

#S-3

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 07.10.2021

CRL.L.P. 44/2021

STATE (NCT OF DELHI)

..... Petitioner

versus

RAVI ANAND & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Ashish Dutta, APP for the State along with S.I.
Sandeep Arya, P.S. Rajouri Garden.

For the Respondents :None

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

JUDGMENT

**SIDDHARTH MRIDUL, J. (OPEN COURT –
BY VIDEO CONFERENCING)**

The present matter has been taken up for hearing by way of Video Conferencing on account of COVID-19 pandemic.

CRL.M.A. 4844/2021 (Condonation of Delay)

The present application under section 482 of the Code of Criminal Procedure, 1973 read with section 5 of the Limitation Act, 1963 has been instituted on behalf of the appellant/State, seeking condonation of 60 days' delay in filing the accompanying criminal leave petition.

In view of the averments made in the application, which are duly supported by affidavit, the same is allowed. The delay of 60 days in filing the accompanying criminal leave petition is condoned.

The criminal leave petition is taken on Board.

The application is disposed of accordingly.

CRL.L.P. 44/2021

1. The present application under section 378(3) of the Code of the Criminal Procedure, 1973 ('Cr.P.C') has been instituted on behalf of the State/Government of National Capital Territory of Delhi, seeking leave to appeal against judgment and order dated 01.10.2019 passed by the learned Special Judge (POCSO Act), West District, Tis Hazari Courts, Delhi acquitting the accused/respondents by granting them the benefit of doubt.
2. The case of the prosecution against the accused/respondents was, that on 17.10.2011 at about 12:45 p.m., the accused persons in furtherance of their common intention kidnapped the minor victim, namely Ms. 'N', with the intent to force and seduce her into illicit sexual intercourse.
3. It was further the case of the prosecution, that in pursuance of this common intention, the accused/respondents had administered to the minor victim Ms. 'N' some intoxicating substance, whilst simultaneously intimidating her criminally.

4. In addition, the accused/respondent, namely Ravi Anand, was charged with having committed rape upon the minor victim Ms. 'N' on 17.10.2011 at C-7/18 Sultan Puri, Delhi.
5. After investigation, charge-sheet was filed against the accused/respondents on 23.02.2012; and subsequent thereto, they were charged by the learned trial court for the commission of offences under sections 363/366-A/328/506 of the Indian Penal Code, 1860. In addition, as aforesaid, charge for the commission of the offence punishable under section 376 of the Indian Penal Code, 1860 was also framed against the respondent/accused Ravi Anand.
6. The learned trial court, by way of the impugned judgment and order dated 01.10.2019, arrived at the following findings:

“33. PW 7 Ms Kamlesh, PGT from the school of the victim produced the Admission Register (Ex.PW 7/A), copy of the date of birth certificate (Ex.PW 7/B), Application Form for admission (PW 7/C) and the School Leaving Certificate dated 21.07,2012 (Ex.PW 7/D) of the student/Victim to show that the date of birth of the victim was 03.02.1995. This witness was not cross-examined. There is no challenge so far as the date of birth of the victim is concerned. The incident in question took place on 17.10.2011. The victim was, therefore, 16 years and 8 months old at the time of the incident.

“Section 376 IPC as defined in Section 375IPC

“34. The incident in question took place on 17.10.2011 when she was more than 16 years old. The internal medical examination of the victim was got conducted on 24.10.2011. Hymen of the victim was found absent.

“35. In the year 2011, Section 375 IPC stood as under:

*"375. Rape - A man A said to commit " rape"
who, except in the case hereinafter excepted, has
sexual intercourse with a woman under
circumstances falling under any of the six following
descriptions:-*

First.- Against her will.

Secondly- Without her consent.

*Thirdly- With her consent, when her consent has
been obtained by putting her or any person in whom
she is interested, in fear of death or of
hurt.*

*Fourthly- With her consent, when the man knows
that he is not her husband, and that her consent is
given because she believes that he is another man. to
whom she is or believes herself to be lawfully
married.*

*Fifthly- With her consent, when at the time of giving
such consent, by reason of unsoundness of mind or
intoxication or the administration by him personally
or through another of any stupefying or
unwholesome substance, she is unable to understand
the nature and consequences of that to which she
gives consent.*

*Sixthly- With or without her consent, when she is
under sixteen years of age.*

*Explanation.- Penetration is sufficient to constitute
the sexual intercourse necessary to the offence of
rape.*

Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. "

“36. Thus, in the instant case, it is to be determined whether the accused had sexual intercourse with the Victim on 17.10.2011 and whether such sexual intercourse took place without the consent of the Victim. This issue shall be dealt within the succeeding paragraph.

