



2026:DHC:5966



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

Date of reserving order: 09th July, 2026

Date of decision: 27th July, 2026

IN THE MATTER OF:

CRL.A. 531/2008

SUBHODH CHOUDHARY @ BHOORA @ CHHOTU

.....Appellant

Through: Mr. Jagat Singh Baasta, Adv.

versus

STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
State with W/SI Devrani, PS
Badarpur.

Ms. Gunjan Sinha Jain, (DHCLSC)
with Mr. Utkarsh, Adv. for
prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. The prosecutrix, who was involved in the work of embroidery attempted to embroider her statement also but then the kind of finesse with which she was, probably, doing the embroidery arising out of her constant involvement and practice, could not be brought to embroider her statement and cracks appeared to the extent that doubt and suspicion about her version seeped in tattering the case in such a manner that truth could not be suppressed or hidden, which was registered on her complaint Ex.PW-2/A.
2. It so happened that the prosecutrix ventured out of her house on 14.12.2004 at about 10:00 AM to fetch the cloth pieces for embroidery work



from Khajoorwali Gali near her house in the area of Molarband Extension within the jurisdiction of Police Station Badarpur, New Delhi. The Appellant, who was known to her, being a neighbour offered her 'Prasad' and after consuming it, she allegedly lost her consciousness only to regain it in NTPC Jungle near Kachi Sarak and found herself naked. She was allegedly raped by the Appellant. The Appellant had not only raped her despite the protests by her, but threatened to kill her as well. The Appellant also allegedly had shut her mouth and pressed her neck. In addition to that, he tore her 'shameej' of green colour also at the spot itself. The prosecutrix somehow escaped from the scene and thereafter reported the matter to her mother who, in turn, informed the Police, pursuant to which ASI Surekha, ASI Randhir Singh and Ct. Ram Tek reached at H. No. D-5, Gali No. 20, Molarband Extension, New Delhi. The mother-daughter duo met police team. The prosecutrix narrated the entire episode. Her statement (Ex.PW-2/A) resulted into the registration of the FIR No. 813/2004 under Section 328/506/376 of Indian Penal Code, 1860 ('IPC').

3. The requisites of the investigation, such as, medical examination of the prosecutrix and Appellant, preparation of site plan and necessary seizures together with the arrest of the Appellant at the instance of the prosecutrix etc. were carried out and that ultimately culminated into a charge-sheet.

4. To the charges framed against the Appellant under Section 328/506/376(1) IPC, he pleaded not guilty. The case of the prosecution, while traversing through the examination of 13 witnesses, resulted into conviction of the Appellant under Section 376 / 506 IPC, whereas the Appellant was acquitted under Section 328 IPC.

5. The Appellant was sentenced to undergo Rigorous Imprisonment



(‘RI’) for 07 years and to pay a sum of Rs.5,000/- as fine, in default of payment of fine, he was to further undergo Simple Imprisonment (‘SI’) for 03 months under Section 376 IPC, whereas, he was awarded RI for one year under Section 506 IPC.

6. Against the backdrop of aforesaid facts and circumstances, the present appeal under Section 374 of the Code of Criminal Procedure, 1973 (‘Cr.P.C.’) has been preferred by the Appellant assailing the Judgment dated 07.05.2008 and Order on Sentence dated 12.05.2008 passed by the Learned Additional Session Judge, New Delhi in Session Case No.08/2005, arising out of FIR No.813/2004 registered at PS Badarpur, whereby the Appellant was convicted and sentenced as aforesaid.

7. The Appellant has come up with the plea that he has been falsely implicated in this case as can be inferred from the testimony of the witnesses, more particularly of the prosecutrix herself, which is riddled with doubtful and suspicious circumstances, full of contradictions and improvements, which renders it highly unreliable and certainly not potent enough to record a finding against the Appellant.

