



2025:DHC:7372



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

% Reserved on : 28.07.2025
Pronounced on : 25.08.2025

+ **CRL.A. 157/2023**

HARVINDER @ ARVINDAppellant
Through: Mr. Shri Singh, Mr. Syed Arham
Masud, Mr. Vikhyat Oberoi, Mr.
Wasif Naushad and Ms. Surabhi,
Advocates.

Versus

STATE OF NCT OF DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State
with SI Paramjeet, P.S. Rnhola.
Ms. Vrinda Bhandari, Advocate
(DHCLSC) for prosecutrix with Ms.
Anandita Rana, Ms. Vanshita Gupta
and Ms. Pragya Barsaiyan,
Advocates.

AND

+ **CRL.A. 341/2023**

LALUAppellant
Through: Ms. Manika Tripathy, Mr. Gautam
Yadav and Mr. Aakash Mohan,
Advocates with appellant/Lalu.

versus

STATERespondent
Through: Mr Pradeep Gahalot, APP for State
with SI Paramjeet, P.S. Rnhola.
Ms. Vrinda, Bhandari, Advocate



(DHCLSC) for prosecutrix with Ms. Anandita Rana, Ms. Vanshita Gupta and Ms. Pragya Barsaiyan, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been filed under Section 374 of CrPC against the judgment of conviction dated 24.11.2022 and order on sentence dated 17.01.2023 in Session Case No.56489/2016 arising out of FIR No. 01/2015 registered under Section 376/34 IPC at P.S. Ranhola, Delhi.

Vide the impugned judgement, appellants stand for the offence punishable under Section 376D/120B IPC and vide order on sentence, the appellants were sentenced to undergo RI for 20 years for the offence under Section 376D IPC with fine of Rs.10,000/- and in default of payment of fine to further undergo SI for 6 months; appellants have been further sentenced to undergo RI for 20 years for the offence under Section 120B IPC with fine of Rs.10,000/- and in default of payment of fine to further undergo SI for 6 months. Benefit of Section 428 Cr.P.C. has been given to the appellants and all the sentences have been directed to run concurrently.

2. While the sentence of appellant/*Harvinder* was suspended on 20.03.2025, sentence of appellant/*Lalu* was suspended on 05.05.2025.

3. The underlying facts leading to the registration of above FIR(Ex.PW-2/A) were noted by the Trial Court are as under:-

“The aforesaid FIR was registered on the complaint made by prosecutrix “G”(identity is withheld to protect the interest of prosecutrix) in police station on 01.01.2015, wherein it is stated that she received the call from unknown number on 23.12.2014 and on



enquiry, caller stated himself Lalu son of chachia sasur of prosecutrix and told her that he would get her a job on which prosecutrix asked accused Lalu to come at her residence and accused Lalu along with accused Harvinder (son of mausisaas) came at her house i.e. Vikas Nagar at about 05.00 pm and both of them stayed there at night and on 24.12.2014, at about 9.30 am they left the residence of prosecutrix and on 29.12.2014, accused Lalu made a call to prosecutrix asking her to come near Uttam Nagar Metro Station as he wanted to talk with her for five minutes and but father of prosecutrix denied her to go there and after that prosecutrix left for her factory where she was working and while she was on the way, accused Lalu again made her call again asking her to come at Uttam Nagar Metro Station and when she reached there, accused Harvinder met and he asked her to accompany him to Bhajanpura and told her that he would get her employed and accused Lalu would also be present there and accused Harvinder took her the metro to Bhajanpura and when they reached at a room there, accused Lalu met them and accused Harvinder offered her hot milk that she refused as she was allergic to milk but at the insistence of accused Lalu, she consumed the same, due to which her stomach got upset and both the accused bolted the room from inside on the pretext of cold weather and thereafter accused Harvinder kept his hand on her mouth and opened her salwar forcefully and committed 'rape upon her without her consent and thereafter accused Lalu also committed rape upon her and on her asking to go at her house, both the accused told her to sleep and go on next day and on 30.12.2014, at 10.00 am, both of them made the prosecutrix sit in an auto and at 12.30 pm, she reached at her house where she told her father that she had gone for her tau house and she did not disclose anything to her father due to fear and her father got complaint made at police station cancelled and on 01.01.2015, she told her father about the rape being committed upon her by accused Lalu and Harvinder and her father took her to PS."

