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

% ***Date of decision: September 22, 2023***

+ **CRL.L.P. 199/2021**

STATE NCT OF DELHI Appellant
Through: Mr.Tarang Srivastava, APP for the
State with SI Arpana, P.S.Punjabi
Bagh and SI Vimla, P.S.Narela
Industrial Area.

Versus

RAJ KARAN @ BABLOO & ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT (oral)

1. **The State has filed the present petition seeking Leave to Appeal under Section 378(3) of the Code of Criminal Procedure, 1973** (in short, "CrPC") against the impugned Judgment dated 04.12.2019 vide which the respondents have been acquitted for the charges under Sections 376(2)(g)/377/506/34 of the Indian Penal Code, 1860 (in short, "IPC").
2. **The case of the prosecution in brief** is that on 01.09.2010 the prosecutrix "K" made a complaint to Police Station Punjabi Bagh stating that she was a married woman having four children. She was working as a cook in a Banquet hall in Janakpuri. On 30.08.2010 she received a call from



Manager of Banquet Hall asking her to report as there was a party. Initially, she expressed her inability as she was not feeling well but at the insistence of Manager, she agreed and left her house at about 10 PM. She took a bus from Madipur and deboarded at Peeraghari Chowk. Since she was not feeling well, she made a call to the Manager who allowed her to go back to house. She took a rickshaw and deboarded near Khatir Restaurant. It was late night. As she was walking back to home on foot and reached near temple, she notice two boys roaming there on motorcycle and on seeing her they whispered that '*Dekho Jugaad Jaa Raha Hai*'. She ignored and kept on walking, but suddenly the boy sitting on the pillion seat of motorcycle caught hold her from her hairs and slapped her, making her fall to the ground. Then the boy held her from her arm and took her to the back street of Khatir Restaurant. The boy, who was driving the motorcycle threatened her not to raise alarm. The boy with short height raped her and the other boy put his penis into her mouth due to which she vomited. Thereafter, both of them asked her to come to them whenever told by them. One of them told her that his name was "Karan" and he was a bad character of the area to whom no harm can be caused even by the police. They offered her to drop to her home and took her mobile. However, on getting an opportunity she hid herself under a van and the boys went away on not being able to find her. Thereafter, she returned back to her house. On 31.08.2010, when her husband returned home, she told him about the entire incident. She then made a complaint to the Police Station on which the FIR under Sections 376(G)/377/506 IPC was registered at PS Punjabi Bagh.

3. The investigation was taken up by the police. The statement of the prosecutrix under Section 164 CrPC (Ex.PW-1/C) was recorded on



15.06.2015 by the learned MM.

4. The accused Raj Karan @ Babloo was apprehended alongwith stolen motorcycle on 18.10.2010 by ASI Sensor Pal in **FIR No. 77/2010** under Section 379 IPC at PS Punjabi Bagh. He made a disclosure statement Ex. PW-16/A in the said case about the commission of offence in this case. He was formally arrested on the intervening night of 18-19.10.2010.

5. Samples were taken and sent to FSL for matching and for an expert opinion. Respondent No.1 Raj Karan @ Babloo admitted his guilt in his disclosure statement and also disclosed the name of his other friend as Jitender @ Golu. Raj Karan @ Babloo refused to get his TIP conducted on 23.10.2010 but he again moved an application for getting his TIP conducted which was conducted on 18.12.2010 vide proceedings Ex.PW-11/C. On completion of investigation, charge-sheet under Section 376G/377/506 IPC was filed before the learned MM and the charges under Sections 376(2)(g)/377/506/34 IPC were framed against the accused Raj Karan @ Babloo on 14.05.2011 to which he pleaded not guilty and claimed trial.

6. The efforts were made to trace the other accused Jitender @ Golu but he could not be traced and ultimately proceedings under Section 82 CrPC were initiated against him. Thereafter the accused Jitender @ Golu was arrested in FIR No. 39/2011 dated 06.11.2011 under Section 25/54 of the Arms Act at PS Sultanpuri wherein he made a disclosure statement about this case. He was formally arrested in this case. The judicial TIP of accused Jitender @ Golu was got done but the complainant was unable to identify him in the TIP though in her supplementary statement she stated that the boy who was shown to her during the TIP was the same person who had committed rape upon her but she did not identify him because of fear.



Supplementary Charge-Sheet under Sections 376G/377/506/34 IPC was prepared against the accused Jitender @ Golu and the same was filed in the Court on 08.08.2011.

7. The Charges against accused Raj Karan @ Babloo under Sections 376(2)(g)/377/506/34 IPC were framed on 14.05.2011. Thereafter, the Charges against accused Jitender @ Golu were framed under Sections 376(2)(g)/377/506/34 IPC on 09.08.2011 to which he pleaded not guilty.

8. The prosecution examined 19 witnesses in all, the most important being the prosecutrix who was examined as PW-7. The statements of both the accused was recorded under Section 313 CrPC wherein they pleaded their false implication.

