



2025:DHC:4004



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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: April 21, 2025

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CRL.A. 122/2008

HABIB UR REHMAN

S/o Yaseen Ali

.....Appellant

Through: Ms. Rakhi Dubey, Advocate on the
panel of Delhi High Court Legal
Services Committee.

versus

STATE OF NCT OF DELHI

Through Lodhi Colony

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T (oral)**

1. Appeal under Section 374 of the *Code of Criminal Procedure, 1973* ('Cr.P.C.' *hereinafter*) has been filed by the Appellant against the Judgment and Order dated 08.12.2007 *vide* which learned Additional Session Judge has **convicted the Petitioner under Section 376 IPC**, in FIR No. 195/2006, Police Station Vasant Kunj, New Delhi.
2. **Briefly stated**, on 10.12.2007 while Head Constable Satpal and Constable Gajender were on patrolling duty, at around 4:30 PM they reached T-Point near Seelampur, where they saw a gathering of vagabonds.

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They met the Prosecutrix and brought her to the Police Station. She gave a statement that she was a housemaid in a house situated near Lal Quila. On 09.06.2005, at the instance of her employer Umesh Sharma, she went to the market to purchase shampoo, but she forgot the way back. At about 12 noon, she asked a boy about the way to Lal Quila, who offered to take her to Lal Quila. Instead, he took her to an abandoned place and raped her. She gave the description of the offender.

3. On her statement, the FIR was registered. Her medical examination was conducted *vide* MLC EX. PW1/A. Investigations were conducted and the Petitioner was apprehended at her pointing out. The Appellant was interrogated and his disclosure statement was recorded. On completion of investigation, Charge-Sheet under Section 376 IPC was filed in the Court.

4. The Prosecution examined seven witnesses. The Appellant in her statement recorded under Section 313 Cr.P.C. denied the charges as frivolous and false.

5. The learned Trial Court *vide* Judgment and Order dated 08.12.2007 convicted the Appellant under Section 376 IPC and sentenced him to suffer seven years of rigorous imprisonment and fine of Rs.100 and in default, to further undergo simple imprisonment of seven days.

6. *Being aggrieved, the Appellant has filed the present Appeal on the ground* that the Prosecutrix herself had turned hostile and did not support the prosecution case, which has not been considered by the Trial Court in the right perspective. Furthermore, she had herself stated before the Doctor as



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was recorded in the MLC, that she was alone at T-Point Seelampur and that she along with some girl from her village named Monika, had absconded from her home town in Bihar two months back and has been working in some home as Maid near Red Fort. She gave her history of being sexually assaulted by servant Raju working in the same home in the morning. This statement itself absolves the culpability of the Appellant since as per the Prosecutrix also, he was not the culprit.

7. Furthermore, blood stains and semen collected from the undergarments of the Prosecutrix did not match with those of the Appellant. The gauze piece did not give any result.

8. It is further asserted that despite the Prosecutrix not having supported the case of the prosecution, the learned ASJ fell in error in assuming that she was raped. Moreover, the testimony of the Doctor also does not support the alleged commission of an offence. Thus, the impugned Judgment of conviction and sentence dated 08.12.2007, is liable to be set aside.

9. ***The learned Additional Public Prosecutor on behalf of Respondent-State*** has strongly opposed the Appeal and submitted that Prosecutrix is a young girl who had been brought to Delhi to work as a Maid and was exploited by servant of the house. There are minor contradictions in the prosecution story, but considering the testimony of the Prosecutrix and the supporting evidence, such minor contradictions cannot be given undue weightage to give benefit of acquittal.

10. It is submitted that the learned Trial Court has given well-reasoned



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Judgment and the Appeal is liable to be dismissed being without merit.

11. ***Submissions heard and record perused.***

12. The *first material witness* examined by the Prosecution is PW-2 ASI Surender Singh who deposed that on the day of incident i.e. 09.06.2005 the Prosecutrix was found in the area of Police Station Seelampur in an abandoned condition by the patrolling staff, who took her to the Police Station. He had recorded her Complaint EX. PW2/A and had taken her to the hospital for her medical examination.

13. The *second material prosecution witness* is the Prosecutrix. She in her Complaint EX. PW2/A stated that she was 15 years old and was a resident of Jharkhand, Bihar. About two months ago, she had been brought to Delhi by one Monika Didi for getting her work in Delhi. She got her employed in the house of Umesh Verma and Madhuri for taking care of their child. She further stated that about two-three days prior to her coming to Delhi, one boy Raju of her village had allured her and committed '*galat kaam*' with her. On 09.06.2005 at about 11 AM she had gone to the market to buy shampoo for dog of her employer, but she lost her way. At about 12 noon, while searching for her way back, she met *one boy* from whom she asked about the location of Lal Quila. He assured her that he would take her to Lal Quila, but took her to a secluded place and committed '*bura kaam*' behind the bushes and abandoned her there. She gave the description of the boy as aged about 23-24 years with height of 5'7".

14. She further stated that though she can recognize the said person, but



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was not aware of his name. She kept on roaming till 5:30 PM and enquired about way to Lal Quila when she met the Police Officials, who brought her to the Police Station where her statement was recorded. This was her first complaint to the Police.

