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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **CRL.A. 254/2023**

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.....Appellant  
Through: Ms. Manika Tripathy, Advocate  
(DHCLSC).

versus

STATE & ANR.

.....Respondents  
Through: Mr. Pradeep Gahalot, APP for State.  
Mr. Rohan Kumar, Advocate for R-2  
with R-2 in person (Through V.C.).

**CORAM:**  
**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**ORDER**

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**03.09.2025**

**CRL.M.A. 7271/2023**

1. By way of the present application, the appellant seeks condonation of delay of 88 days in filing the present appeal.
2. For the reasons explained in the application, the same is allowed and the delay of 88 days is condoned.
3. Application is disposed of.

**CRL.A. 254/2023**

1. The appellant/complainant filed the present appeal under Section 372 Cr.P.C. assailing the judgment dated 23.11.2022 rendered by the Sessions Court in trial held in the context of FIR No. 943/2020 registered under Sections 376/506 IPC at P.S. Bindapur vide which respondent no. 2 stands acquitted.



2. The facts, as noted by the Trial Court, are reproduced hereunder:

*“On 20.03.2020, her cousin brother in law (son of her maternal mother in law), had brought her from her village on the pretext of meeting her with her husband, who was, at the relevant point of time working at Faridabad. However, he had not taken her to her husband and had brought her to Sainik Nagar, where, he had established physical relations with her without her consent. When the prosecutrix questioned him about his conduct, then he told her that both of them would stay in the same house and in case she disclosed this incident to anyone or had raised any alarm, then he would kill her and her children.*

*Thereafter accused started establishing forcible physical relations with her and on 09.08.2020, he left her alone at the house and went back to his native village. She tried to call him many times but his phone was switched off. Hence, she wanted an action against the said accused.”*

3. On completion of investigation, charges were framed under Sections 376(2)(n)/506(II) IPC, to which the appellant pleaded not guilty and claimed trial.

4. The prosecution examined 2 witnesses in support of its case. The victim herself was examined as PW-1. The I.O./WSI *Usha* was examined as PW-2 and deposed as to various aspects of the investigation.

The appellant, on the other hand, in his statement recorded under Section 313 Cr.P.C., denied all prosecution evidence and claimed false implication.

5. Learned counsel for the appellant contends that the testimony of the prosecutrix is consistent on the aspect of rape being committed upon her by respondent no. 2, her own cousin brother-in-law (son of maternal mother-in-law). She further submits that the prosecutrix has also cogently stated that, while she was residing at her native village in Madhya Pradesh and her husband was living in Faridabad, Haryana, respondent no. 2, on the pretext of bringing her to Faridabad, instead took her to Sainik Nagar Colony,



Delhi, where the offence was committed repeatedly over a period of time. She argued that the impugned judgment of acquittal is based on the incident not being reported at the earliest possible opportunity, to which end the prosecutrix has explained that she was unable to inform anyone on account of threats to the lives of her children, and it was only after respondent no. 2 left on 09.08.2022, that the incident came to be reported at P.S. Bindapur.

6. Learned counsel for respondent no. 2, on the other hand, has defended the impugned judgment by contending that the conduct of the prosecutrix, in first coming to Delhi and thereafter continuing to reside with respondent no. 2 for a period of 4/5 months, without raising any alarm, even when her own brother was residing about 1 km away, casts a doubt on the veracity and truthfulness of allegations.

7. Learned APP for the State submits that the State has not independently challenged the acquittal of respondent no. 2.

8. I have heard the learned counsels for the parties and perused the record.

9. The first information about the incident came to be recorded through PCR call on 22.09.2020 resulting in registration of the present FIR. The prosecutrix was examined as PW-1. She testified that sometime in March 2020, though she did not remember the exact date, respondent no. 2 brought her from Chhatarpur, M.P. on the pretext of dropping her at her husband's place, who was working at Faridabad. However, instead of taking her there, he took her to Sainik Nagar Colony, Delhi. When she asked him to take her to her husband, he declined and told her that she would stay there with him. She further deposed that physical relations were established without her consent and that continued for about 4 months and 20 days. On 09.08.2020,



respondent no. 2 left on his own and went to his native village and when she tried to contact him on phone he asked her not to call him anymore. It was only thereafter she went to P.S. Bindapur, resulting in registration of the concerned FIR. The prosecutrix was then taken for medical examination, where she refused to undergo internal examination.

In her cross-examination, she stated that she was married for 11 years and had three children from said marriage who were residing with her in-laws at her native village. She further stated that her husband used to visit the village once a year and used to also call her on the phone from Faridabad. Before coming to Delhi she informed her husband, as well as her in-laws, that she was coming to meet her husband at Faridabad. She further added that her own brother was residing at a distance of about 1 km from place where she was kept by the respondent no. 2. She also admitted the relations between her and her own brother was also cordial. On being asked, she stated that she had lost her phone as it had fallen somewhere and she found the same after six months. She further stated that she used to call respondent no. 2 from the mobile phone of other persons, whose mobile numbers she couldn't recollect. She further stated that she had not given her identity proof to the landlord at the time of taking the room on rent. She denied the suggestion that after one week her brother had called the accused to his place and got him a rickshaw after taking Rs.60,000/- from him. She further denied the suggestion that respondent no. 2 was falsely implicated in the present case when he demanded that her brother transfer the title of the rickshaw to him. The only other witness examined was the I.O. of the case, as at the time of medical examination the prosecutrix had refused to undergo an internal examination and as such no samples could be collected.



10. The prosecutrix has not stated even once that she tried to inform her brother who was concededly living 1 km away, or her in-laws, or her husband. Concededly, she admitted to calling the respondent from her mobile as well as others. Further, the explanation tendered for not informing the police or any other person of the incident, namely that a threat had been extended to harm her children, did not find favour with the Trial Court, as the children were not living with her but with her in-laws at her native village in M.P. The Trial Court also took into account that neither the landlord nor any neighbour was informed of the alleged continuous assault.

11. Taking into view the conduct of the prosecutrix, her testimony does not inspire confidence. Having heard learned counsels for the parties and noting the aforesaid, even this Court concurs with the conclusion arrived at by the Trial Court.

12. At this stage, it is apposite to note the law pertaining to double presumption of innocence, which operates in favour of the accused at the appellate stage after his acquittal by the Trial Court. The same is fortunately 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 under:

*"8. ...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 378 of the Cr.PC, 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. The decision of the Supreme Court in Anwar Ali v. State of H.P., reported as **(2020) 10 SCC 166**, categorically holds 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.’*

*...*

*(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.’’*

14. Having heard learned counsels for the parties and in view of the aforesaid discussion, this Court concurs with the conclusion arrived at by the Trial Court, the impugned judgement acquitting respondent no. 2 of all charges is upheld, and the present appeal is accordingly dismissed.

15. A copy of this order be communicated to the concerned Trial Court.

**MANOJ KUMAR OHRI, J**

**SEPTEMBER 3, 2025**

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