4. In the trial, the prosecution examined 8 witnesses including the prosecutrix (PW1), her father V.P. (PW3), Dr. Neha Saluja (PW6) who conducted the MLC(Ex.PW-3D/A) and Dr. Suminder Kaur (PW8), Sr. Forensic Chemical Examiner, who proved the DNA report (Ex.PW7/PX-1 to Ex.PW7/PX-3). Appellants in their statement under Section 313 Cr.P.C.,



took a defence that they had friendly relations with the prosecutrix and were falsely implicated at the behest of her husband, who is their cousin.

5. Ms.Manika Tripathy, learned counsel for the appellant/*Lalu*, while assailing the impugned judgment, contended that the prosecutrix suppressed material facts and, de hors that, turned hostile in her cross-examination. Even the father of the prosecutrix, examined as PW3, did not support the prosecution case. Further, the MLC was recorded two days after the incident also does not lend any support to the prosecution case.

6. Mr. Shri Singh, learned counsel for the appellant/*Harvinder*, additionally contended that the trial court erred in relying upon the DNA Report as the expert witness had stated that statistical analysis was not performed and, in this regard, he has referred to the decision rendered in *Rahul v. State (NCT of Delhi)*, reported as **(2023) 1 SCC 83**.

7. *Per contra*, learned APP for the State, duly assisted by Ms. Vrinda Bhandari, Ld. Counsel for the complainant, while defending the impugned judgment, highlighted the time gap between the examination-in-chief and cross-examination. Attention is also invited to the re-examination carried out by the Ld. APP wherein the prosecutrix again reiterated the version in her testimony.

8. A perusal of the Trial Court Record would show that the FIR was registered on 01.01.2015 and her statement under Section 164 Cr.P.C.(Ex.PW-1/F) was recorded on 03.01.2015. In the complaint, the prosecutrix stated that, her marriage was solemnized on 07.05.2014 and she lived in her matrimonial home for about two months whereafter her husband on the occasion of '*Bhai Dooj*' dropped her at her parental house and never returned. The examination-in-chief of the prosecutrix was recorded on



05.10.2015 and on the said day, the prosecutrix deposed that she had received a telephonic call on 23.12.2014 from an unidentified number. On enquiry, the caller told her that he was *Lalu*, her brother-in-law (*devar*) who promised to get her a job. She invited them to come to her parental house, where she was living. Appellant/*Lalu* accompanied by *Harvinder* (another cousin of husband of the prosecutrix) visited and stayed overnight at the parental house of the prosecutrix. The prosecutrix further deposed that on 29.12.2014, she received another phone call from appellant/*Lalu* asking her to come to Uttam Nagar Metro Station. Prosecutrix went to the said metro station, where she met the accused/*Harvinder*, who took him to a flat at *Bhajanpura*, where she met appellant/*Lalu*. She was offered milk and despite her reluctance, she was made to drink the same on which, she suffered dysentery. The appellants thereafter raped her. Her examination-in-chief was deferred and thereafter continued on 30.05.2016 when she further deposed that on the night of the incident, she remained at the said place and the next day, she reached her house. Thereafter, she narrated the incident to her parents, who took her to the police station, where the complaint (Ex.PW-1/A) was lodged. She identified her signatures on the MLC (Ex.PW-1/E) as well as the statement recorded under Section 164 Cr.P.C.

