



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

% Date of Decision: 22.08.2025

+ **CRL.A. 97/2020**

SAppellant

Through: Mr. Kartikay Mathur, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR.Respondents

Through: Mr. Pradeep Gahalot, APP for State
with SI Avanti, P.S. Lahori Gate
Mr. Kanhaiya Singhal, Mr. Prasanna,
Mr. Ajay Kumar, Ms.Vani Singhal,
Mr.Rishabh Bhardwaj and Mr.Pulki
Jolly, Advocates for respondent No.2

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal filed under under Section 378 Cr.P.C., the appellant/prosecutrix seeks to assail the judgment of acquittal dated 05.03.2018 passed by the learned Additional Sessions Judge – Special FTC– 02 (Central), Tis Hazari Courts, Delhi in SC No. 27359/2016 arising out of F.I.R. No. 54/2016 registered under Sections 376/354(C)/328/506 IPC at P.S. Lahori Gate, whereby respondent no. 2 herein was acquitted of all charges. Notably, the leave to appeal was granted vide order dated 21.01.2020.
2. The facts, in brief, as noted by the Trial Court are extracted hereunder:-



“The criminal law set into motion on the written complaint of the prosecutrix, Ex.PW1/A wherein she has stated that she has been raped by accused on the pretext of helping her in study, prosecutrix had stated in her complaint that on 17.11.2015, she along with accused had come from Sonipat by a roadways bus and got down at Kashmere Gate bus stand, Delhi from where she was taken to a hotel named Laxmi Vilas Marwari by accused where she was made to stay in a room. There she was given a glass of cold drink by the accused and that after drinking it she became unconscious and when she regained her consciousness, she found her kurti to be above her chest and her legging below in her feet and she realized that she has been raped. When prosecutrix enquired from accused, about the incident, he threatened her to kill and accused also showed her nude photos in the mobile phone. Prosecutrix did not make any complaint at that time and she came back to her house in Sonapat, she also did not disclose about the incident any of her family members, but when her mother insisted as to why she was remaining silent she disclosed about the incident to her mother. Thereafter, family members of the prosecutrix contacted the accused but he threatened them and accordingly, she lodged a complaint in police station Lahori Gate on 17.02.2016.”

3. Upon completion of investigation, charges were framed against respondent no. 2 under Sections 328/376/506 IPC and Section 66(E) of the Information Technology Act, to which he pleaded not guilty and claimed trial.
4. The prosecution examined 16 witnesses in support of its case. The material witnesses were the prosecutrix herself, examined as PW-2; the owner of the concerned hotel, Sh. *Umakant Sharma*, as PW-4; the mother of the prosecutrix as PW-10; the prosecutrix's brother as PW-13; and W/SI *Seema*, the Investigating Officer, as PW-14. PW-5 and PW-7 were doctors who deposed in respect of the medical examination of the prosecutrix. The remaining prosecution witnesses were formal in nature and deposed as to various aspects of the investigation.
5. The prosecutrix was examined as PW-2. She deposed that she was pursuing Chartered Accountancy and lived with her parents and her brother.



After her brother's marriage in June 2015, his wife stayed with them for some months, during which her family, including her brother/respondent no. 2 herein, used to visit their house. She deposed that he was aware she had failed in two or three attempts of her CA examinations and assured her of help through a teacher known to him. She further deposed that in November 2015, when she told him of usually purchasing books from Laxmi Nagar, he suggested Chandni Chowk instead, saying that books were cheaper there and that the person who would help her in her examinations would also meet them there. She deposed that on 17.11.2015, she accompanied him to Delhi by bus. After getting down at Kashmere Gate and having food, he took her to a hotel, saying it would be easier to meet the said person and talk there. She deposed that she did not hand over any ID proof at the reception. She stated that in the room, respondent no. 2 ordered cold drinks, and after she drank from the glass given to her, she lost consciousness. She deposed that when she regained her senses at about 2:00 p.m., she found her upper garments lifted and her leggings pulled down, and on questioning him, he showed her nude photographs of her on his mobile phone, at which point she realised he had committed sexual intercourse with her. She further deposed that she became frightened and respondent no. 2 threatened to upload the photographs on the internet if she disclosed the incident to anyone, and that on their way back to Sonapat he continued to issue such threats. She stated that she developed depression thereafter and remained silent for about 15–20 days, during which period respondent no. 2 continued to call her and she met him at a restaurant in Sonapat on two or three occasions, where he also touched her inappropriately. She deposed that when he again asked her to come to a hotel, she became scared and disclosed the incident to her mother, and thereafter her father and brother went to confront respondent no. 2 but