“Statements of the Victim. : An Analysis

“37. The statement U/s 164 Cr.P.C. of the victim was recorded on 18.10.2011 wherein the victim stated that on 17.10.2011 at 12.40 p.m. she hired an auto after her school was over to meet accused Ravi at Sanjay Gandhi Hospital. She herself had called accused Ravi outside the Sanjay Gandhi Hospital as Ravi had suffered an accident. She has also stated that Ravi was her distant relative and was upset because of death of his mother. From the Sanjay Gandhi Hospital, they both went, to India Gate in the same auto. The victim called her parents at around 9.30 p.m. but since they told her that they would lodge a police report, she switched her mobile phone off. At around 1.00 a.m. they left India Gate and Victim left for Ravi's house with him where family of the accused Ravi was present. Accused Shankar beat up the accused Ravi and then took the victim and Ravi to Victim's house at around 3.00 a.m. The victim and the accused were produced in the police station at around 4.30 a.m. The victim also stated that while mother of the accused Ravi was counting her left breaths, she made victim promise to marry accused Ravi. Victim stated that she had left with Ravi willingly and she had returned willingly.

“38. The testimony of the victim would show that when she was taken to Court for recording of her statement U/s 164 Cr.P.C., her parents had accompanied her.

- “39. *Contrary to the testimony of the victim that the police recorded her statement in presence of accused persons, there is nothing on record to show that statement U/s 161 Cr.P.C. of the victim was also recorded on 17/18.10.2011.*
- “40. *As per the testimony of the victim/PW 1 as also her mother PW 3, the parents of the victim got her custody from Nirmal Chhaya on 19.10.2011. Yet it was only on 24.10.2011 that serious allegations were alleged against the accused persons vide her statement (Ex.PW 1/B). The testimony of the victim is on the same lines. It is noted that the record reveals that at the time of the recording of testimony of the victim, she had legal assistance available to her and was represented by an advocate. The testimony of her father (PW9) also shows that during the time of investigation, legal assistance was available to the victim and the complainant.*
- “41. *In her statement dated 24.10.2011 (Ex. PW 1/B) the victim alleged that on 17.10.2011 at 12:40 p.m. when she was going home after school, accused Ravi, his father Shankar and his sister Mausam met her. They told that her house was locked and her parents were at their house. They also told her that her parents had sent them to fetch her. Upon this, victim sat with them in the Auto- Rickshaw and went to their house at C-7/80, Sultan Puri, Delhi. There she did not find her parents. Accused Ravi told her that her parents were on their way, Accused Mausam then gave her a cold drink after having which she lost consciousness. When she regained consciousness, she saw that she was in bridal fineries. She also told her that her parents did not come but they have got her married to accused Ravi so that later on her parents could not refuse. They also told the victim that they had got her married to accused Ravi to honour the last wish of Ravi's mother. Victim has alleged that thereafter she was forcibly taken to a photo studio. Before entering the studio, she was threatened .and was told not to cry and that she should get her photographs taken in a smiling pose. All*

those photographs in ' which she appeared sad, were got deleted. Thereafter they took her back to her home. After a few hours, accused Vicky reached home and he along with accused Ravi took her to some other house. Vicky left the accused Ravi and the victim and thereafter accused Ravi had forcibly sexual intercourse with her. Thereafter late at night, accused Shankar and Vicky came there and informed her that her father had lodged police complaint. Accused Vicky, Mausam and Shankar abused the victim and her family and these three accused prepared a false statement and pressurized the victim to remember it and to repeat this statement wherever she was asked to give statements. They also threatened her with defamation and that they would disclose about the physical relationship between her and accused Ravi in case she refused to do their bidding. Victim has alleged that she got scared of such threats. Thereafter accused Mausam made her take bath and to wear school uniform so that they could hide the fact of forcible marriage of the victim with accused Ravi. It was only because of the threats of accused persons that she gave earlier statements favoring them. She again reiterated that while she was semi-conscious, accused Ravi raped her.

- “42. *In her testimony, victim stated that she gave a false statement before Ld. M.M. on 18.10.2011 out of fear and threat on part of the accused. She refused to get her internal medical examination conducted on 18.10.2011 out of fear.* She has further alleged that the examining doctor told her parents that she would remain unconscious for next two days, if her internal medical examination was conducted. PW 3/mother of victim deposed that the examining doctor told, her that her daughter would experience pain during internal medical examination and, therefore, she refused her internal medical examination. PW 9/Father of victim deposed that he refused victim's internal medical examination as the doctor had misguided him and the victim was also terrorized in this regard by the lady constable who had accompanied her.