9. The cross-examination was deferred on 30.05.2016 and eventually carried out on 26.09.2016. During cross-examination, the prosecutrix admitted to the suggestion that there was a quarrel between her husband and the appellants. She resiled from the allegations of rape and rather stated that on the day of the incident, she had gone to her uncle (*Tau*) *Chander Pal* on account of altercation with her husband, who had come to her parental home on 29.12.2014. On 30.12.2014, her husband took her from her *Tau*'s place



and brought her back to her parental home. She further stated that on 01.01.2015, the complaint against the appellants was made at the behest of her husband. She further deposed that even at the time of recording the statement under Section 164 Cr.P.C. before the Ld. M.M., she was accompanied by her husband and made the statement under his pressure.

10. Ld. APP for the State sought permission of the Trial Court to re-examine the prosecutrix, and she was re-called for the said purpose on 23.10.2017. During her re-examination, she admitted the suggestion that her statements recorded on 30.05.2015 and 05.10.2015 by the Ld. Magistrate was administered on oath to speak truth and both days, she stated the correct facts and did not conceal anything from the Court. On this, another opportunity was granted to the appellants to cross-examine the prosecutrix, which they did not avail.

11. At this stage, this Court has gone through the daily proceedings of the Trial Court, and perusal of the same would reflect that on receipt of the FSL Report, an application under Section 311 Cr.P.C. was preferred by the appellants to enable them to put the FSL Report to the prosecutrix. The Trial Court in the order dated 11.03.2022, noted that FSL/DNA Report was exhibited, as on 18.01.2021 as learned defence counsel had given his no objection to the exhibition of the same. Moreover, opportunity was granted to the appellants to summon the expert, however, the opportunity was not availed. In the application filed on 20.12.2021 seeking recall of PW1, the prayer was restricted to cross-examine the prosecutrix limited to the aspect of consent for sexual intercourse. Though initially the FSL Report was not put to the prosecutrix, however, later on 22.09.2021, noting the aforesaid, additional statements of the appellants were recorded and further



opportunity was given to the appellant to lead defence evidence. Nothing has been pointed out by the learned counsels, that this opportunity was availed.

12. The issue that arises before this Court is whether, in the above facts, the testimony of the prosecutrix can be held to be credible and reliable. Learned counsels for the appellants have tried to impress upon the Court that the prosecutrix and her father, having turned hostile, their examination-in-chief is unreliable. In furtherance of said submissions, reference was earlier made to the CDR details of the mobile phones of the prosecutrix and the appellant/*Lalu*, collected during the investigation, to contend that there were regular calls between them on the days prior to and after the alleged incident. On this aspect, it is noted that there were calls between the prosecutrix and appellant/*Lalu* from 20.12.2014 onwards. The call on 23.12.2014 is distinctively mentioned by the prosecutrix in her examination-in-chief. The appellants are not strangers and are related to her husband. Even on 29.12.2014, the prosecutrix had received a call from the appellant/*Lalu*, which rather corroborates her testimony. It is trite law that the evidence of prosecution witnesses who turn hostile cannot be washed off or rejected *in toto*. The evidence merits closer scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. After employing caution and separating the truth from the exaggeration, lies and improvements, the Court can come to the conclusion that the residuary evidence is sufficient to secure a conviction. Whether the testimony of the hostile witness can be relied upon stands answered by the Supreme Court in Selvamani v. State Rep. by the Inspector of Police reported as **2024 SCC OnLine SC 837**, wherein it has been held as under: -



“10. This Court, in the case of *C. Muniappan and Others v. State of Tamil Nadu*¹⁰, has observed thus:

*“81. It is settled legal proposition that :(*Khujji* case, SCC p. 635, para 6) ‘6. ... the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.’*

*82. In *State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360] this Court held that (at SCC p. 363, para 7) evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon. A similar view has been reiterated by this Court in *BaluSonba Shinde v. State of Maharashtra*, (2002) 7 SCC 543], *Gagan Kanojia v. State of Punjab*, (2006) 13 (2010) 9 SCC 567 : 2010 INSC 553SCC 516], *Radha Mohan Singh v. State of U.P.*, (2006) 2 SCC 450], *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360] and *Subbu Singh v. State*, (2009) 6 SCC 462.*

83. Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

84. In the instant case, some of the material witnesses i.e. B. Kamal (PW 86) and R. Maruthu (PW 51) turned hostile. Their evidence has been taken into consideration by the courts below strictly in accordance with law. Some omissions, improvements in the evidence of the PWs have been pointed out by the learned counsel for the appellants, but we find them to be very trivial in nature.

