doubt based on the prosecutrix's own narration, states that sexual assault had taken place about one month earlier.

15. In his statement under Section 313 Cr.P.C., the respondent denied the allegations and stated that the prosecutrix wanted to marry him, and upon his refusal she threatened and falsely implicated him. This plea is partially corroborated by the prosecutrix's statement under Section 164 Cr.P.C., wherein she has stated "*Maine apne devar ko kaha ki mujhse shaadi kar lo. Devar ne 'haa' kar dee lekin saas aur nanad ne kaha ki usse bol mai cylinder laga ke aag laga lunga, lekin shaadi nahi karunga.*" In the peculiar circumstances of this case, the respondent's plea of false implication cannot be ruled out, especially when seen against the other contradictions and omissions in the prosecution case.

16. Furthermore, 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.””

17. 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.’’

18. On a thorough appraisal of the material on record, it is observed that the prosecutrix's testimony is not free from material contradictions, her conduct appears unnatural, and the medical evidence on record does not support the prosecution case. The delay in lodging of the FIR and the inconsistencies in the prosecutrix's versions further weaken her account. The defence plea of false implication, in the peculiar circumstances of this case, cannot be ruled out. These factors, taken together, create reasonable doubt, which enures to the benefit of the accused.

19. This Court, therefore, finds no reason to interfere with the impugned judgment. The present appeal, alongwith pending applications, if any, is accordingly dismissed.

20. The personal bond and surety bond furnished are cancelled and the surety stands discharged.

21. A copy of this judgment be communicated to the concerned Trial Court.

**MANOJ KUMAR OHRI
(JUDGE)**

AUGUST 28, 2025

nb