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

% *Date of decision: 15th April, 2025*

+ **CRL.L.P. 356/2017**

STATE

.....Petitioner

Through: Mr. Utkarsh, Ld. APP for the State
with W/SI Savita Choudhary and SI
Lal Chand P.S. Vasant Kunj, South.

versus

U. D. MESHARAM @ MISHRA

.....Respondent

Through: Mr. RHA Sikander and Mr. Jatin
Bhatt, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Criminal Leave to Appeal under Section 378(3) read with Section 482 Cr.P.C has been filed by the State to challenge the Judgment dated 14.12.2016 acquitting the Respondent for the offences punishable under Sections 376/342/506 IPC at P.S. Vasant Kunj in FIR No.0967/2014.

2. The **brief facts** as per the prosecution that on 06.10.2014 at about 12 Noon, prosecutrix was raped by the Respondent, while her husband had gone to market for purchasing meat. The Respondent before leaving the house, threatened her that her husband would be killed if she told about the incident to anyone. On her complaint, FIR No. 0967/2014 under Sections 376/342/506 IPC was registered at P.S. Vasant Kunj. Medical examination was done and the statement under Section 164 Cr.P.C. was recorded before



learned MM on 07.10.2014. The Respondent was arrested on 07.10.2014. On completion of investigation, Chargesheet was filed in the Court.

3. *Charges under Section 376/342/506 IPC were framed to which the Respondent pleaded not guilty.*

4. The prosecution examined 15 witnesses. Prosecutrix was examined as PW1, who in her statement made allegations of rape and her husband/Riazul was examined as PW5, who in his statement supported the case of Prosecution.

5. The statement of the Accused was recorded under Section 313 Cr.P.C. in which he pleaded his innocence.

6. The Respondent was acquitted of all the charges *vide* judgment dated 14.12.2016, by the learned ASJ.

7. Aggrieved, **the State has challenged the judgment of acquittal** on the grounds that PW-1, the Prosecutrix had been consistent in deposing about her being raped by the Respondent at her residence while she was alone. Her testimony is fully supported by PW-5, her husband. It is a settled law that the sole testimony of the Prosecutrix can be the sole basis of conviction in the offence of rape. It is further asserted that the entire incident happened over a short period of time and there was no possibility for the complainant to concoct the version in the FIR, which was recorded soon after the incident.

8. The learned ASJ fell in error in disbelieving the testimony of PW-1 the Prosecutrix and PW-5 her husband. The testimony of the Prosecutrix was disbelieved on the ground that she did not raise any hue and cry and none was examined from the neighbourhood. However, not raising of alarm



is not a contradiction especially when she had explained the circumstances, as has been held in the case of Vijay@Chinee v. State of M.P. in Criminal Appeal No. 660/2008 decided by the Apex Court on 27.07.2010.

9. Further, merely because her clothes were not torn or she did not have any injury, cannot be a reason to disbelieve her testimony. In the *Biological Examination Report* and *DNA Profiling Report*, there was a clear finding that a DNA profile generated from the male fraction DNA obtained from the salwar of the Prosecutrix was consistent with the DNA profile of the Respondent. There is no other explanation as to the semen of the Respondent being found on the salwar of the Prosecutrix except that she was raped by the Respondent.

10. The minor inconsistencies had been magnified to acquit the Respondent and Ld. ASJ has failed to appreciate that the truth had to be segregated from the falsehood and it is only in exceptional circumstances that the testimony of the Prosecutrix may be discarded.

11. It is, therefore, submitted that the impugned judgment of acquittal be set aside and the Respondent be punished for the offences with which he was charged.

12. The **Status Report** was filed on behalf of the State wherein the entire investigation leading to filing of chargesheet in the Court, has been stated.

13. **Submissions heard and record perused.**

14. The Respondent had been Charge-sheeted with the offences punishable under Sections 376/342/506 IPC.

15. The entire case of the Prosecution rests on the testimony of the Prosecutrix, who as PW-1, deposed that she had become acquainted with



the Accused while she was looking for job in Delhi and used to off and on talk to him. They were permanent resident in Village Nichnol, District-Maharaj Gant, U.P. She has two children, who were studying in the Village. About one year prior to the incident, she shifted to Delhi along with her husband and two children and resided as tenant in a house at Mahipalpur, Delhi. She used to visit the Respondent for the attestation of some documents of the children.

16. The Prosecutrix at that time was working at the Airport, but the Respondent assured her to procure a Government job for her. Her husband also used to enquire from the Respondent in regard to the job whereafter; they went back to their native place. From there also, she and her husband, used to enquire from the Respondent in regard to the job on which he told her husband to come to Delhi for procurement of a Government job. They thus, came to Delhi about 10 days prior to the incident and stayed at Rangpuri, Delhi as tenant.

17. PW-1/Prosecutrix further deposed that on the date of the incident i.e. 06.10.2014 on the day of Bakra-Eid, Respondent came to their room at 9.00 AM and gave Rs.200/- and told her to prepare meat while he would come back after some time. Her husband went to the market for purchase of raw meat to be cooked on the occasion of Bakra-Eid. She was sleeping alone in her room as she was suffering from Malaria as well as Typhoid. At about 12:00 Noon while she was alone and her husband had not returned from the market, the Respondent came inside and he bolted the door of the room and forcibly pushed her on the floor and committed rape upon her without her consent. As she tried to raise alarm, the Accused put his hand on her mouth



and also threatened that if she told about the incident to anyone, he would kill her and her husband. He, thereafter, left the room. After some time, her husband came back and enquired as to why was she weeping. She then told the entire incident to her husband, who consulted one known person staying in the vicinity, who advised them to call the Police at Mahila helpline. Accordingly, the call was made and Police arrived in 10 minutes. She gave a statement Ex. PW1/A on which the FIR was registered.

