



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

% Reserved on : 27.10.2025  
Pronounced on : 28.10.2025

+ **CRL.A. 163/2020**

STATE (NCT OF DELHI) .....Appellant  
Through: Ms. Shubhi Gupta, APP for State with  
SI Mahavir, PS, DBG, Road  
*Versus*  
BHEEM KUMAR JAISWAL .....Respondent  
Through: Mr. Iqbal Shamsi, Advocate

### **JUDGMENT**

1. The present appeal has been preferred by the State against the judgment dated 22.07.2016 passed by the learned ASJ-Special FTC-2 (Central), Tis Hazari Courts in proceedings arising out of FIR No. 25/2013, P.S. DBG Road, Delhi registered under Sections 376(2)(n) IPC, whereby the respondent was acquitted.

The respondent was admitted to bail by this Court vide order dated 11.02.2020.

2. Learned APP for the State, submits that the Trial Court has erred in acquitting the respondent. It is contended that the respondent committed rape upon the prosecutrix on multiple occasions on false pretext of marriage. He had taken her to Ayodhya where he put 'sindoor' in her 'Maang', however, the marriage was not proper as per Hindu rights and rituals. He also assured the prosecutrix of court marriage, despite already being married.



3. Learned counsel for the respondent, on the other hand, supports the impugned judgment and contends that the testimony of the prosecutrix is riddled with material contradictions and falsities and the case of the prosecution was not established beyond reasonable doubt.

4. The case of the prosecution, before the Trial Court, was that the prosecutrix, who was widowed in the year 2002, came to be acquainted with the respondent through her nephew 'A'. The respondent got her employed at PMS Company where he himself was working. As can be culled out from the order framing charge dated 04.06.2014, the respondent committed rape on her on several occasions, as follows:

- (i) Firstly, in the first week of June, 2011 at her house in Kishanganj.
- (ii) In the last week of June, 2011 at a hotel in Ayodhya and Gorakhpur
- (iii) Thereafter, in a room at Shankar Nagar and Azad Nagar, Delhi.
- (iv) Lastly, in July, 2012 at Jagjit Nagar, Delhi.

5. In support of its case, the prosecution examined 15 witnesses. The complainant/prosecutrix was examined as PW-1. SI *Kavita Rana*, who was the first IO, was examined as PW-10. The nephew of the prosecutrix 'A' was examined as PW-11. SI *Surender Kumar*, who took the respondent to Lucknow, was examined as PW-12. The second IO, W/SI *Pushpa* was examined as PW-13. The rest of the witnesses are formal in nature and deposed about the various aspects of the case.

6. In his statement recorded under Section 313 Cr.P.C., the respondent



claimed false implication. He stated that the prosecutrix had demanded money from him which he had refused. His wife had also approached the prosecutrix at her house where they had arguments, and the same led false allegations of rape.

7. The prosecutrix is the key witness of the prosecution. However, her testimony suffers from material and grave contradictions. She had alleged that the first instance of rape had occurred at her house in Kishanganj in the first week of June, 2011. In her cross-examination, she had deposed that she joined PMS Company in May, 2011 and that the first incident occurred after 3-4 months of her joining the company. Thus, by her own account, the incident could not have occurred in June, 2011. In her cross-examination conducted on 20.01.2015, she was confronted with her statement Ex.PW-1/A and this contradiction was pointed out.

8. Insofar as allegations of rape at Gorakhpur and Ayodhya are concerned, the prosecutrix had categorically deposed that the respondent did not commit rape with her at any other place except Lucknow. She stated to the police that after they had left Delhi and went to Lucknow, Ayodhya and Gorakhpur, the respondent did not commit rape with her at any place except Lucknow. Thus, she herself ruled these incidents out. Insofar as Lucknow is concerned, she has not given any detail as to the hotel where the incident at Lucknow statedly occurred. The IO of the case W/SI Pushpa (PW-13) deposed that she did not take the prosecutrix to Lucknow for investigation since she had refused to go there stating that she would not be able to identify the hotel. On the other hand, SI Surender Kumar (PW12) deposed that the respondent was taken to Lucknow and he had pointed out one Kaveri Hotel, stating that he had stayed there with the prosecutrix.



However, on examination of the hotel register, neither the name of the respondent nor the name of the prosecutrix could be found therein.

9. Insofar as the incidents of rape stated to have occurred at Shankar Nagar and Azad Nagar, Delhi is concerned, they do not find any mention in the testimony of the prosecutrix. She had rather deposed that she had to shift frequently because the landlords used to object to the visits by the respondent.

10. Coming to the last accusation, the prosecutrix deposed that the respondent last established physical relations with her at the house in Jagjit Nagar. Then he started avoiding her calls, stopped coming to her house and stopped giving money. Further, the respondent had come to her house along with his wife and both of them had quarreled with the prosecutrix. The prosecutrix has built up the case on an alleged false promise of marriage after the first alleged incident. At one point, she has deposed that respondent had told her after establishing physical relations for the first time that his wife had already expired. On another occasion, she has claimed that she became aware of the respondent's prior marriage after six months of her marriage with the respondent at Ayodhya. However, in her cross examination, she admitted that she had stitched a suit for the wife of the respondent about five to six years prior to the incident at Jagjit Nagar in August, 2012. Moreover, some photographs, exhibited as Ex.PW1/DP-1 and Ex.PW1/DP-2, were put to her, and she confirmed that the same contained herself and the wife of the respondent in the same frame. She was given a suggestion that the same were taken in July, 2012, to which she said that she could not remember. Another aspect worth noting is that the prosecutrix had given a complaint at PS New Usmanpur, Delhi on 31.08.2012 vide DD



No.50-B. In her cross-examination conducted on 18.08.2015, she deposed that she had seen the record of the said DD vide which she had made a complaint regarding threatening to kill against one *Neelam*, who was the wife of the respondent. Thus, strong doubt arises as to the prosecutrix pleading ignorance of the marital status of the respondent till 6 months after their ‘marriage’ at Ayodhya. Considering that prosecutrix was a 36-year-old woman with children, the premise that she got swayed by the false promises of marriage by the respondent, especially in the context of her already knowing that he had a wife, seems untenable.

11. The MLC of the prosecutrix (Ex.PW3/A) was prepared by Dr. Deepti Kaur, SR (Obs. & Gynae) LHMC. It reveals that the prosecutrix refused external and internal examination.

12. The Trial Court, upon a detailed analysis of the evidence, extended the benefit of the doubt to the respondent and acquitted him of the offence under 376 (2)(n) IPC. It was noted that the prosecutrix was a 36 years old adult and had a lot of time to raise objections within family about the alleged forceful act committed by the respondent. It was also noted that the medical examination was refused and there was a contradiction as to the timing of the occurrence of the first incident. Although, she stated that PW11 was her nephew, he stated in cross-examination that he was not related to the prosecutrix.

13. 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 fortunately a settled position, no longer *res integra*. 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 hereunder:

*“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 378CrPC, 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.””*

14. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to 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.'*

15. This Court has carefully examined the impugned judgment and the evidence on record and concurs with the findings of the Trial Court and proceeds to elaborate that, cumulatively, the testimony of the prosecutrix, on account of material contradictions and improvements, accompanied by lack of any scientific or medical evidence, render her testimony wholly unreliable.

16. In view of the above, this Court finds no reason to interfere with the finding of acquittal recorded by the Trial Court. The appeal filed by the State is accordingly dismissed. The respondent's bail bonds are cancelled and sureties discharged.

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

**MANOJ KUMAR OHRI  
(JUDGE)**

**OCTOBER 28, 2025/ry**