



2025:DHC:10265



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

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+ **CRL.A. 205/2019**

HARJINDER SINGH

.....Appellant

Through: Mr. Gurbakash Singh and Mr. Arjun
Dhingra, Advocates.

versus

THE STATE

.....Respondent

Through: Ms.Shubhi Gupta, APP for State with
WSI Annu Kumari PS Nihal Vihar,
Delhi.
Mr. Arjun Mahajan, Advocate
(Amicus Curiae, pro bono) for victim
with Mr Apoorv Upadhyay,
Advocate.
Mr.Himanshu Anand Gupta, Mr.
Siddharth Barua, Mr.Shekhar Anand,
Ms.Navneet and Ms.Shivani Rampal,
Advocates for DSLSA.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal seeks to impugn the judgment of conviction dated 30.01.2019 and order on sentence dated 06.02.2019 rendered by the Trial Court in the context of trial held in relation to the FIR No. 134/15 registered under Section 376 IPC at PS Nihal Vihar, Delhi. On completion of the trial, the appellant came to be convicted for the offence under Section 376 IPC



and sentenced to undergo RI for 10 years along with a fine of Rs. 25,000/- and in default thereof, he was to undergo SI for a period of 6 months. The benefit of Section 428 Cr.P.C was given to the appellant.

His sentence was suspended by this Court on 20.03.2019.

2. On 20.02.2015, a complaint came to be registered at PS Nihal Vihar at the behest of the prosecutrix, alleging that the appellant, who is her brother-in-law (*Devar*), used to pressure her into engaging in *galat kaam* with him and on resisting, used to beat her. He watched her bath by concealing himself. On 20.01.2015, when she was alone at home, the appellant forcibly established physical relations with her. When she told her *naani saas* (mother of the mother-in-law), she didn't say anything. On 23.01.2015, the appellant again tried to commit *galat kaam* with her but her father-in-law was at home and she went to him who saved her. On the same day, her mother arrived and she left the house with her. She disclosed the incident to her mother and thereafter the complaint came to be filed.

3. On the basis of this complaint, FIR was registered and investigation commenced. Prosecutrix's medical examination was done. In her statement recorded under Section 164 CrPC on 21.02.2015, she stated that after marriage, medical tests revealed that her husband was infertile. Her *naani saas* used to taunt her for the same. Her parents-in-law and the appellant also used to live in the same house. Her in-laws made a plan of getting her impregnated by the appellant to conceive a child and hide her husband's impotency. The appellant used to trouble and beat her. She did not tell her husband. One day when no one was home, the appellant threatened her with an acid bottle and made her forcibly to write a letter that she was making physical relations with the appellant willingly. The appellant promised to not



bother her in the future. She also stated about the incident on 20.01.2015 and 23.01.2015. She informed her husband. Her mother-in-law did not allow her to call her mother and said that the appellant did nothing wrong and in this way, she could have a child. On the same day, her mother came to take her to some function, and she disclosed the incident to her. Her husband sent her away with her mother. When they called the police, her in-laws came to her house and asked her not to involve the police, promising that the incident would not be repeated. She started living with her husband separately, but he used to come home drunk and beat her. When he beat her on 13.02.2015 and said that the appellant did nothing wrong, she started living with her mother and made the complaint in the present case.

4. Charges were framed under Sections 376 and 376/511 IPC, to which the appellant pleaded not guilty and claimed trial.

5. In support of its case, the prosecution examined 9 witnesses. The prosecutrix was examined as PW1. Her MLC was proved by Dr. Shilpi Gupta, examined as PW2. SI Maya, who was the IO of the case, was examined as PW8. Rest of the witnesses were formal in nature who deposed as to various aspects of investigation.

6. In his statement recorded under Section 313 CrPC, the appellant claimed false implication because the prosecutrix wanted to get divorce. He examined 2 witnesses in his defence, the husband of the prosecutrix as DW1 and her mother-in-law as DW2.

7. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. The prosecutrix had filed this case to build pressure on the brother of the appellant, from who she was demanding a divorce on account of his infertility. It is further



submitted that there is a huge delay of 1 month in lodging the FIR which has not been sufficiently explained. There are also substantial improvement in her testimony. Her case is also not supported by any medical or scientific evidence.

8. Learned APP for the State defended the impugned judgment. Mr. Mahajan, learned Amicus Curiae submitted that the prosecutrix has consistently deposed about the appellant forcibly establishing physical relations with her. The delay in lodging was due to pressure from her in-laws and husband. The contradictions, if any, are trivial in nature and do not go to the root of the prosecution case.

Testimonies

9. Prosecutrix was examined as PW1. She deposed that she married her husband on 15.04.2009 and lived in the matrimonial home till 23.01.2015 and afterwards lived with her husband on rental accommodation, till she was thrown out on 14.02.2015. Deposing about the incidents, she stated that on 20.01.2015, around 4.00pm, the appellant came up the stairs on the first floor and forcibly took her to bedroom. He tied her hands behind her back with *Dastar* (cloth used for covering the head by Sikh men), removed her lower body clothes and raped her. Her *nani saas* came to the room by the time the accused had already committed the offence but did not say anything. Upon being informed, mother-in-law also didn't say anything and told her to not tell her husband.

On 23.01.2015, the appellant again tried to rape her and also beaten her. She informed her father-in-law who asked him, but he denied having beaten her. She told her parents-in-law to call her mother, but they didn't allow her to talk to her mother.



She also deposed that the appellant used to make videos of her bathing, and her mother-in-law had also seen such videos. Appellant used to give her beatings when she refused to make physical relations. She lodged a complaint with Women Commission on 18.02.2015. On 19.02.2015, *Kartar Singh* - uncle of the appellant, a neighbour, mother-in-law and husband visited her at her mother's house to convince her to go back to matrimonial home. They threatened to kill her if she did not accompany.

She said that 3-4 days prior to the first incident on 20.01.2015, she was made to write one letter by the appellant that he was doing 'galat kaam' with her consent. This letter was Mark A, admitted by the accused and exhibited as Ex. PW1/B. She admitted her writing, but said that at that time she did not know the reason or consequences which was now clear that he wanted to portray the forcible physical relations as if they were with her consent. She said that her husband threatened her with dagger (*chhura*) on 19.02.2015.

10. In cross examination, she stated that from marriage till 23.01.2015, she did not make any complaints against her in-laws. Except the present case, she had filed a complaint regarding dowry before ITO (Office of National Commission for Women) on 18.02.2015 against her In-laws. She stated that she went to PS Nihal Vihar on 20.02.2015 for the incident on 20.01.2015. The incident of 20.01.2015 did not take place on the first floor as it had occurred on the ground floor. Both incidents took place on the ground floor. She stated that neither she nor her mother made any complaint regarding the incident of her husband beating her on 14.02.2014. She did not get herself medically examined. On 20.01.2015, when appellant caught hold of her, she raised alarm by calling her *naani saas*. She could not go to roof



of neighbor as appellant held her hand strongly. She was confronted with her previous statements where all facts were not mentioned. She did not complain to the police or got medically examined after the incident on 20.01.2015 because she was not allowed to move out of the house. She said that her mother called the police on 23.01.2015 but accused persons turned them away. She said the accused tied her hands and then her mouth. She did not call the police because earlier she did not have the phone and from 23.01.2015 onwards she was living with her husband. She was confronted with her earlier statements where the factum of her being recorded bathing was not stated. She was asked that since her parental home was 20 mins away from the matrimonial home, did she complain about the incidents to mother, to which she said that she was not allowed to go out of the house. She was confronted about not telling about the threat from *kartar Singh* in her earlier statement. She admitted not lodging any complaint about the forceful letter. She said that her husband's sperms were not fertile. She had filed cases of maintenance and DV Act against him. She admitted seeking divorce from him and him refusing. She denied the suggestion that she was falsely implicating the appellant to put pressure on her husband. She admitted not making any complaint against her husband for the incident on 19.02.2015 and not telling this to the police on 29.02.2015.