he also threatened them. She stated that even though a panchayat was convened where respondent no. 2 apologised to her parents, the threats to her family later resumed. She also deposed that prior to her disclosure to her mother, respondent no. 2 had threatened her to prepare and send him a nude video, which she had done but later deleted from her phone, and that subsequently she exchanged her phone with her brother who had formatted it, and therefore the said phone did not contain the relevant data. She deposed that on 17.02.2016 she lodged her written complaint (Ex.PW-1/A), proved her statement under Section 164 Cr.P.C. as Ex.PW-2/A and her medical examination as Ex.PW-5/A, and further deposed that the police seized the Lava mobile phone used by her at the relevant time from her brother vide seizure memo Ex.PW-2/B, and also seized the clothes she was wearing at the time of the incident vide seizure memo Ex.PW-2/C. She identified the said mobile phone in court as Ex.P-1 and the said clothes as Ex.P-2 (colly). She also deposed that the police had taken into possession copies of the hotel guest register and the ID proofs of both herself and respondent no. 2 from the hotel manager, vide memos Ex.PW-4/A to Ex.PW-4/C.

In cross-examination, she admitted that respondent no. 2 was the real brother of her sister-in-law. She denied the suggestion that her sister-in-law was harassed on account of dowry demands. She stated that after lodging the present complaint, her father had also filed a complaint against the family of respondent no. 2 in Sonapat, and had further got another complaint signed by her against their family. She admitted that she could not recall the date or the contents of the said complaint, nor could she say whether she herself had filed it. She admitted that she had been suffering from kidney stone problem about one to one and a half months prior to the incident and was under



Ayurvedic treatment. She denied the suggestion that she had fallen ill on the day of the incident due to her ailment, that respondent no. 2 had arranged the hotel room for her rest, or that she had herself furnished her driving licence as identity proof to the hotel manager. She stated that she had not written her complaint Ex.PW-1/A at her house and did not remember where she had written it. She admitted that she had not mentioned in her complaint Ex.PW-1/A or her statement Ex.PW-2/A that a panchayat was held or that her father, mother and brother had attended it. She admitted knowledge that her brother had filed a petition to bring back his wife from her parental home but did not recall its date, nor whether it was filed before the present case or the panchayat in question. She denied the suggestion that the present case had been filed to create a false defence against threatened implications by her sister-in-law. She admitted that she used to chat with respondent no. 2 on WhatsApp. She stated that after the incident respondent no. 2 used to call her late at night, and she was compelled to speak with him. She admitted that photographs Mark A-1 to A-13 were taken after the incident. She further admitted that she had not mentioned in her complaint Ex.PW-1/A that respondent no. 2 had asked her to make and send him a nude video. She stated that she had handed over the mobile phone with which the said video was made to the police, but she did not remember the make of the phone or the mobile number she was using at that time.

6. PW-4, the owner of the hotel, deposed that on 17.11.2015 respondent no. 2 along with the prosecutrix had checked in at about 10:30 a.m., and that the necessary entries were made in the guest register. He stated that respondent no. 2 had furnished his Aadhaar card, while the prosecutrix had produced her driving licence as identification. He further deposed that they checked out of the hotel the same day at about 1:30 p.m.



In his cross-examination, PW-4 admitted that he was present at the reception when the prosecutrix and respondent no. 2 entered the hotel, and that neither of them appeared frightened. He further admitted that at the time of leaving, the prosecutrix did not appear to be intoxicated, nor did she make any disclosure to him.

