
(2025) 11 DEL CK 0057

Delhi HC

Case No: Criminal Appeal No. 274 Of 2008

Deepak

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 7, 2025

Acts Referred:

- Code of Criminal Procedure, 1973- Section 164, 313, 374
- Indian Penal Code, 1860- Section 366, 376, 506

Hon'ble Judges: Rajneesh Kumar Gupta, J

Bench: Single Bench

Advocate: Naveen Singh Negi, Satinder Singh Bawa

Final Decision: Disposed Of

Judgement

Rajneesh Kumar Gupta, J.

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C") is filed against judgment of conviction dated 25th January, 2008 (hereinafter referred to as the "impugned judgment") and against order on sentence dated 01st February, 2008 (hereinafter referred to as the "impugned order on sentence") passed by the learned ASJ, Rohini Courts, Delhi (hereinafter referred to as the "Trial Court") in Sessions Case bearing no. 15/2006 arising out of the FIR bearing no. 284/2004, titled "State V Deepak", registered at P.S. Sultanpuri, Delhi. The appellant vide the impugned judgement was held guilty for committing the offences punishable under Sections 366/376 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC"). The appellant vide the impugned order on sentence was sentenced to undergo Rigorous Imprisonment for 07 (seven) years with fine of ₹5,000/-, in default of payment of fine to undergo Simple Imprisonment for 06 (six) months under Section 376 IPC, and Rigorous Imprisonment for 03 (three) years with fine of ₹5,000/-, in default to undergo Simple Imprisonment for 03 (three) months under Section 366 IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution, in brief, is that DD bearing No. 62-B was registered at Police Station Mangolpuri on 18th May, 2004, regarding a boy harassing the prosecutrix. On 21st May, 2004, the prosecutrix, along with her mother, went to the police station and got her statement recorded. In her statement, she stated that she was student of class - IX. As it was the summer vacation, she was at home during those days. Her mother used to leave the house for work, as she was engaged in selling snacks from door to door, while her father resided in Punjab. On 18th May, 2004, when she was alone at home, the appellant came to their house at 1:30 p.m. and, on some pretext, took her to a room in the back lane. In the said room, he committed rape upon her and threatened her not to disclose the incident to anyone. Thereafter, she narrated the incident to her mother. On the basis of that statement, the FIR under Sections 376/506 IPC was registered at PS Mangolpuri.

2.1 During the investigation, the prosecutrix was medically examined and her statement was recorded under Section 164 Cr.P.C. The appellant was arrested and was also medically examined. Upon completion of Investigation, the chargesheet was filed under Sections 376/506 IPC in the Court. Charge under Sections 366/376/506 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case, examined 10 witnesses. The statement of the appellant was recorded under Section 313 of the Cr.P.C, wherein the appellant denied the incriminating evidences, pleaded innocence, and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

3. I have heard the learned counsel for the Appellant and learned APP for the State, and have examined the record.

4. Learned counsel for the appellant has argued that the learned Trial Court has passed the impugned judgment on the basis of surmises and conjectures, which is against the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution doubtful. It is further argued that the prosecutrix was a consenting party and her age was more than 16 years on the date of alleged offence and so no offence of rape is made out against the appellant. There is a delay of 03 (three) days in lodging the FIR, which makes the case of the prosecution doubtful. From the evidence on record, the prosecution has failed to prove its case beyond reasonable doubt against the appellant. On these grounds, it is prayed that the impugned judgment and order on sentence be set aside and the appellant be acquitted.

5. Per contra, learned APP for the State has argued that the learned Trial Court has passed the impugned judgment after considering the evidence on record. The evidence produced on behalf of the prosecution has proved the case beyond reasonable doubt against the appellant. The arguments of the appellant are without any merit, and hence, the appeal is liable to be dismissed.

6. The prosecutrix has been examined as PW-1, and she deposed that on 18th May, 2004, she was studying in 8th class in Govt. Model School, G Block, Mangol Puri. Her mother had gone for work. Her father had gone to Punjab as he lives in Punjab. She was alone on that day in her house.