85. It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As



the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. Vide Sohrab v. State of M.P., (1972) 3 SCC 751, State of U.P. v. M.K. Anthony, (1985) 1 SCC 505, BharwadaBhoginbhaiHirjibhai v. State of Gujarat, (1983) 3 SCC 217, State of Rajasthan v. Om Prakash, (2007) 12 SCC 381, Prithu v. State of H.P., (2009) 11 SCC 588, State of U.P. v. Santosh Kumar, (2009) 9 SCC 626 and State v. Saravanan, (2008) 17 SCC 587”

13. In the present case also, it appears that, on account of a long gap between the examination-in-chief and cross examination, the witnesses were won over by the accused and they resiled from the version as deposed in the examination-in-chief which fully incriminates the accused. However, when the evidence of the victim as well as her mother (PW-2) and aunt (PW-3) is tested with the FIR, the statement recorded under Section 164 CrPC and the evidence of the Medical Expert (PW-8), we find that there is sufficient corroboration to the version given by the prosecutrix in her examination-in-chief.”

13. Records would reveal that the prosecutrix has maintained consistency in relation to the material facts of the offense across multiple stages. She has consistently stated that she was contacted by appellant/*Lalu* on 29.12.2014, was taken by appellant/*Harvinder* to Bhajanpura on the pretext of a job, was given milk after which she felt uneasy, and was thereafter raped by both appellants. This version is recorded in the initial complaint on 01.01.2015 (Ex PW1/A), her brief description of the incident in the MLC (Ex. PW1/E) prepared on. 01.01.2025, her statement under Section 161 CrPC dated. 01.01.2025, her statement under S. 164 CrPC recorded on 03.01.2015 (Ex PW1/F), and her examination-in-chief recorded on 05.10.2015 and 30.05.2016). It was only in her cross examination which was recorded on 26.09.2016 i.e. almost a year later that she turned hostile. Pertinently, when she was re-examined on 23.10.2017, she again re-affirmed her earlier



version and stated that she had deposed truthfully during her examination-in-chief on 05.10.2015 and 30.05.2016. Thus, overall, she has remained consistent and the cross-examination appears to be a lone aberration. Her entire testimony cannot be effaced from the record only on this account. In this regard, it has been held by the Supreme Court in Khujji v. State of M.P., reported as **(1991) 3 SCC 627** that:-

“6. ...But counsel for the State is right when he submits that the evidence of a witness, declared hostile, is not wholly effaced from the record and that part of the evidence which is otherwise acceptable can be acted upon. It seems to be well settled by the decisions of this Court — Bhagwan Singh v. State of Haryana [(1976) 1 SCC 389 : 1976 SCC (Cri) 7 : (1976) 2 SCR 921] , Rabindra Kumar Dey v. State of Orissa [(1976) 4 SCC 233 : 1976 SCC (Cri) 566 : AIR 1977 SC 170] and Syad Akbar v. State of Karnataka [(1980) 1 SCC 30 : 1980 SCC (Cri) 59 : (1980) 1 SCR 95] — that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

7. ...The High Court came to the conclusion and, in our opinion rightly, that during the one month period that elapsed since the recording of his examination-in-chief something transpired which made him shift his evidence on the question of identity to help the appellant. We are satisfied on a reading of his entire evidence that his statement in cross-examination on the question of identity of the appellant and his companion is a clear attempt to wriggle out of what he had stated earlier in his examination-in-chief. Since the incident occurred at a public place, it is reasonable to infer that the street lights illuminated the place sufficiently to enable this witness to identify the assailants. We have, therefore, no hesitation in concluding that he had ample opportunity to identify the assailants of Gulab, his presence at the scene of occurrence is not unnatural nor is his statement that he had come to purchase vegetables unacceptable. We do not find any material contradictions in his evidence to doubt his testimony. He is a totally independent witness



who had no cause to give false evidence against the appellant and his companions. We are, therefore, not impressed by the reasons which weighed with the trial court for rejecting his evidence. We agree with the High Court that his evidence is acceptable regarding the time, place and manner of the incident as well as the identity of the assailants.”

