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

% ***Date of decision: 21st August, 2023***

+ **CRL.A. 1231/2015**

STATE

..... Appellant

Through: Mr. Tarang Srivastava, APP for State
with Insp. Naveen Kumar, PS S.P.
Badli.

versus

NEERAJ

..... Respondent

Through: Mr. R.P. Dhamia, Mr. Baldev Raj &
Ms. Shikha Tyagi, Advocates.

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

J U D G M E N T (oral)

1. The present Criminal Appeal under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the appellant/State to set aside the Judgment dated 21.09.2011 passed by the learned Additional Sessions Judge/Special Judge (NDPS), Outer District, Rohini Courts, Delhi in SC No. 74/2010 *vide* which the accused/respondent was acquitted of the charges punishable under Sections 328/376/506 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC, 1860"*) registered *vide* FIR No. 120/2010 at Police Station SP Badli.
2. The case of the prosecution was that the prosecutrix with her family



member was residing as a tenant in house bearing No. E-225 in the same colony, which was owned by the father of the accused/respondent. On 04.05.2010, at about 7:45 A.M., the prosecutrix, who was a student of 7th standard, while she was on her way to school, the accused/respondent, who was 20 years old, misrepresented that her mother had been taken ill and was admitted in the hospital and asked her to accompany him. The accused/respondent told her that they would first go to the house to take money for her mother's treatment. On reaching the house, he gave her Limca (soft drink) and the prosecutrix after taking the said soft drink became dizzy and accused started removing her clothes and when she resisted, the accused/respondent threatened and raped her.

3. Thereafter, the prosecutrix came back home, but she could not disclose the facts as she was threatened by the accused/respondent that he would kill her if she disclosed anything to anyone. Later, the prosecutrix revealed the incident to her mother on 09.05.2010 and on the statement of the prosecutrix, an FIR No. 120/2010 under Sections 328/376/506 of IPC, 1860 was registered against the accused/respondent at Police Station SP Badli.

4. The Charges under **Sections 328/376/506 of IPC, 1860** were framed against the accused/respondent to which he pleaded not guilty and claimed trial.

5. The prosecution in support of its case, examined sixteen witnesses, the most significant witnesses being PW3/prosecutrix, PW4/mother and PW5/father.

6. The MLC of the prosecutrix was proved by PW7/Dr. Shweta Aggarwal.



7. The accused/respondent in his statement under Section 313 of Cr.P.C., 1973 pleaded his innocence and claimed that a false case that had been registered against him at the instance of the father of the prosecutrix.

8. The learned Additional Sessions Judge on appreciation of the evidence as led by the prosecution observed that there were material improvements in the testimony of the prosecutrix and her parents, and the allegations were also not supported by the MLC. Therefore, benefit of doubt was extended to the accused/respondent and accordingly, he was acquitted of the charges punishable under Sections 328/376/506 of IPC, 1860 *vide* Judgment dated 21.09.2011.

9. Aggrieved by the Judgment dated 21.09.2011, the present appeal has been preferred on behalf of the appellant/State.

10. Submissions heard.

11. The prosecutrix in her testimony as PW3 had deposed about the incident essentially on similar lines as her statement under Section 164 of Cr.P.C., 1973 with some embellishments that she had shouted for help, but the accused/respondent increased the volume of television for which reason, none came for her help to the room where she was taken by the accused/respondent. The prosecutrix had admitted that the room which was the place of incident was situated on the first floor, while there were people/tenants present in the rooms situated on the ground floor. Moreover, no alarm was raised by her to seek help of the people/tenants living in the said house. Therefore, the prosecutrix' asseration that she had shouted for help despite which none came to her help, is not believable.

12. It is pertinent to observe that as per the testimony of the prosecutrix, the accused/respondent continued to rape her for about 20 minutes, but she



herself had deposed that she remained in the room with the accused/respondent till about 02:00 P.M. There is no averment made by the prosecutrix that she was kept confined in the room forcibly and there is no explanation forthcoming as to why she remained in the room with the accused/respondent since 07:45 A.M. when she met the accused/respondent till about 02:00 P.M.

13. It is also significant to note that the prosecutrix had asserted that after being raped, there was bleeding and her school uniform got stains, however, she went back to her house at about 02:00 P.M.

14. It has not been explained satisfactorily as to how she walked back when blood stains were present on her uniform without being noticed by anyone, including her parents.

15. The prosecutrix had deposed in her testimony that she had handed over the school uniform and her underwear that she was wearing at the time of incident to the police *vide* Seizure Memo Ex.PW4/A. However, the prosecutrix herself deposed that the clothes had been washed and thus, seizure of the clothes is of little significance or relevance.

16. The improvements and non-credulence of the testimony of the prosecutrix which generally should not be easily disbelieved, is evident from certain significant admissions made by the prosecution on witnesses. Admittedly, the prosecutrix and her family were a tenant in the house, of which, the father of the accused/respondent was the owner and landlord. It has also come in the evidence of PW-4/mother of the prosecutrix that the prosecutrix and her family had vacated the house on 08.05.2010. A suggestion was given that since the parents of the prosecutrix defaulted in making payment towards the rent, they were asked by the father of the



accused/respondent to vacate the premises which they admittedly did on 08.05.2010. The alleged incident took place on 04.05.2010, but the complaint had been made on 09.05.2010 i.e., one day after the vacation of the premises by the parents of the prosecutrix.

17. In these circumstances, a serious doubt is raised about the incident which had been reported one day after the prosecutrix and her family members had vacated the premises one day i.e., on 08.05.2010 of reporting the alleged incident on 09.05.2010.

18. The MLC Ex.PW7/A proved by Dr. Shweta Aggarwal also does not support the testimony of the prosecutrix. It is stated in the MLC that there were no external injuries found on the body of the prosecutrix. Though hymen was torn, but there was no indication about the age of tearing of hymen. It was also not mentioned whether the tearing of hymen of the prosecutrix was posterior or posterolateral. Furthermore, there was nothing incriminating reported in the FSL Report Ex. PW15/E and 15/E-1, essentially because all the samples were putrefied. The clothes, as per the admission of the prosecutrix, had already been washed. The corroborative evidence also does not support the case of the prosecution.

19. Therefore, inherent contradictions in the testimony of the prosecutrix and the possibility of it being a false complaint cannot be ruled out. Though it is settled proposition of law that the sole testimony if of stellar quality, can be the basis of conviction, but in the present case, the testimony is not only full of inherent contradictions and improvements, but the possibility of it being motivated, making it unsafe, to be made the basis of conviction.

20. Accordingly, we conclude that the learned Additional Sessions Judge has rightly extended the benefit of doubt to the accused/respondent.



21. Therefore, we find no merit in the present Criminal Appeal, and the same is hereby dismissed along with pending application, if any.

SURESH KUMAR KAIT, J

NEENA BANSAL KRISHNA, J

AUGUST 21, 2023
S.Sharma