"43. *It is further noted that PW 9 also deposed that on 19.10.2011, custody of his daughter/victim was given to him by Court's order and the CWC official had misguided him by saying that the victim did not want to go with him. He also alleged that the CWC Official also misguided his daughter/victim saying that he did not want to take her home.*

"44. *The victim has deposed in her testimony that she was kidnapped by accused Shankar, Ravi Anand and Mausam. At the house of accused, she was administered a spiked cold drink after which she became unconscious. When she gained consciousness, she found herself in bridal fineries. She was then taken to a photo studio. **She deposed that she was under fear when the photographs Ex. PW1/CI to C15 were taken. The perusal of the photographs, however, do not show any sign of duress or fear or that the victim was under influence of any sedative or intoxicant.** The victim has deposed that she was forced to be natural and to smile by the accused persons and the photographs in which she did not smile were got deleted. On the other hand, PW 10/Photographer deposed that a boy and a girl with few other persons had come to the shop. They were wearing wedding dresses and garlands and had come for getting themselves photographed. Both had asked him to take their photographs upon which he took 15 photographs as mentioned above. **So far as the photographs Ex. PW 1/CI to C15 are concerned, they speak for themselves. The testimony of PW 10 further confirms that both accused Ravi Anand and the victim had asked him to take their photographs.** No amount of force, coercion or threat or fear upon the victim could be proved by the prosecution at the time when the photographs were taken.*

"45. *The initial stage of investigation after recovery of victim was the most crucial period to establish the offence U/s 376 IPC against the accused Ravi Anand. **At that time not only did***

the victim exonerate the accused but she and her parents also refused to get her internal medical examination conducted. There is also material improvement in the complaint of the victim dated 24.10.2011 which and her statement U/s 164 Cr.P.C. Ex. PW/A. As discussed above, **all the events from 17th October to 24th October 2011 could not be reasonably explained, have been attributed to intoxication, fear & misguidance.** The victim was unconscious and under the influence of intoxicant or stupefying substance when her clothes were changed and on waking up, she found herself in bridal fineries. It was under the threat and fear that she was compelled to look natural and happy while the photographs were being taken. She was terrorized by the Lady Constable because of which she did not get her internal medical examination conducted on 18.10.2011. Further, the examining doctor herself misguided the parents of the victim stating that she would remain unconscious for two days after her internal medical examination. She was under fear and misguidance of I.O. SI Hansa Ram when her statement U/s 164 Cr.P.C, was recorded. Such explanations and reasons do not inspire confidence of the Court and cast a veil of doubt on the case of prosecution.

- “46. Further, DD No. 45A dated 17.10.2011 (Ex.PW 4/A) shows that at the time of lodging the complaint at the police station, father of victim had named that accused Ravi Anand as suspect and taken her away. In his cross-examination, PW 9 has admitted that his family and that of accused were on visiting terms, with each other. Documents Ex. DW 2/A and DW 2/Al show that PW 9 visited accused Ravi Anand at Tihar Jail on 10.12.2012 & 17.12.2012. **All these facts seen in light of the statement U/s 164 Cr.P.C. of the victim and her photographs lend credence to the defence that victim and accused Ravi Anand wanted to marry each other and it was in the knowledge of the victim's parents.**

“47. Thus, it could not be proved beyond reasonable doubt that the victim was kidnapped by the accused and she did not join accused Ravi Anand on her own. In view of lack of scientific evidence and contradictions/material improvements in statement U/s 164 Cr.P.C. and testimony of the victim, it could not be established beyond reasonable doubt that the victim was raped by the accused on 17.10.2011 after the photographs Ex. PW 1/CI to CI5 were taken. The hymen being absent in itself does not indicate commission of rape upon the victim. It has not been proved that if at all sexual intercourse between accused Ravi Anand and the victim took place on 17.10.2011 and if it had, it was without the consent of the victim. In view of the above discussed material contradictions and improvements, a doubt has been created whether accused Shankar, Vicky and Mausam played an active role in formation of intention of the victim to leave the house of her father and join accused Ravi Anand or if the victim had herself left to join the company of accused Ravi Anand.

