



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

% Reserved on : 22.07.2025
Pronounced on : 28.07.2025

+ **CRL.A. 35/2023**

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.....Appellant

Through: Mr. Faraz Maqbool, Advocate
(DHCLSC) with Ms. Deepshikha and
Ms. Sana Juneja, Advocates.

versus

STATE (NCT) OF DELHI & ANR

.....Respondents

Through: Mr. Pradeep Gahalot, APP for State
Mr. Arvind K. Gupta, Mr.
Abhiesumat Gupta and Mr. Arun
Bhattacharya, Advocates for
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal the appellant/prosecutrix seeks to assail the judgment of acquittal dated 23.05.2022 passed by learned ASJ/Special Court, FTC, PHC, New Delhi, in Sessions Case No. 9636/2016, arising out of FIR No. 993/2015 registered under Sections 376/506/323 IPC at PS Vasant Kunj North, New Delhi.

2. Briefly stated, as per the case of prosecution, the prosecutrix (PW1) and her husband (PW3) were working as sweepers at IIMC near JNU Campus, on a contractual basis. The accused/Respondent No. 2 was also



employed as a Lower Division Clerk (LDC) in the said office and was known to the prosecutrix for one year prior to the date of incident. The respondent No.2 was residing in the IIMC staff quarters and had asked the prosecutrix to accompany him to take his grandmother to the market on two or three occasions, to which the prosecutrix agreed.

On 15.08.2015, the respondent No.2 again asked the prosecutrix to visit his quarters. She reached there and found that his grandmother was asleep in an adjoining room. The respondent No.2 came into the room where the prosecutrix was sitting, bolted the door from inside, and forcibly established sexual relations with the prosecutrix against her will and without her consent. He also captured her photo in his mobile phone and threatened her to publish the photographs on the internet in case she disclosed the incident to anyone. Thereafter, the respondent No.2, on 2-3 occasions, by extending threats based on the photographs, called her to his quarters and established sexual relationship with her. On 09.10.2015, the respondent No.2 called her at R.K. Puram, and inscribed his name on the wrist of the prosecutrix using a blade, due to which she sustained injuries. It is after this incident that the prosecutrix narrated the entire incident to her husband and lodged a complaint on 18.10.2015, leading to the registration of present FIR.

3. The Trial Court framed charges vide order dated 03.12.2016 under section 376(2)(n)/506/323 IPC against respondent No.2, to which he pleaded not guilty and claimed trial.

4. In trial, a total 11 witnesses were cited by the prosecution to prove its case. The prosecutrix was examined as PW1, her husband was examined as PW3, and the doctor who conducted the medical examination of the



prosecutrix was examined as PW5. The remaining witnesses are all police and forensic witnesses who deposed about various aspects of the investigation and FSL results.

On the other hand, the appellant, in his statement recorded under Section 313 Cr.P.C., claimed innocence and that he had been falsely implicated in the present case because he did not help the prosecutrix and her husband, who were employed on a contractual basis, to become permanent.

5. The learned counsel for the appellant has raised threefold arguments. *Firstly*, that the trial court erred in concluding that there are material contradictions in the testimony of the prosecutrix. Rather PW1 stated in her examination-in-chief that on 15.08.2015, the respondent No.2 called her to his house and forcibly established physical relations with her, thereby corroborating her version in the complaint dated 18.10.2015 (Ex. PW1/A). *Secondly*, the presence of an injury on the wrist of the prosecutrix has been confirmed by the husband of the prosecutrix (PW3) and Dr. Karnika Tiwari (PW5) who conducted the medical examination of the prosecutrix. It is submitted that the said injury is attributed to the respondent No.2 slitting her hand with a blade. *Thirdly*, the incident dated 15.08.2015 is further established by the CDR, which indicates that a call was made at 13:47 hours by the respondent No.2 to the prosecutrix. It was this call that led to her going to his room, where the offence was committed.

6. Learned counsel for the respondent No.2, submitted that the testimony of prosecutrix (PW1) cannot be relied upon as the prosecutrix retracted from her complaint in her statement recorded under section 164 CrPC and did not support the allegations made by her in the complaint. It is next contended



that the MLC recorded a bruise on the prosecutrix's wrist, which though was attributed to the respondent No.2, however, no conclusive opinion is rendered as to the nature or cause of injury. Lastly, it is contended that the detailed analysis of the call detail record shows not only the prosecutrix but also her husband were in constant contact with each other, at the relevant time. Further, there were plenty of calls exchanged between the prosecutrix and respondent no.2.