The appellant came to her house around 1.30 p.m. and took her out of the house on the pretext of some work and then took her to the backside in a gali and then to somebody's house there. He took her to the first floor of that house. Thereafter, he committed rape upon her. Thereafter, he sent her home. Thereafter, he threatened to kill her in case she disclosed the incident to anyone. Thereafter, her mother came home in the night she disclosed the entire incident to her. Her mother called the police on the same day. The police came to her house and recorded her statement, which is Ex. PW1/A, and the statement of her mother. Thereafter, she was taken to Sanjay Gandhi Hospital, where she was medically examined. She has proved her statement recorded under Section 164 Cr.P.C, as Ex. PW1/B. She was 14 years old at the time of incident and her date of birth is 19th August, 1990. Her name in school is 'S' (name withheld). She did not tell the incident to her mother or other family members on the day of incident since she was nervous on that day due to the threat given by the appellant.

In cross-examination on behalf of the appellant, PW-1 deposed that on the day of incident she had accompanied the appellant without asking him any questions. The appellant had come to her house on the day of incident for the first time. She had not received any injuries or any scratch marks or bruises anywhere on her body. Her salwar was smeared with blood profusely. It was her first sexual intercourse with the man, and she had also told the doctor who medically examined her that bleeding had taken place from her private parts, at the time of her medical examination. She cannot admit or deny if her age can be above 16 also. She has denied the suggestion that she used to write letters to the appellant and used to force him to meet her and come to her house.

6.1 PW-2 Renu Dhall, TGT, Govt. Girls, Secondary School, Mangolpur Kalan, Delhi, deposed that as per the school record, the date of birth of 'S' (name withheld) D/o Raj Kumar is 19th August, 1990. She has proved the relevant school record of the prosecutrix as Ex. PW2/A to PW2/G.

6.2 PW-3 Sunita (mother of the prosecutrix), deposed that the prosecutrix was born on 19th August, 1990 in Punjab. On 18th May, 2004, she had come to her house at about 2:00-2:30 p.m from her work. She found the prosecutrix crying, and the prosecutrix told her about the incident. She then informed the police.

In cross-examination on behalf of the appellant, PW-3 has deposed that she had nicknamed the prosecutrix as 'S' (name withheld) as she liked the name. The report with police was lodged after 03 (three) days.

6.3 PW-5 Dr. Baljeet Singh has proved the MLC of the prosecutrix as Ex. PW5/A. As per the said MLC, the hymen of the prosecutrix was found torn and there was no evidence of external injury.

7. The prosecutrix when examined in the Court and also when her statement under section 164 Cr.P.C was recorded, she deposed her age as 14 years. She deposed her date of birth as 19th August, 1990, which is corroborated by her school record and the testimony of PW-3. From the cross-examination of PW-1 to PW-3, no such material has come on record which would show that the entry as to the date of birth of the prosecutrix in the school record is not the correct date of her birth. This date of birth was recorded much prior to the alleged incident. The prosecutrix or her

family members had not anticipated that such an incident would happen to her in the future so as to manipulate her date of birth. From the evidence on record, it is proved that the prosecutrix was below 16 years of age on the date of the alleged commission of offence.

8. There was a delay of 03 (three) days in lodging the FIR. This delay has been satisfactorily explained in the testimony of prosecutrix, as she testified that she did not inform her mother or family members about the incident on the day it occurred, as she was nervous due to the threats given by the appellant. The delay in lodging the report in sexual offences, per se, is not fatal, as has been observed by the Hon'ble Supreme Court in *Tulshidas Kanolkar V State of Goa.*, (2003) 8 SCC 590, as follows:

"5. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle."

9. It is a well-settled law that the appellant can be convicted on the sole testimony of the prosecutrix, if it inspires confidence, and no corroboration is required unless there are compelling reasons which necessitate insisting on corroboration of her statement. Minor contradictions should not be a ground for throwing out the testimony of the prosecutrix. In this respect, it has been held by the Hon'ble Supreme Court in *Deepak Kumar Sahu V State of Chhattisgarh*, (2025) SCC OnLine SC 1610 as follows:

"5.5.2. This Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction could base solely on the evidence of the prosecutrix. It was further observed that as a general rule there is no reason to insist on the corroboration except in certain cases, it was stated.