Role of Accused Vicky @ Vikram Anand

“48. In her testimony, victim has deposed that accused Vicky took her and accused Ravi to house No. C-8/103 and left them there. He also threatened her when it became known that her father had lodged a complaint at the Police Station. When she was taken to Police Station, accused Ravi, Mausam and Shankar accompanied her. There is no mention of accused Vicky here. Her father (PW9), however, deposed that accused Vicky was also present at P.S. at 5.00 a.m. on 18.10.2011. The role attributed to accused Vicky is rather sketchy.

“49. Accused Vicky summoned the official record of his work place to show that on 17.10.2011, he had reported for duty. DW 3 Sh Anil Kumar, Record Incharge/Conductor proved the attendance record of DTC, Wazir Pur Depot for the month of October 2011 as Ex.DW 3/A. He also produced the

relevant record to prove the I-Card No. 12372 of accused Vicky @ Vikram Anand. DW 3 explained in his cross-examination by the State that double duty done by Vikram Anand on 17.10.2011 is mentioned in the Attendance Register Ex.DW 3/A. He explained that on that day he was deputed at Route No. 970 and Route No. 971 and, therefore, he remained on duty from 7.20 a.m. till 6.00 p.m. There is nothing on record to suspect the DTC record produced by the summoned official witness. It is therefore, doubtful, if accused Vikram Anand played any active role in respect of the alleged offence.

“House No. C-8/103, Sultan Puri

“50. Case of the prosecution is that after photographs of the victim and accused Ravi were got taken at a photo studio, they returned home from where they were again taken to House No. C-8/103, Sultan Puri. Accused Ravi and victim were left there and Ravi committed rape upon the victim.

“51. PW 13 Om Prakash -owner of House No. C-8/103, Sultan Puri, Delhi deposed that he had rented out a room, to the accused. He pointed towards accused Shankar Dayal and stated that the accused had told him that his house was under construction. In his cross-examination, however he admitted that, he had never seen him before. He tried to explain that his elder daughter whose name he did not know had come to him to take the premises on rent. It is noted that on 16.05.2013 when PW 13 was examined, all the accused persons were present. It has not been clarified by the witness that if he had not seen accused Shankar Dayal before and was seeing him for the first time in the Court on, 16.05.2013, how could he say that it was his elder daughter who had come to him for taking the room on rent. He also did not identify if it was accused Mausam who had taken the said room on rent from him or someone else. Such a witness as PW 13 is not only an unreliable witness, but he has

brought the case of prosecution itself regarding a room being taken on rent by the accused persons in the premises C-8/103 where accused Ravi Anand raped the victim under a cloud

“Investigation

“52. Circumstances in which the victim was recovered and the circumstances that prevailed till 24.10.2011 were the subject matter of investigation conducted by the first I.O. SI Hansa Ram.. Perusal of record also shows that accused Ravi Anand was arrested for the first time on 18.10.2011 at 7.00 a.m. near the Metro Station Rajouri Garden by the first I.O. SI Hansa Ram. It is not clear as to under what circumstances this accused was arrested from Rajouri Garden Metro Station if he was present at the Police Station alongwith the victim in the wee hours of 18.10.2011. The first I.O. as also Constable Harkesh who assisted him, have neither been examined as prosecution witnesses to explain the circumstances of the first arrest of accused Ravi Anand on 18.10.2011 and the circumstances that prevailed till 24.10.2011 nor have they been cited as PWs.

“53. Only I.O. SI Hansa Ram could have explained and proved how the victim was recovered and whether she and accused Ravi were produced in the Police Station after they had first gone to victim's parents at her house as stated by her in the statement U/s 164 Cr.P.C. or did victim's parents come to know about her recovery after one to two hours. The initial investigation in the instant case is material and crucial. Non-citing of the initial I.O. or Ct. Harkesh as PWs goes against the prosecution. It is also noted that in her statement U/s 164 Cr.P.C., victim stated that at 9.30 p.m when she was with accused Ravi, they called up her parents. PW 14 I.O. Sumitra deposed that she had collected the call details of the mobile phones of victim and accused Ravi Anand. These call details which would have been a material piece of evidence

in respect of the initial circumstances on 17.10.2011 have not been proved by the prosecution. Disregarding initial circumstances and relying solely upon the events from 24.10.2011 does not appeal to the conscience of the Court.”