8. It is elaborated by the learned counsel for the Appellant that the inherent contradictions, in the testimony of the victim, makes the case of prosecution highly susceptible to doubt and suspicion, for instance the prosecutrix has deposed that she was given some ‘Prasad’ not sure what it was, after which she fell unconscious. But then how come she, after falling unconscious, was able to say that she was shifted in a vehicle by the Appellant. Incidentally, on this aspect also, a different version has come, which is to that effect that she had seen the Appellant arranging / stopping some vehicle at the end of ‘Gali’.

9. The place where she was allegedly offered the Prasad is about 03 kms



away from the alleged place of incident of rape i.e. NTPC Jungle, but then how is it possible for somebody, to travel so far in an unconscious position without being noticed by the persons in the vicinity and on the way. It has been contended that the area from where she was allegedly taken, is a thickly populated area, as admitted by the Investigating Officer in her statement and even otherwise, can be very well imagined. This becomes all the more important when there are two versions available with regard to vehicle used in transporting the prosecutrix. It has been emphasised that the place, where the prosecutrix regained her conscious, is not accessible to any vehicle as can be seen from the site plan Ex. PW-13/A, then how she, from the road to the place of incident, was taken, that too unnoticed. Similar contention has been put forth about the prosecutrix being taken to the vehicle from the gali without any assistance and unnoticed.

10. According to the learned counsel for the Appellant, the fact of the matter is that whatever had happened had happened with the consent of the parties, as can be inferred from an additional factor that the Appellant and the prosecutrix were spotted not only by the NTPC employees present there at the NTPC Jungle roaming together hand in hand and were seen by DW-1 Lajja Ram also. The statement of Investigating Officer reflects the former at least.

11. It is further contended that the prosecutrix was 19 years old girl and therefore, fully competent to consent to the act and in fact it was a consensual relationship. In this context, learned counsel for the Appellant has relied upon the Ossification Test (Ex. PW-12/A), according to which, the age of the victim was within the range of 16 to 19 years of age. The concept of margin of error of plus (+), minus (-) two years is to be taken in favour of the Appellant and that takes the Appellant totally out of the purview of the



offence as the prosecutrix was major, thus, her consent matters.

12. Finally, it is concluded by asserting that there is no scientific or technical evidence, which may corroborate the one sided story of the prosecutrix. As a passing reference, it is submitted that the Appellant and the prosecutrix were in a relationship, which was known to the families and in the vicinity too. Since they belonged to different religious groups, therefore, there was a very strong opposition about such an alliance, especially from the prosecutrix's family. Incidentally, it is reflected that the prosecutrix alongwith her family has already been deported to Bangladesh as they were illegally living in India.

13. On the other hand, learned APP, while countering the contentions raised on behalf of the Appellant submitted that there is no reason to disbelieve the victim, who is consistent not only in the FIR, but in her statement recorded under Section 164 Cr.P.C. and the deposition made before the Court. In addition to that learned APP has further pointed out towards the scientific and medical evidence to hammer his point that it was the Appellant, who is responsible for committing the rape inasmuch as human semen was detected on the undergarments and the slides of the vaginal smear as reported in Ex. PW-13/G and Ex. PW-13/H. There is nothing on record, which may reflect that they were consenting parties, concluded the learned APP and, therefore, there is no reason to interfere with the Impugned Judgment.

14. According to the Appellant, everything was consensual, therefore, in such circumstances, apart from ascertaining the element of consent, the determination of age also becomes equally relevant, for the obvious reason that consent can only be relevant if the prosecutrix was capable to do so. Apart from the oral submission made by the prosecutrix about her age,



which needs to be verified, the relevant documents concerning the age are to be looked into.