11. The MLC of the prosecutrix (Ex. PW1/C) was proved through Dr. Shilpi Gupta, SR Gynae, SGM Hospital who identified the handwriting and signatures of Dr. Trapti Gupta. The external genitalia were found healthy, with no vulval injury, bleeding or discharge. Hymen was also found old torn with no injury- fresh or old/oedema/congestion or tenderness.

12. SI Maya Devi was examined as PW8. She deposed as to the recording



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of the statement of prosecutrix, her medical examination, handing over of *tehrir*, counselling of the prosecutrix, preparation of Site Plan, arrest of appellant on 21.02.2025. She further deposed that though she enquired from the prosecutrix as to whether she had already given any complaint, but she did not state anything in this regard and she was unaware of the complaint dated 18.02.2015 at Delhi Commission for Women. Another copy of this complaint (Mark A) was attached to the judicial file which was received by her later, exhibited as Ex.PW8/DA. She enquired from the prosecutrix who confirmed making it and that her husband was medically examined and could not have a child. She did not collect the report of the husband. She also made enquires qua the letter. The prosecutrix told her that she had written the letter Mark B, however, she did not inform that to whom she had written the said letter. She did not know whether the prosecutrix had already settled all her matrimonial disputes, that the first motion *qua* the divorce proceedings between' the prosecutrix and her husband had already been completed in the Family Court or whether the prosecutrix had already withdrawn her maintenance petition and the complaint under D.V. Act and under the IPC.

13. The husband of the prosecutrix was examined as DW1. He deposed that he married the prosecutrix on 15.04.2009, however no child could be conceived. After waiting for two years, he got himself medically examined from Sri Balaji Action Medical Institute and it was opined that he was unable to produce sperms. The report dated 04.06.2011 in this respect was exhibited as Ex.DW1/A. Treatment did not improve the situation. The prosecutrix wanted him to divorce her. She was not amenable to adopting a child. His In-laws took her home on 23.11.2014. He went there to bring her



back but she refused, and demanded divorce. Subsequently, she filed the present complaint and one before Dowry cell. All proceedings related to dowry demands, maintenance were settled in mediation and first motion of divorce petition was moved and accepted. In cross examination by learned APP, he admitted not making any complaint against the prosecutrix. He admitted pendency of mutual divorce. He volunteered that he did not want to give divorce to the prosecutrix but he was compelled to file the mutual divorce petition. He pleaded that he was illiterate and did not know the contents of the mutual divorce petition and the affidavit. Settlement was reached with the prosecutrix for Rs. 3,20,000/-

14. The mother-in-law of the prosecutrix was examined as DW2. She deposed that, on 03.11.2014, she observed that prosecutrix was very friendly to her younger son (appellant) and she used to sit with him very closely (*Chipak kar*). She did not like her conduct and scolded her on this account and did not talk for 2-3 days. On 06.11.2014 when she opened her lunch box in her office at Rajouri Garden, she found one letter in it written by the prosecutrix and addressed to her. The said letter was already exhibited as Ex. PW1/B. When she asked her why she wrote the letter, the prosecutrix said that she could not conceive due to her husband. DW2 called the parents of prosecutrix and they asked her to take the prosecutrix to their house. They refused to wait for medical treatment and wanted divorce. After residing with her parents for 4-5 days, she returned back with total changed behavior. She pressurized her son to divorce her. Now this matter between her daughter and appellant was settled and first motion of divorce by mutual consent was passed.

In cross examination, she stated that she did not make any complaint



against the prosecutrix. She deposed that settlement was reached between for a sum of Rs.3,20,000/- to be paid by her son to prosecutrix. She denied the appellant getting any letter written 3-4 days prior to 20.01.2015.