(emphasis supplied)

7. Mr. Ashish Dutta, learned Additional Public Prosecutor, appearing on behalf of the State, would urge that the learned trial court fell into error in acquitting all the accused/respondents, contrary to the evidence on record.
8. It was specifically urged on behalf of the State that the impugned judgment and order is premised on conjectures and surmises and returns a finding of ‘not guilty’ merely on the basis of minor contradictions in the testimony of relevant witnesses.
9. It was also asseverated on behalf of the State that the learned trial court failed to appreciate, that in her testimony before the court, the minor victim Ms. 'N' specifically explained the reasons behind her discordant stand as evidenced by her statement under section 164 of Cr.P.C. before the learned Metropolitan Magistrate on 18.10.2011.
10. Lastly, it was urged that the learned trial court failed to consider the testimony of the victim with respect to her refusal to subject herself to internal medical examination on 18.10.2011.
11. In view of the submissions made on behalf of the State, it becomes incumbent upon us to examine the statement of the victim under section 164 Cr.P.C., which is Ex-PW-1/A, recorded on 18.10.2011, wherein she stated as follows (identity particulars redacted for confidentiality of minor):

$$\Sigma x^2 w^2 / A$$

ASJ Delhi
08/8/12

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(17) (179) - Mmt West Delhi

डेर के कारण हमने अपने Mobile Phone, Switch
 बंद कर दिए। लगभग रात के 01.00 बजे हम
 Indira Gate से निकले और मैं रवि के साथ
 रवि के घर चली गई। रवि के घर मैं रवि
 के family members मौजूद थे। रवि के
 पिताजी ने रवि को गारा और मुझे साथ रवि को
 मेरे घर ले आए। हम लगभग 03.00 बजे
 अपने घर पहुँचे। लगभग 04.30 बजे (सुबह के)
 हमें थोड़े जे पैसा मिला। यह कदम हमने इसलिए
 उठाया क्योंकि रवि की माँ ने अपने अतिरिक्त कर्जों में
 रवि का हाथ मेरे हाथ पर रख कर मुझसे वचन
 लिया था कि मैं उसी से शादी करूँ और मैंने
 यह वचन रवि का माँ को भी दिया था। मैं
 अपनी गली से रवि के साथ गई थी और
 अपनी गली से वापिस आई हूँ। मेरे साथ कोई
 जोर-जबरदस्ती नहीं की गई है।

RO&AC
 (अभि-पि)

(Sugandha Aggarwal)
 MM-West Delhi

18/10/2011. पृष्ठ

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12. Before proceeding further however, it would be relevant to observe that the victim recanted on her statement under section 164 Cr.P.C, as elaborated hereinabove, in her testimony before the court.
13. In her testimony before the Court, the victim sought to clarify, that she had made a false statement before the learned Metropolitan Magistrate on 18.10.2011, Ex.PW-1/A, out of fear and threats extended to her by the respondent/accused and that she had refused to permit DDU Hospital to conduct an internal medical examination, as reflected in the MLC [Ex-PW-1/C], also out of fear.
14. However, having heard Mr. Ashish Dutta, learned Additional Public Prosecutor appearing on behalf of the State, and having considered the evidence on record, including the ‘flip-flop’ testimony of the alleged victim Ms. ‘N’, we find ourselves in the agreement with the learned trial court, inasmuch as, in our considered opinion also :
 - (1) The prosecution has been unable to establish beyond reasonable doubt that the victim was kidnapped by the accused/respondent, Ravi Anand, and did not join him of her own free will;
 - (2) The abject lack of scientific evidence and the contradictions/material improvements, as axiomatic from the statement of the victim under section 164 Cr.P.C, which is Ex-PW-1/A, and her contradictory testimony in court, leaves no manner of doubt that the same is neither credible

nor trustworthy, so as to arrive at a conclusion beyond reasonable doubt that she was raped by the accused on 17.10.2011;

- (3) The photographs exhibited before the learned trial court by the prosecution, Ex-PW1/C1 to C15, also reflect the falsity of the prosecution's case against the accused persons; and
 - (4) The evidence to establish that the accused Ravi Anand subjected the victim to sexual intercourse without her consent, is also conspicuous by its absence.
15. Therefore, in view of the circumstances, antecedent and attendant, as they emerge from the evidence on record, we are of the considered view that, as opined by the learned trial court, the prosecution has failed to establish the charges framed against the accused/respondents beyond reasonable doubt. In this view of the matter, we find ourselves in agreement with the conclusion arrived at by the learned trial court that the present is a fit case for grant of benefit of doubt to all the accused persons.
16. In view of the foregoing, the criminal leave petition instituted on behalf of the State, is devoid of merit and is accordingly dismissed.

**SIDDHARTH MRIDUL
(JUDGE)**

**ANUP JAIRAM BHAMBHANI
(JUDGE)**

OCTOBER 07, 2021/rs

[*Click here to check corrigendum, if any*](#)