15. What all is required in respect of determination of age has been crystallised in various pronouncements. The sum and substance of which is reliance on Rule 12 of Juvenile Justice Rules, 2007 and Section 94 of Juvenile Justice Act, 2015, where, broadly, three options are available to determine the age of a child who may be either a juvenile or a child victim. The matriculation (or equivalent) certificate of the child in question has been given the top priority and in case no such certificate is available in that eventuality the date of birth entered in the school first attended by the child becomes relevant and in the absence of this, the next option available is in the shape of birth certificate issued by a Corporation or a Municipal Authority or a Panchayat. In case this birth certificate is available then nothing else is required to be looked into but in case it is not, then as a last resort Ossification Test is to be conducted to ascertain the age of the child. The result of the Ossification Test, neither legally nor medically, is considered conclusive. It is very difficult, if not impossible to determine the exact age of the person concerned through such test. The concept of margin of error has, thus, been recognised by medical professionals as well as the Courts. The margin of error has been determined as two years on either side, as was observed in **Ram Suresh Singh vs. Prabhat Singh**, (2009) 6 SCC 681.

16. On the aforesaid parameters, the age is required to be determined in the instant case as well. No other document i.e. certificate of 10th standard, the school first attended or birth certificate by the Municipal body was there, therefore, in the instant case, Ossification Test was carried out and in terms of what has been deposed by PW-12 Dr. S. Zafar Abbas, the age of the



prosecutrix was more than 16 years and less than 19 years. The Ossification Test is reflected in Ex. PW-12/A. As the concept of margin of error of two years is taken into consideration which has to be read in favour of the Appellant, therefore, the age of the prosecutrix turns out to be 21 years at the relevant time and certainly it was more than 16 years. Therefore, by all standards the prosecutrix was competent to take a decision about her willingness or otherwise.

17. However, it is yet to be seen as to whether the consent was there or not, only then this aspect of age would come into play and not otherwise. The prosecutrix is consistent, so far blaming the Appellant is concerned, in her all three statements i.e. the one which laid the foundation of the FIR recorded by the Police (Ex. PW-2/A), similarly, she holds the Appellant accountable in her statement recorded under Section 164 Cr.P.C. recorded by the Magistrate (Ex. PW-9/2). In the statement under Section 164 Cr.P.C., she blames the Appellant and so is her substantive statement made before the Court as PW-2. The core issue has been maintained by her in all three statements that she was raped by the Appellant, therefore on the face of it, there appears a strong case against the Appellant. The statement of the prosecutrix herself is sufficient to hold the Appellant guilty, provided the statement is impeccable, irrefutable and consistent with the entire set of facts and circumstances, so as to say it is of sterling quality, as was observed in ***State of Punjab vs. Gurmit Singh***, (1996) 2 SCC 384.

18. However, the appreciation of evidence, especially in such like cases, is a bit tricky. When the testimony of the prosecutrix is examined threadbare, by juxtaposing it with her earlier two statements and other references on record and circumstances attending thereto, then the testimony of prosecutrix not only loses its, sheen and strength rather becomes vulnerable also.



Credibility of the prosecutrix comes into question, primarily on account of highly improbable and unbelievable deposition made by her. The narration of a witness is not to be taken into account by divorcing it from the ground realities, testimony of other witnesses and attending circumstances including the testimony of defence witnesses. In the instant case, the Appellant has examined two defence witnesses, of whom one happens to be his father.

19. The first element of improbability emerges at the very inception of the case itself, when prosecutrix says that she was given 'Prasad', in both her statements given to Police (Ex PW-2/A) and to the Magistrate under Section 164 Cr.P.C. (Ex.PW-9/2), whereas her mother in her testimony stated that prosecutrix was given 'laddo' 'Prasad'. Incidentally, prosecutrix PW-2 also discloses for the first time that it was 'ladoo' 'Prasad' in her deposition in Court. According to the prosecutrix, she fell unconscious after taking the Prasad indicating thereby that it was laced with some intoxicating, stupefying or such like substance. Albeit, it is not very vital but when looked into with the overall facts, then this also becomes a fact against the Prosecution. The prosecutrix was still able to notice that the Appellant was trying to stop a vehicle and made her sit in it. It has also come in evidence that the 'Prasad' was offered in the Gali, which is so narrow that a vehicle other than smaller vehicles cannot enter in it. This indicates that prosecutrix was taken from the Gali to the main road or the place where the so called vehicle was there. How come an unconscious young woman could be taken to a distance can be anybody's guess and it can be easily visualised that it required some effort and assistance. It has also come in the evidence of the Investigating Officer that the place where the 'Prasad' was offered is very thickly populated area and all this is happening in the morning time. It is nearly impossible that the act of the Appellant, of not only giving 'Prasad',