7. The mother of the prosecutrix was examined as PW-10. She deposed that on 17.11.2015 the prosecutrix accompanied respondent no. 2 to Delhi for buying books, and that when she returned the same evening she appeared absent-minded, and two or three days later disclosed that respondent no. 2 had taken her to a hotel, given her a drink laced with sedatives, committed rape upon her, and taken obscene photographs. She stated that after she informed her husband, he and her son took the prosecutrix to P.S. Lahori Gate where she lodged her complaint.

In cross-examination, PW-10 admitted that her son was married to the sister of respondent no. 2 and denied that her daughter-in-law had been harassed for dowry. She stated that she did not know if her son had filed any matrimonial case against his wife/respondent no. 2's sister. On being shown photographs marked as Mark A-1 to A-13, she admitted that said photos were shown to her by the prosecutrix on her mobile phone, however, she denied that the photos marked as Mark A-14 to A-17 had been taken by the prosecutrix using her mobile phone. She stated that she could not explain the delay of three months in registration of the FIR despite coming to know of the facts after 2-3 days of the incident. She denied the suggestion that the case was concocted to pressurise her daughter-in-law to settle disputes with her husband. She further stated that she did not know if any panchayat regarding alleged dowry harassment of her daughter-in-law was held, which was attended by her husband, son and the mediator of the marriage. She then



stated that she herself was unwell at the time of the panchayat.

8. The brother of the prosecutrix was examined as PW-13. He deposed to the same effect as PW-2 and PW-10 insofar as the facts were within his knowledge. He further deposed that he had handed over to the police a Lava mobile phone used by the prosecutrix, which was seized vide memo Ex.PW-2/B. On 19.02.2016, he joined the investigation when the accused was arrested at Sonapat, and the arrest memo Ex.PW-13/A, the personal search memo Ex.PW-13/B, and the memo of the accused's statement Ex.PW-13/C were prepared. He deposed that a mobile phone was also recovered from the accused, though he did not remember its make. In court, he identified the Lava mobile phone as Ex.P-1.

In cross-examination, he admitted that he came to know of the facts of the present case about a month after the incident, in January 2016. He admitted that the present complaint was filed after discussion in the family. He further admitted that he and his parents had gone to his wife's house in mid-January 2016 to bring her back. He also admitted that on 16.02.2016 he had filed a case against his wife under Section 9 of the Hindu Marriage Act for restitution of conjugal rights.

9. PW-14/WSI *Seema* deposed that on 17.02.2016 the prosecutrix came to P.S. Lahori Gate along with her brother and handed over a written complaint, on the basis of which the FIR was registered. She called a counsellor from an NGO, prepared a site plan at the instance of the prosecutrix, and collected copies of the hotel guest register and identity documents from the hotel manager. The prosecutrix was medically examined, though she specifically declined to undergo internal examination. On 18.02.2016 her statement under Section 164 Cr.P.C. was recorded. A Lava mobile phone used by the prosecutrix was seized, and on 19.02.2016



the accused was arrested, his personal search conducted, and a Micromax mobile phone recovered. She further deposed that on 23.02.2016 the clothes of the prosecutrix were seized and that the exhibits of the case were thereafter sent to FSL, Rohini for examination.

In cross-examination, the witness admitted that no CCTV footage from the hotel or surrounding area was collected. She further stated that no medical opinion had been obtained as to the possible effect of any stupefying substance allegedly administered to the prosecutrix.

10. On the other hand, in his statement under Section 313 Cr.P.C., respondent no. 2 denied all allegations, including administering any stupefying substance or taking obscene photographs or videos, and stated that he had been falsely implicated due to matrimonial disputes between the prosecutrix's brother and his sister. He admitted accompanying the prosecutrix to a hotel but claimed it was only because she had developed pain from kidney stones. He also led defence evidence before the Trial Court and examined two formal witnesses: the *Ahlmad* of the Court at Sonapat, who produced the record of a petition under Section 9 of the Hindu Marriage Act filed by the prosecutrix's brother, as DW-1, and a Clerk from the office of the SP, Sonapat, as DW-2.