Analysis

15. The prosecution case is that the incident of rape and attempt to commit rape occurred on 20.01.2015 and 23.01.2015 respectively. The complaint came to be filed on 20.02.2015, i.e., after a delay of one month. No satisfactory explanation has been given to explain this delay. The prosecutrix deposed that initially she did not even tell her husband. She did not call the police or got medically examined because she did not have a phone and was not allowed to leave the house. However, by her own case, she disclosed everything to her husband as well as mother on 23.01.2015, in fact she left the home with her mother. No explanation has been given as to why she or her mother did not inform the police on that day, considering that the second act was still fresh. Thereafter, she started living with her husband separately, on rent. Even then, no effort was made to contact the authorities. When her husband allegedly gave her beatings on 13.02.2015, even then she did not make any complaint. Finally, the complaint came to be registered in the present case on 20.02.2015.

16. It is settled law that conviction can be secured solely on the basis of the testimony of the prosecutrix without requiring any corroboration, provided that the same is reliable and credible (Cf: Vijay alias Chineer v. State of Madhya Pradesh).¹ However, in the present case, there have been material improvements, omissions and contradictions at every stage. In the initial complaint, allegations were made only against



the appellant, that he established forcible relations on 20.01.2015, and attempted again on 23.01.2015 and that he used to watch her bathe and beat her. In her statement under Section 164 CrPC, for the first time, she stated as to her husband being infertile, her in-laws making a plan to get her impregnated by the appellant, him forcing her to write a letter 3-4 days prior to the first incident under threat of acid bottle, her living with her husband separately and him beating her.

17. Further improvements were made in her Court deposition as well. She stated that the appellant took her to the room on first floor and tied her hands with *Dastar*. Her *naani saas* also came into the room but did not say anything. Interestingly, she contradicted herself in cross examination, where she stated that both incidents took place on the ground floor. It was also stated for the first time that the appellant used to make videos of her bathing. Pertinently, no such video was ever recovered during investigation. She also stated about her husband, mother-in-law, uncle *Kartar Singh* and a neighbor coming to her mother's house on 19.02.2015 and extending threats if she didn't go back to her in-laws. Her husband was alleged to have threatened her with a dagger. However, this fact does not find mention in the police complaint, recorded on the very next day.

18. Much ado has been made about the letter statedly written by the prosecutrix, 3-4 days prior to the incident. Prosecutrix has stated that she was made to write that letter forcefully under threat of acid bottle. A perusal of the said letter would show that the same does not state anything about any physical or sexual relations being made with the appellant, and consequently does not turn either way as to whether the same were consensual or non-

¹ (2010) 8 SCC 191



consensual. In any case, the defence of the appellant is of complete denial, and not that any consensual physical relations were established.

19. The MLC was prepared a month after the alleged incident of rape and is thus of little help to the prosecution. The same records no injuries to the private parts of the prosecutrix. No FSL report was prepared either.

20. The defense of the appellant is that he has been falsely implicated to build pressure on his brother, from who the prosecutrix was seeking a divorce due to his infertility. The prosecutrix, in her cross examination, admitted her husband's infertility, filing cases of maintenance and DV Act against him, her seeking divorce from him and he refusing. The husband (DW1) deposed that he was unable to produce sperms. His semen analysis report dated 04.06.2011 was exhibited as Ex. DWI/A and the same records that no spermatozoa were seen in it. Further, he deposed that the dowry complaint was settled in mediation and divorce by mutual consent was sought. The order dated 01.08.2018 granting the 1st motion by the parties under Section 13 B (1) of Hindu Marriage Act was placed on record as Ex. PX. The same records the factum of a settlement being arrived at in mediation for the sum of Rs. 3,20,000/- payable to the prosecutrix.

21. In view of the substantial and unexplained delay in lodging of the FIR, which is accompanied by the prosecutrix making material improvements in every statement, non-supportive MLC and non-existent FSL, the background of parallel divorce proceedings on the basis of mutual consent where none of these allegations have been uttered, substantial lacunae have emerged in the prosecution case, resulting in it not being proved beyond reasonable doubt against the appellant. Naturally, the benefit of the doubt must be extended to him.



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22. The appeal is allowed and the appellant is acquitted of all the charges.
23. The appellant's bail bonds are cancelled and sureties discharged.
24. A copy of this judgement be communicated to the Trial Court and Jail Superintendent.
25. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Arjun Mahajan, Advocate, learned *Amicus Curiae* (*pro bono*).

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 20, 2025

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