14. Moreover, even when the prosecutrix and her father turned hostile, their versions don't *inter se* match each other. The prosecutrix had mentioned that her husband had come to her parental house on 29.12.2014 and on account of an altercation between them, she had went to the residence of her *Tau* from where her husband had recovered her a day later. However, the father of the prosecutrix has not stated the factum of her husband coming to their home and an altercation taking place either in his deposition or in his statement to the police.

15. Though much was contended on the aspect of communication dated 30.12.2014 addressed to P.S. Ranhola by the father of the prosecutrix wherein he had stated that his daughter came back from her tau's home and he does not want any further action. The appellants' reliance on this communication is misplaced as the prosecutrix has explained that she had returned on 30.12.2014 to her parental home however, disclosed about the incident only on the next day as on the date of writing of communication on 30.12.2014, the father of the prosecutrix was not aware of the incident.

16. Moreover, the FSL report would show that the mixed DNA profile generated from vaginal secretions, vulval swab, washing from vagina, cervical mucous collection etc of the prosecutrix matched that of appellant/*Lalu* and partially matched that of appellant/*Harvinder*. The appellants have raised a contention that since statistical analysis on the DNA



samples was not performed during the preparation of the FSL report, the same could not be relied upon. In this regard, reference has been made to the decision in *Rahul v. State* (Supra), which in turn, further places reliance on the decision of Supreme Court in *Manoj & Ors v State of Madhya Pradesh*, decided on 20.05.2022 in Criminal Appeal Nos. 248-250 of 2015. However, in both of those cases, not much reliance was placed on the DNA reports for different reasons. While in *Rahul* (Supra), doubts were raised on the collection and sealing of the samples which were sent for examination, in *Manoj* (supra) recoveries were held to be suspect and likely to be contaminated.

17. It is pertinent to note that questions in this regard were put to Dr. *Suminder Kaur*, who was examined as PW8 and was posted at FSL Rohini as Sr. Forensic Chemical Examiner (Asstt. Director) at the time when the FSL report in the present case came to be prepared. She categorically stated that the report was prepared as per the standard operating procedure laid down by the Directorate, FSL and that statistical analysis was not the part of SOP till the data base was maintained. She further stated that even without statistical analysis, her report could be relied upon, as she had given autosomal and Y filer genotype data. She denied the suggestion that the report was unscientific or incomplete.

As noted earlier, the FSL report was exhibited on no objection by the appellants. After the same was exhibited, due opportunities was given to the appellants to give additional statements under Section 311 CrPC and their applications to recall PW-1 as well as summoning of the forensic expert was allowed, the expert had explained the basis for his conclusion. Moreover, another opportunity was given to again lead defence evidence, however, the



appellants chose not to do so.

18. On an overall view of the facts and circumstances, it appears that after subjecting the testimony of the prosecutrix to close scrutiny, the residuary evidence which remains after dealing with the version where she turns hostile, is by itself enough to secure a conviction against the appellants.

19. This Court with the aid of learned counsels has thoroughly examined the records and finds no reason to differ with the conclusive arrived by the trial court. Consequently, the appeal is dismissed and the impugned judgment convicting the appellants as well as the order on sentence are upheld. The appellants' bail bonds are cancelled and their sureties stand discharged. They are directed to be taken into custody to serve the remainder of their sentence.

20. Copy of the judgment be communicated to the Trial Court, as well as concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 25, 2025

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