Learned counsel for respondent no. 2 submitted that the prosecutrix remained in regular contact with respondent no. 2 over phone and WhatsApp, including late at night, and that her communications were voluntary. He further contended that the prosecution case was fabricated to exert pressure in the context of the said family discord, and that the testimony of the prosecutrix itself was riddled with material improvements and contradictions.

11. On a careful consideration of the record, it is apparent that the



testimony of the prosecutrix is marred by material improvements and contradictions. In her complaint (Ex. PW-1/A), she confined herself to the incident of 17.11.2015. In her statement under Section 164 Cr.P.C. (Ex. PW-2/A), apart from reiterating the said incident, she only made a passing reference to respondent no. 2 having compelled her to send him a nude video on WhatsApp. However, in her deposition before the Court, she went on to introduce further allegations, namely, that respondent no. 2 called her two or three times to a restaurant where he touched her inappropriately, that after 15–20 days she disclosed the incident to her mother and a panchayat was convened where respondent no. 2 apologised but later resumed threats, and she elaborated that after sending him a nude video she deleted it from her phone and thereafter exchanged phones with her brother.

12. The inordinate delay in registration of the FIR also raises doubts about the prosecution case. The incident is alleged to have occurred on 17.11.2015 but the complaint was lodged only on 17.02.2016, and no plausible explanation for the said delay has been offered. The prosecutrix stated that she told her mother about the incident after 15-20 days, PW-10/prosecutrix's mother stated that the disclosure was made 2–3 days after the prosecutrix returned from Delhi, and PW-13/prosecutrix's brother states that he came to know the facts one month after the incident. Despite this, the FIR was filed after a delay of 3 months, and PW-10 has stated in her testimony that she cannot explain the said delay.

13. The admitted background of matrimonial discord between the families also cannot be ignored. The prosecutrix admitted that after filing of the complaint in the present case, her father filed another complaint against the family of respondent no. 2 in Sonapat and also got one signed by her, the date and contents of which she could not recall. PW-13 admitted that in



January 2016 he went to bring back his wife/respondent no. 2's sister, and that on 16.02.2016, one day before registration of FIR in the present matter, he filed a petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.

14. The photographs produced during trial also do not lend credence the prosecution version. Photographs Mark A-14 to A-17 depict the prosecutrix with respondent no. 2, while photographs Mark A-1 to A-13 are of the prosecutrix alone and were admittedly taken after the alleged incident. On a perusal, these photographs do not lend any support to the case of the prosecution.

15. The testimony of PW-4/the hotel owner, also does not support the allegations. He deposed that at the time of check-out the prosecutrix did not appear to be intoxicated and did not make any disclosure to him. The I.O. also admitted that no CCTV footage was collected from the hotel or adjoining establishments, and that no medical opinion was obtained regarding the alleged administration of a stupefying substance.

16. The medical and forensic evidence on record likewise fails to support the prosecution's case. The MLC (Ex. PW-5/A) does not support the prosecutrix's allegations and she denied internal examination. The FSL report (Ex. PW-14/G) yielded no incriminating result from either the seized mobile phones or the clothes of the prosecutrix.

17. In view of the above discussion, this Court is of the considered view that the testimony of the prosecutrix does not inspire confidence and is marred by improvements and contradictions. The unexplained delay in lodging the FIR, the background of family disputes, the absence of corroboration from medical and forensic evidence collectively raise doubt about the veracity of the prosecution case.



18. At this stage, the Court deems it apposite to take note of the law relating to appeals against acquittal.

19. The law pertaining to double presumption of innocence operating in favour of an accused at the appellate stage, after his acquittal by the Trial Court, is settled. 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.""

20. The Supreme Court has also categorically held in Anwar Ali v. State of H.P., reported as (2020) 10 SCC 166, that the principles of double presumption of innocence and benefit of doubt should ordinarily operate in favour of the accused in an appeal against 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.'''

21. Considering all of the aforesaid, this Court finds no reason to interfere with the judgment of the Trial Court. Accordingly, the same is upheld and the present appeal is dismissed.

22. A copy of this judgment be communicated to the Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 22, 2025

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(corrected and released on 01.09.2025)