7. As per the allegations in the complaint (Ex.PW1/A) lodged by the prosecutrix, the respondent No.2 committed rape upon her on multiple occasions. However, in her statement recorded under section 164 CrPC (Ex.PW1/G), the prosecutrix has not supported her version of complaint and no allegation with respect to forceful physical relation by the respondent No.2 was made. It is further observed that while explaining the reason behind such retraction from her complaint, the prosecutrix has stated in her cross-examination that she was under pressure from the respondent No.2. However, pertinently, she admitted that she had not stated to the Magistrate about any such threat at the time of recording of her statement.

8. The prosecution's case is further undermined by a significant and unexplained delay in reporting the incident of rape, alleged to have occurred on 15.08.2015. The FIR came to be lodged only on 18.10.2015, i.e. after a delay of more than two months and no satisfactory explanation was given to explain this delay. Even as per the prosecution version, the incident was disclosed by the prosecutrix to her husband on 09.10.2015 and yet there was a further delay of 9 days in lodging the complaint on 18.10.2015.

9. Insofar as the allegations with respect to the injury on the wrist of the prosecutrix with a blade is concerned, her husband (PW3) has stated that on



09.10.2015, he saw the wrist injury, however, he did not immediately make any complaint to the police. In the MLC of the prosecutrix (Ex.PW1/B), it is only stated that a sign of marks was found on prosecutrix's left forearm. PW5, the doctor who conducted the medical examination, stated that she noticed a small bruise on her left forearm. There was no bandage, and on being asked by the prosecutrix, she stated that it had nothing to do with the rape. Additionally, the W/SI Poonam Yadav (PW9), the investigating officer, stated that she did not notice any bandage on her wrist; however, one of her wrists did have an old injury mark, but it was not bleeding nor appeared to be fresh.

10. Though the prosecutrix had alleged that photographs and videos were taken by the respondent No.2 to threaten the prosecutrix, however, no such content was recovered during the investigation. The mobile phone of respondent No.2 was sent for FSL examination but the FSL report too, yielded no incriminating material against the respondent No.2. Moreover, the CDR analysis sheds no light as to the contents of conversation between the prosecutrix, her husband and the respondent No.2 and merely call detail records cannot fill the lacunae in the prosecution case.

11. In light of the above-noted facts, the learned ASJ has rightly concluded that no case was made out against the respondent No.2 for the offence of commission of rape, and he was accordingly acquitted.

12. The law pertaining to the double presumption of innocence operating in favour of an accused at the appellate stage after his acquittal by the Trial Court is, a settled position, no longer *res integra*. A gainful reference may be made to the Supreme Court's decision in Ravi Sharma v. State (NCT of Delhi), reported as **(2022) 8 SCC 536**, wherein it was observed, as



hereunder:

“8. Before venturing into the merits of the case, we would like to reiterate the scope of Section 378 of the Criminal Procedure Code (for short “CrPC”) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in Jafarudheen v. State of Kerala [Jafarudheen v. State of Kerala, (2022) 8 SCC 440] as follows : (SCC p. 454, para 25)

“25. While dealing with an appeal against acquittal by invoking Section 378CrPC, the appellate court has to consider whether the trial court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate court has to be relatively slow in reversing the order of the trial court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.””

13. At this juncture, it is also deemed apposite to refer to the decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, wherein it has been categorically held that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal to an acquittal. The relevant portions are produced hereinunder:

“14.1. In Babu [Babu v. State of Kerala, (2010) 9 SCC 189 : (2010) 3 SCC (Cri) 1179] , this Court had reiterated the principles to be followed in an appeal against acquittal under Section 378 CrPC. In paras 12 to 19, it is observed and held as under: (SCC pp. 196-99)

“ ...

13. In Sheo Swarup v. King Emperor [Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42 : (1933-34) 61 IA 398 : AIR 1934 PC 227 (2)] , the Privy Council observed as under: (SCC Online PC: IA p. 404)

‘... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness



of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.'