5.5.3. The medical evidence may not be available in which circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction.

"The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix."

10. The prosecutrix in her testimony has supported the case of the prosecution. The testimony of the prosecutrix is also corroborated by her statement recorded under Section 164 Cr.P.C, which is Ex. PW1/B, and also by her statement Ex. PW1/A, on the basis of which the FIR was registered. The MLC of the prosecutrix, which is Ex. PW5/A, also supports the case of the prosecution, as at the time of her medical examination, her hymen was found torn. Despite in-depth cross-examination, no material infirmities have come on record to suspect her testimony. There is also no evidence on record to prove that the prosecutrix had any enmity with the appellant which could have motivated her to falsely implicate him in the alleged offence. In the absence of any cogent reason to disbelieve her version, this court finds no sufficient reason to discard the testimony of the prosecutrix.

11. It was also argued on behalf of the appellant that the MLC Ex. PW5/A does not support the prosecution case, as no external injuries were found on the prosecutrix. This contention has no merit, for the reason that the presence of injuries is not a sine qua non for determining whether the offence of rape has been committed.

It has been observed by the Hon'ble Supreme Court in *Lalliram &Anr. V State of M.P.*, (2008) 10 SCC 69 that:

"11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa [(1977) 3 SCC 41: 1977 SCC (Cri) 447] where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration."

12. In view of the analysis hereinabove, there is clear and unimpeachable evidence of the prosecutrix which, in terms of the settled legal position, is sufficient to hold the appellant guilty. It stands proved beyond reasonable doubt that the prosecutrix was kidnapped and sexually assaulted by the appellant. Accordingly, the conviction of the appellant by the learned Trial Court does not warrant any interference by this Court and it is upheld.

13. The appellant has, however prayed for modification of the sentence, seeking reduction to the period already undergone. In support of his plea, the appellant submitted that he is now aged about 43 years and has a wife and two minor children. He is the sole earning member of his family, and in case he is sent to jail, his entire family will be ruined. This Court has considered these contentions.

13.1 As per the Nominal Roll, the appellant has already undergone sentence for approximately 02 years and 04 months (excluding the remission earned by him). It is also noted that there has been no allegation of misuse of liberty during the pendency of the appeal, and the appellant's jail conduct during his incarceration has been reported to be satisfactory.

13.2 The present case relates to an incident which had occurred 21 years ago, while the impugned judgment itself was delivered nearly 16 years ago. Undergoing 07 years' rigorous imprisonment as awarded, at this distant point of time, would be too harsh.

14. After considering the facts of the case and the aforesaid mitigating circumstances, the sentence of the appellant is modified to Rigorous Imprisonment for a period of 04 (four) years for the offence punishable under Section 376 IPC. The other sentence of fine for the offence punishable under Section 376 IPC and the sentence for the offence punishable under Section 366 IPC, as awarded in the impugned order on sentence, shall remain the same. This reduction of sentence is on account of the mitigating circumstances noticed above, and it does not, in any manner, impact the seriousness of the offence for which the appellant was convicted.

15. The appellant is directed to surrender within a period of 07 (seven) days before the concerned Jail Superintendent and serve his remaining sentence as ordered. His bail bond will thereupon stands cancelled.

16. The concerned Jail Superintendent is directed to file a compliance report with regard to the surrender of the appellant before the concerned Trial Court. In case the appellant fails to surrender, the concerned Trial Court shall take appropriate steps, in accordance with law, to execute the sentence as ordered.

17. In view of the above, the present appeal is disposed of. All pending applications, if any, are also disposed of.

18. A Copy of this judgment be communicated forthwith to the concerned Trial Court as well as to the concerned Jail Superintendent for necessary information and compliance.