but taking the prosecutrix to the vehicle would also go unnoticed. The Investigating Officer, PW-13 has categorically deposed about the density of population in the area and that she could not find involvement of any vehicle in this crime. This shows that the deposition of the prosecutrix is not truthful.

20. The scene shifts from the Gali to the NTPC Jungle, thereafter, where the alleged incident of rape took place. The prosecutrix has deposed that she regained her consciousness in the NTPC Jungle and found herself naked. The Appellant, according to her, committed rape upon her despite her protest and in the process gagged her mouth and pressed her neck as well. On the contrary, the Investigating Officer has stated that the NTPC Officials had spotted the couple i.e. the Appellant and the prosecutrix roaming hand in hand in the area freely without there being any trace of any kind of force or lack of consent. This is indicative of the fact that the Appellant and the prosecutrix ventured out of their own volition, willingly and voluntarily. This fact has come in the deposition of the defence witnesses as well. In addition to that it has also come in evidence through the mouth of defence witnesses that the Appellant and the prosecutrix were having an amorous relationship and in fact they were deliberating to get married but for the fact that the family of the prosecutrix was strongly against such an alliance. The reason being the inter faith relationship, not approved by parents of either side but then a very strong opposition was there in the family of the prosecutrix, as it seems that the parents of the Appellant were probably ready to relent.

21. As has been deposed by the prosecutrix, she came back home and reported the whole thing to her mother when she came back home from Hospital. However, it has also come in evidence that the prosecutrix first



went to the house of the Appellant too but what for she went to the house of the Appellant, remains in the confines and in the realms of the heart and mind of the prosecutrix. The prosecutrix shared her plight with the mother of the Appellant, prior to informing to her own mother. The mother of the Appellant was not home rather brother of the Appellant, was there. Prosecutrix waited for the mother of Appellant. What this all shows?

22. The testimony of the prosecutrix further reveals that she was threatened by the Appellant not to disclose it to anyone but the testimony further reflects a strong possibility that the Appellant and the prosecutrix almost came back home together as the prosecutrix has stated that on the way home in the Gali, the Appellant stopped her and again extended the threat not to disclose the fact to her parents.

23. The cracks in the testimony of the prosecutrix are not confined to the aforesaid facts only rather are present extensively.

24. It has come in the evidence and has been very categorically suggested to the mother of the prosecutrix about the marriage proposal, which obviously, has been denied by PW-3, mother of the prosecutrix. This further indicates that the Appellant and the prosecutrix were very well known to each other. This fact of being known has been admitted by PW-3 in her statement. In the light of this fact, if the MLC Ex. PW-1/A is looked into then again a riddle is thrown up as to why the prosecutrix has not named the Appellant in the alleged history given by her to the Doctor as reflected in Ex. PW-1/A, in which she gives history of sexual assault at 10:00 AM by an “unknown man” after being sedated. If prosecutrix was wronged, offended and raped then what stopped her from naming the Appellant in the Hospital.

25. The recording of the FIR has also two versions inasmuch as, prosecutrix, examined as PW-2 has categorically stated that she went to the



Police after informing her mother when she came back from the hospital. Her statement was recorded by the Police in the Police Station (Ex.PW-2/A). The mother of the prosecutrix examined as PW-3 has a different version about it. According to her, when the prosecutrix informed her about the incident, she informed the Police telephonically and a lady ASI came to their house and recorded her statement. Apparently, both the things cannot be possible.