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* [*Tulsiram Kanu v. State*, 1951 SCC 92 : AIR 1954 SC 1] , *Balbir Singh v. State of Punjab* [*Balbir Singh v. State of Punjab*, AIR 1957 SC 216 : 1957 Cri LJ 481] , *M.G. Agarwal v. State of Maharashtra* [*M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 : (1963) 1 Cri LJ 235] , *Khedu Mohton v. State of Bihar* [*Khedu Mohton v. State of Bihar*, (1970) 2 SCC 450 : 1970 SCC (Cri) 479] , *Sambasivan v. State of Kerala* [*Sambasivan v. State of Kerala*, (1998) 5 SCC 412 : 1998 SCC (Cri) 1320] , *Bhagwan Singh v. State of M.P.* [*Bhagwan Singh v. State of M.P.*, (2002) 4 SCC 85 : 2002 SCC (Cri) 736] and *State of Goa v. Sanjay Thakran* [*State of Goa v. Sanjay Thakran*, (2007) 3 SCC 755 : (2007) 2 SCC (Cri) 162] .)

15. In *Chandrappa v. State of Karnataka* [*Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325] , this Court reiterated the legal position as under: (SCC p. 432, para 42)...

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'

16. In *Ghurey Lal v. State of U.P.* [*Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 : (2009) 1 SCC (Cri) 60] , this Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* [*State of Rajasthan v. Naresh*, (2009) 9 SCC 368 : (2009) 3 SCC (Cri) 1069] , the Court again examined the earlier judgments of this Court and laid down that: (SCC p. 374, para 20)

'20. ... An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused.'



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17. Even in *G. Parshwanath* [*G. Parshwanath v. State of Karnataka*, (2010) 8 SCC 593 : (2010) 3 SCC (Cri) 1027], this Court has in paras 23 and 24 observed as under: (SCC pp. 602-03)

“23. In cases where evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should, in the first instance, be fully established. Each fact sought to be relied upon must be proved individually. However, in applying this principle a distinction must be made between facts called primary or basic on the one hand and inference of facts to be drawn from them on the other. In regard to proof of primary facts, the court has to judge the evidence and decide whether that evidence proves a particular fact and if that fact is proved, the question whether that fact leads to an inference of guilt of the accused person should be considered. In dealing with this aspect of the problem, the doctrine of benefit of doubt applies. Although there should not be any missing links in the case, yet it is not essential that each of the links must appear on the surface of the evidence adduced and some of these links may have to be inferred from the proved facts. In drawing these inferences, the court must have regard to the common course of natural events and to human conduct and their relations to the facts of the particular case. The court thereafter has to consider the effect of proved facts.

24. In deciding the sufficiency of the circumstantial evidence for the purpose of conviction, the court has to consider the total cumulative effect of all the proved facts, each one of which reinforces the conclusion of guilt and if the combined effect of all these facts taken together is conclusive in establishing the guilt of the accused, the conviction would be justified even though it may be that one or more of these facts by itself or themselves is/are not decisive. The facts established should be consistent only with the hypothesis of the guilt of the accused and should exclude every hypothesis except the one sought to be proved. But this does not mean that before the prosecution can succeed in a case resting upon circumstantial evidence alone, it must exclude each and every hypothesis suggested by the accused, howsoever, extravagant and fanciful it might be. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused, where various links in chain are in themselves complete, then the false plea or false defence may be called into aid only to lend assurance to the court.” (emphasis supplied) ”

14. In light of the aforesaid factual as well as legal position, this Court is inclined to agree with the view taken by the Trial Court. To begin with, the



double presumption of innocence lies in favour of the respondent No.2 after his acquittal at the stage of trial. Upon appreciating the facts and materials placed on record, it is evident that the testimony of the prosecutrix is not reliable and lacks corroboration regarding repeated assault. Furthermore, in the absence of any medical or technical evidence or recovery of the alleged photographs and videos said to be taken by the respondent No.2, the material contradiction in the statements of the prosecutrix cannot be overlooked. All these factors cumulatively weaken the case of the prosecution, and as noted above, this Court finds no grounds to interfere with the impugned judgment of acquittal.

15. Accordingly, the present appeal is dismissed along with the pending application.

MANOJ KUMAR OHRI
(JUDGE)

JULY 28, 2025

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