9. The learned ASJ referred to the testimony of the prosecutrix and the testimony of the Investigating Officer in regard to the TIP proceedings to conclude that the prosecutrix has failed to identify the two accused in the TIP and her identification of the two accused in the Court for the first time could not be held to be proved beyond reasonable doubt. The benefit of doubt was extended to both the accused who were acquitted by the impugned Judgment.

10. Being aggrieved, the present Leave to Appeal has been preferred by the State.

11. **Submissions heard as advanced by the Counsel for parties.**

12. The star witness of the prosecution was PW-7 the prosecutrix who deposed about the entire incident as stated in her complaint (Ex. PW-7/A) with there being no material contradictions. She identified her clothes i.e. black colour *salwar*, one brown colour *kameej*, one *dupatta* and one underwear which she was wearing at the time of commission of offence and



handed over to the Doctor at the time of examination. These clothes were identified by her during her testimony in the Court.

13. The entire case, however, hinges on establishing the identity of the two respondents. On 18.10.2010 in this case, PW-10 Head Constable Bahadur Singh had apprehended this accused/respondent No. 1 Raj Karan @ Babloo alongwith the motorcycle bearing no. DL1SR 0259 which was found to be a stolen vehicle, in regard to which FIR No. 77/2010 at PS Punjabi Bagh was already registered. During the interrogation, respondent No.1 Raj Karan @ Babloo confessed to the commission of crime in this case. Consequently, he was formally arrested in this case in the intervening night of 18/19.10.2010.

14. Since the respondent No.1 Raj Karan @ Babloo had not been identified on the spot but was arrested on 48 days of the incident, the prosecution was required to establish his identity beyond reasonable doubt. The first significant aspect which emerges is that the alleged incident had happened around 10 PM in the night. From the prosecution story, it was dark and there was no light making the chances of seeing the respondents bleak.

15. The IO had moved an application for the TIP of the accused Raj Karan @ Babloo on 23.10.2010 but he refused to get his TIP conducted and his statement was recorded as Ex.PW-11/A. The accused Raj Karan @ Babloo refused to get his TIP conducted as he claimed that he had been photographed and his photograph has been shown by the IO to the witness. The TIP proceedings are exhibit PW-A. The TIP of the accused Raj Karan @ Babloo was again conducted at Tihar Jail on 18.12.2010 i.e. after almost 2 months of 1st TIP. The prosecutrix was unable to identify the accused from



the 10 persons who were produced before her. The TIP proceedings are Ex.PW-11/C. Hence, the TIP of Raj Karan @ Babloo was conducted twice but on both the occasions, the prosecutrix was unable to identify him.

16. The respondent no.2 Jitender @ Golu was arrested subsequently. An application for getting his TIP conducted which is Ex.PW-19/D was moved on 04.03.2011 and the TIP was eventually conducted at the Tihar Jail on 09.03.2011 i.e. after almost six months of the incident. The TIP proceedings are Ex.PW-19/D. Here again the prosecutrix was shown 10 persons including the accused but she was again unable to identify the accused Jitender @ Golu.

17. The prosecutrix was thus, admittedly not able to identify either of the two accused during investigation. However, when she appeared as PW-7 in the Court, she identified both the accused as being the culprits. In her cross-examination, she deposed that she was shown two accused persons in PS Madipur on 22.11.2012 before her examination-in-chief was recorded in the Court. She also deposed that she had seen two accused persons outside the Court when she had come for her evidence on 22.11.2012 and that she had been able to identify them as she had been coming continuously to the Court when she had seen them. In the light of her admissions that she had been shown the two accused on the day when her examination-in-chief was recorded on 22.11.2012 and also that she had seen the accused persons regularly coming to the Court in regard to her case, clearly makes the identification of the two respondents for the first time in the Court, not beyond a shadow of doubt.

18. The learned ASJ has rightly held that under these circumstances, the identification of both the respondents-accused by the prosecutrix for the first



time in the Court could be of no consequence and it was safe to conclude that the identity of the two accused as perpetrators of the crime, has not been proved by the prosecution beyond reasonable doubt.

19. In addition to this, a reference be also made to the FSL report which recorded that the samples had got putrefied and the corroborative medical evidence also did not connect the two respondents to the commission of offence. The learned ASJ has also observed that in her complaint (Ex.PW-7/A) or in her statement under Section 164 CrPC (Ex.PW-1/C), the prosecutrix had not mentioned that one accused had committed oral sex. The learned ASJ, therefore extended the benefit of doubt to the two respondents and acquitted them.

20. We find that the learned ASJ has rightly concluded that the identity of the two respondents as the perpetrators of crime was not established by the prosecution beyond reasonable doubt and they have been rightly acquitted.

21. We find no merit in the Leave to Appeal which is hereby dismissed.

22. The pending applications, if any, also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 22, 2023/akb