26. The deposition with regard to the fact that the Appellant and the prosecutrix were roaming freely holding each other's hand in the NTPC Jungle, as was told by some officials of the NTPC to the Investigating Officer as has been deposed by PW-13, surfaced in the testimony of DW-1, Lajja Ram, as he too had seen both the Appellant and the prosecutrix moving together hand in hand on that very day. In these circumstances, there appears no reason to disbelieve DW-1. The witnesses are the eyes and ears of the Court irrespective of the fact that who brought them, the Prosecution of the Defence. It is the credibility of the testimony which matters. It has been held by the Hon'ble Supreme Court in a catena of Judgments that while examining the witness on record equal weightage shall be given to the defence witnesses as is being given to the prosecution witnesses. In a recent Judgment titled as **Adambhai Sulemanbhai Ajmeri v. State of Gujarat**, (2014) 7 SCC 716, what was iterated in **Munshi Prasad v. State of Bihar** (2002) 1 SCC 351 has been reiterated in the aforesaid Judgment. The observations made in **Munshi Prasad** case goes as under:

“3.... Before drawing the curtain on this score, however, we wish to clarify that the evidence tendered by the defence witnesses cannot always be termed to be a tainted one by reason of the factum of the witnesses being examined by the defence. The defence witnesses are entitled to equal respect and treatment as that of the prosecution. The issue of credibility and the trustworthiness ought also to be



attributed to the defence witnesses on a par with that of the prosecution - a lapse on the part of the defence witnesses cannot be differentiated and be treated differently than that of the prosecutors' witnesses"

Reference can be made to the Judgment in ***Dudh Nath Pandey vs State of U.P.*** (1981) 2 SCC 166.

27. In view of these facts and circumstances, why the DW-1 and for that matter DW-2 should not be believed inasmuch as, their testimony has withstood the acid test of cross-examination and apparently there appears nothing which may discredit them. The deposition of the defence witnesses has found reference in the witnesses examined by the prosecution also, therefore, the degree of trustworthiness is present in a good measure.

28. What emerges on record is that the prosecutrix and the Appellant were neighbours, and were in a relationship. Their desire to get married was frustrated by the fact that they belong to two different religions. The evidence on record reflects that the deposition of the prosecutrix is not up to the mark, which certainly cannot be treated as that of a sterling quality as the circumstances narrated by her are highly improbable, which renders her testimony susceptible to doubt and suspicion. In such circumstances, corroboration was mandatory but that is not forthcoming. The medical and forensic evidence is indicative of the fact that the prosecutrix had sexual relations, but then the same were consensual or forcibly made is not clear. In the MLCs (Ex.PW-1/A), the doctor observed that the hymen was ruptured but noticed that no blood was found which indicates that the rupture was an old one. The exhibits i.e. the slides of the vaginal smear and the undergarment of the prosecutrix were subjected to forensic examination where presence of semen was found, but the FSL results Ex.PW-13/G &



Ex.PW-13/H reflect that the blood sample of the Appellant was of 'A' blood group, whereas test of the semen was inconclusive. Thus, the required corroboration is amiss. Notwithstanding, the fact that it indicates about a very strong possibility of complicity of the Appellant. However, in the criminal jurisprudence, the prosecution is under obligation to establish the case beyond all reasonable doubts, in order to hold anybody accountable, responsible and guilty. On this count, the evidence is wanting. In such circumstances, even if the Ossification Test is not even taken into consideration, as observed by the learned Trial Court, it still would not be possible to hold the Appellant responsible for the above-stated reasons. As such, the Appellant cannot be held guilty for the offence alleged against him and for which he has been convicted through the Impugned Judgment.

29. As a result, the Appeal is allowed and the Impugned Judgment dated 07.05.2008 is set aside. Appellant stands acquitted. The Bail Bond(s) stand discharged. Pending application(s), if any, stand disposed of.

30. Copy of the judgment be transmitted to the concerned Trial Court and Prison Authorities, for information and requisite compliance.

VIMAL KUMAR YADAV, J

JULY 27, 2026/ps/tng