18. The crime like Rape is committed in secrecy and most often there is no independent direct evidence except the evidence of the Prosecutrix. In recognition of this fact, it is well settled that the sole testimony of the prosecutrix can be the sole basis of conviction, but that is with a rider that the testimony but be of sterling quality, not suffering from any contradictions and embellishments.

19. The first aspect that emerges and considered by Learned ASJ in detail, is the given timelines. As per the Prosecutrix, the Respondent had come to her house at about 9.00 AM and gave Rs.200/- and told her to prepare meat, while he would come back after some time. Her husband went to the market to purchase the meat, and came back after about 1 - 1½ hours.

20. It has been noted by the Ld. ASJ in the impugned judgment that if her timelines were accepted, her husband would have returned latest by 11.00 AM and the alleged incident has claimed to have taken place at 12 Noon. It is difficult the timelines given by her of the alleged offence which do not match entirely with her testimony. If the incident happened at 12.00 noon, her husband would definitely been back by then.

21. PW-5, Sh. Riazual, husband of the Prosecutrix in his testimony had



deposed that he had gone to the market to purchase chicken but was not able to get it and returned home after about one hour, when he found his wife weeping. On enquiry, she told him about having been raped by the Respondent.

22. From his testimony also, similar timelines are given which does not tally with the time of alleged offence at 12:00 Noon. If his testimony is to be accepted, then he should have been back by 11:00 AM and the Prosecutrix would not have been alone in the house at about 12:00 Noon when allegedly she was raped.

23. Further, PW-5 had deposed that he was unable to get the chicken in the market, but it is difficult to so believe since it was the day of Bakra-Eid and to accept that no chicken was available in the market is clearly not tenable. Rather, it creates a doubt about the entire backdrop given to establish that PW-5 was away from home, thereby given an occasion to the Respondent to commit the Rape. Clearly, the testimony of PW-1 and PW-5 was not only inconsistent and not believable from the entire event, which led to the alleged rape.

24. The next aspect for consideration is that the Prosecutrix had explained that she had raised hue and cry, but was prevented by the Accused, who placed his hand on her mouth. However, as per her own testimony, there were many tenants residing in the building and in case any offence was committed against her wish, it is difficult to comprehend that no neighbour would have come when she raised any hue and cry.

25. The Prosecutrix further tried to explain by saying that she did raise hue and cry but because the tenants generally play loud music, they may not



have been able to hear her cry for help. Herein again, there is a major contradiction. On the one hand, she said she was prevented from raising any noise and on the other, she claimed that she did raise hue and cry but the neighbour could not hear her cry for help. If the Prosecutrix has been raped, she would not only resist but also raise hue and cry, which would have definitely be heard by the neighbours residing in the same building. The learned ASJ thus, rightly held that the different versions given by PW-1, the Prosecutrix was only an endeavour to fill up the lacuna in her testimony.

26. The DNA Profile Report as well as the Serological Report though confirmed that semen of the Respondent was present on the Salwar of the Prosecutrix, which may indicate that there was sexual relationship established between Respondent and the Prosecutrix but the surrounding circumstances clearly point out that the relationship was consensual and not forcible against her will. Rather, it establishes that while her husband was away, she had consensual relationship with the respondent and thereafter when her husband came, she alleged rape. The circumstances create a doubt of the Prosecutrix having been raped.

27. The learned ASJ thus concluded the entire evidence as follows:-

“35. In the present case, though prosecutrix initially has stated that she tried to raise hue and cry but in her own testimony before the court, she had improved her version stating that since though raised alarm at the time of incident, but said alarm was not audible to other occupants in and outside the building. Though she has stated that she struggled with the accused but in her cross examination, she has admitted that her clothes were not torn from anywhere and even the string of her Salwar was intact. The MLC of the prosecutrix made it clear that she did not sustain any



injury on her person despite her struggle at the time of sexual assault. Even according to the prosecutrix, her husband PW-5 was not present at the time of incident and he came only after the incident when the accused ran away but the PW-5 has deposed that he was threatened by the accused. However, no explanation has been offered at what point of time, the accused threatened him. Even the scientific evidence does not support the case of the prosecution. Thus, in the circumstances, the sole testimony of the prosecutrix which are contradictory on the material particulars and even not supported by the scientific evidence, cannot be said to be of sterling quality and in such circumstances, on the basis of the testimony of the prosecutrix, the accused cannot be convicted. There are material contradictions in the testimony of PW-1 and PW-5 as well on the point of raising hue and cry as well as threat extended by the accused. The testimony of the prosecutrix does not inspire any confidence in absence of any corroboration on material particulars regarding the sexual assault by the accused.”

28. Though, it is a settled law that sole testimony of the Prosecutrix can be the basis of conviction but considering the contradictions as highlighted above, it cannot be held beyond reasonable doubt that it was a rape committed without the consent of the Prosecutrix. A benefit of doubt has been rightly extended to the Respondent, by the Ld. ASJ in the impugned Judgement.

29. There is no merit in the Leave to Appeal, which is hereby dismissed. The pending Application(s) are accordingly, disposed of.

(NEENA BANSAL KRISHNA)

2025:DHC:3765



APRIL 15, 2025

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JUDGE