15. What emerges from the **Complaint** of the Prosecutrix is that one boy had taken her to a deserted place behind the bushes and committed “*galat kaam*” with her.

16. *In her testimony*, the Prosecutrix- PW3 deposed that in the year 2005, she was working as a Maid at the house of Madhuri and had gone to the market to purchase shampoo for dog bath. She couldn’t find the shampoo in the market as she was new to the area and she could not search the house of the employer. She met a person who used to come to the house of Ms. Madhuri to collect garbage (‘Kura Binne wala’) and offered her to drop her to the house of the employer. Thereafter, he took her in an autorickshaw. Subsequently, a lady Pushpa met her on the way and took her to the Police Station and from there she was sent to Nari Niketan. From there, she went to Seelampur and from the Court her father took her to the village. She deposed that “*no one had committed sexual intercourse with her*”.

17. PW3-Prosecutrix in her examination in chief did not depose about being raped. She was cross-examined by the learned Public Prosecutor with permission of the Court wherein *she admitted that she was raped by the accused present in the Court, but she has excused him and that is why she does not want to tell anything*. She further admitted that had he not allured



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her, she would not have gone with him.

18. In her cross-examination by the learned Counsel for the Appellant, she deposed that Raju had not committed rape upon her three days prior to this incident. She also denied that on the date of the incident, Raju had sex with her or that this incident was seen by her employer Madhuri or any other family member. She further stated that she had given statement on the tutoring of her employer. Further, she reiterated that the Accused/Appellant had not committed any rape upon her.

19. While in her *Complaint EX.PW2/A*, the Prosecutrix had claimed that she had been raped by the Appellant whom she had subsequently identified and pointed out as the one who had raped her, but in her *testimony* as PW2 she has categorically denied being raped not only in her examination-in-chief, but also in her cross-examination by the learned Counsel for the Appellant. The most pertinent contradiction which emerges in her testimony is that she was claiming to have been raped not only in Jharkhand before she came to Delhi but even on the date of the incident by Raju, who was known to her being a resident of her native village.

20. *There is a blatant contradiction about the identity of the person who had committed rape.* In her Complaint, the Prosecutrix has not been able to give the identity of the person who had allegedly raped her on 09.05.2005. If the perpetrator was Raju who was known to her, then the pertinent question is as to why the Prosecutrix in her examination-in-chief as well as cross-examination denied alleged rape by him.



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21. *In light of the material contradictions in regard to the identity of the perpetrator of the crime, the benefit necessarily has to be granted to the Appellant.*

22. It is also pertinent to refer to the MLC Ex. PW1/A of the Prosecutrix prepared on 10.06.2015 wherein the history recorded is that she was caught alone at T Point Seelampur. She had absconded from her home place in Jharkhand, Bihar two months back with some village girl Monika and has been working as Maid in some home near Red Fort. She had given history of being sexually assaulted by servant Raju working in the same home in the morning. She lost her way while going to buy shampoo. In her MLC, she has categorically named Raju, who was working as a Servant in the same house as the perpetrator of the crime.

23. Furthermore, PW-1 Dr. Richa Aggarwal, who had examined the Prosecutrix and prepared the MLC PW3/A stated that there was no evidence of external injury. However, posterior fourchette was present, which was not actively bleeding but her undergarments had shown blood stains. Tear was present on inner aspect of white labia minora with no bleeding. Her vaginal smear, undergarments and pubic hair clippings were sealed and handed over to the police.

24. The Investigating Officer had sent the exhibits of Prosecutrix and blood gauze and semen sample/penile swab for FSL comparison. In this regard, the FSL Report assumes significance. As per FSL Report EX. PW4/E, human semen of AB group was detected on the underwear and



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salwar of the Prosecutrix but no semen could be detected on the smear slide of the Prosecutrix. This FSL Report has given only the blood group from the semen found on the clothes of the Prosecutrix and the same could not be compared with that of the Appellant as the gauze piece did not give any result. Merely giving the blood group of the stains found on the clothes of the Prosecutrix, are not sufficient to draw any conclusion of Prosecutrix having been raped by the Appellant.

25. Learned Trial Court has therefore, fallen in error in concluding that the Prosecutrix had been raped by the Appellant. Merely because she stated in her cross-examination by the learned Additional Public Prosecutor for Respondent-State that she has forgiven the Appellant and does not want to depose against him, it cannot be inferred that she was raped. It cannot be overlooked that her testimony in regard to the identity of a person who had allegedly raped her is highly doubtful, as her consistent testimony had been of being raped by Raju, while Appellant is not the same servant.

26. The inevitable conclusion from the entire prosecution evidence which emerges is that *there is no conclusive evidence to prove the prosecution case against the appellant and he is entitled to benefit of doubt.*

27. In view of the above, conviction and sentence awarded to Appellant *vide* impugned Judgment and Order dated 08.12.2007 is hereby set aside and he is acquitted of the offence under Section 376 IPC.

28. The present Appeal is accordingly disposed of.



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(NEENA BANSAL KRISHNA)
JUDGE

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Signature Not Verified

Signed By: VIKAS

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Signing Date: 19.05.2025

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