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

Date of decision: 23.01.2025

+ **CRL.L.P. 343/2022**

STATE

.....Petitioner

Through: Mr. Aashneet Singh, APP with
WSI Anita Kumari, PS Jama Masjid

versus

YASIR ALI

.....Respondent

Through: Mr. Sudershan Ranjan, JS Kalra,
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is an application seeking leave to appeal to challenge the judgment dated 29.09.2021 passed by the learned Additional Sessions Judge (FTSC), (RC) Central District, Tis Hazari Court, Delhi, in Case No. 307/2018 titled "*State vs. Yasir Ali*" in FIR No. 91/2018 dated 31.08.2018 registered at PS Jama Masjid, Central Delhi under Section 376 of the Indian Penal Code, 1860 ("*IPC*").

FACTUAL BACKGROUND

2. As per the prosecution, on 31.08.2018, at about 4 PM, the prosecutrix visited the shop of the respondent/accused for purchasing clothes for her children. At the shop, suddenly her health deteriorated and she requested the respondent for water. After drinking the water, she



started feeling dizzy. The respondent took her towards the back side of his shop and told her that there is a fan and she would be comfortable by taking some rest. It is alleged by the petitioner that the respondent removed her clothes and put his finger in her private part and made her to lie on a bedsheet and raped her. The petitioner on regaining consciousness questioned the respondent as to what he has done with her. At this, the respondent offered her to take any cloth piece from his shop without making any payment. The petitioner, after wearing her clothes, went to the police station and lodged an FIR against the respondent.

3. After completion of investigation, a charge sheet was filed against the respondent before the concerned Court.
4. Learned Trial Court took the cognizance of the chargesheet and framed the charge under section 376 of IPC against the respondent. The prosecution examined a total of 12 witnesses and 3 witnesses were examined from the side of the respondent.
5. After recording of the evidence, the learned Trial Court *vide* impugned judgement dated 29.09.2021, acquitted the respondent under Section 376 of IPC. Hence the present appeal is filed by the State.

SUBMISSIONS ON BEHALF OF THE PETITIONER

6. Mr Singh, learned APP appearing on behalf of the State submits as follows:-
 - A. The impugned judgment is perverse and manifestly erroneous of misreading evidence and demonstrably unsustainable in the eyes of law as the learned Trial Court



wrongly and erroneously acquitted the respondent under Section 376 of IPC.

B. The impugned judgment is based on presumptions and assumptions, conjectures and surmises, devoid of merits and as such cannot stand *prima facie* scrutiny of law and thus, the respondent should be punished under Section 376 of IPC.

C. Learned Trial Court wrongly held that the statement of the petitioner is contradictory and inconsistent. The testimony of the prosecutrix is credit worthy, reliable and supported by the case of the prosecution. Minor variations in the statement of the prosecutrix do not shake her credibility. In these types of cases, no corroborative independent evidence can be expected. In the present case, the contradictions are not material contradictions and the same will not affect the case of the prosecution. The evidence of the prosecution witnesses cannot be thrown away, when it has some significance. The learned Trial Court ignored the judgment titled ***Ganesan v. State (2020) 10 SCC 573***, wherein it was held, *inter alia*, that the conviction can be granted on the sole testimony of the victim.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

7. *Per contra*, the learned counsel appearing on behalf of the respondent supports the impugned judgment and submits as follows:-

A. There are glaring contradictions in the statements of the petitioner who is the sole witness of the incident and reflects



that the petitioner has not given a consistent version regarding the manner in which entire incident of rape took place.

B. In addition, the medical evidence has not supported the case of the petitioner.

C. The petitioner has miserably failed to clearly establish and lead evidence. Hence, the petitioner has failed to prove the case beyond reasonable doubt against the respondent.

ANALYSIS AND FINDINGS

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

9. The operative portion of the impugned judgments reads as under:-

“37. In view of above background and legal position, the narration of the incident of rape and other allegations made in the present case by the prosecutrix has been critically examined to determine the question of quality of the testimony of prosecutrix and the following inconsistencies are noticed:

a)..... The perusal of record shows that the prosecutrix has made contradictory statements regarding the number of times, the accused committed rape with her. The prosecutrix in her complaint Ex. PW1/A and DD No. 27-A has mentioned that on 31.08.18, at about 4.00 PM, in shop no. 982, Matiya Mahal, she was raped only once by the accused. In fact, the perusal of the complaint Ex. PW 1/A shows that the prosecutrix had mentioned that she



became unconscious and only on regaining her conscious, she found that her salwar was opened and therefore, she assumed that she was raped. But, in her statement given to the doctor, who medically examined her, she mentioned that she was raped twice. However, in her statement u/s. 164 Cr.PC, before Ld. MM, she stated that accused committed forcible intercourse with her 2-3 times. Her statement u/s. 164 Cr. P.C. is totally contradictory regarding the manner in which the incident took place. In her complaint, Ex. PW 1/A, she had mentioned that she had lost her conscious, whereas, in her statement u/s. 164 Cr.P.C. Ex. PW 1/C, she mentioned that she had even resisted the accused, but, since, she was under the influence of some intoxicating substance, she herself laid down on the floor and thereafter, accused committed rape upon her twice or thrice. Thereafter, the prosecutrix again changed her version and stated in her testimony before the court that she was raped only twice by the accused on that day.

b) Not only on the aspect of manner and the number of time of rape, regarding which, the prosecutrix has given inconsistent statements, the perusal of record shows that she has also given totally inconsistent and varied version regarding the time of losing the senses/consciousness and also the level of losing the consciousness. As per complaint Ex. PW1/A, the prosecutrix had lost her



complete consciousness immediately after drinking the water, whereas, as per statement u/s. 164 Cr. P.C, she had lost only partial consciousness only and that too after half an hour of drinking the water. As per her complaint Ex. PW 1/A, she did not witness rape with her as she was unconscious, whereas, as per statement u/s. 164 Cr. P.C. and her testimony recorded in the court, she not only narrated the entire incident, but she also stated that she had resisted the sexual assault on her.

c) It has also been observed that in respect of timing and sequence of making the complaint to the police also, the prosecutrix has given totally contradictory statements. As per DD No. 27-A, dated 31.08.18 and the complaint Ex. PW1/A, after the incident, she directly visited the police station and made the complaint Ex. PW 1/A. Whereas, in her statement U/s. 164 Cr.PC before Ld. MM and in her testimony before the court, she stated that at shop itself, she made call at 100 number and PCR officials visited the shop and she narrated the incident to them, who took her and the accused to the police chowki and from there, she was taken to the police post. She has further deposed that PCR officials firstly took her to the police post and subsequently, to police station.

The aforesaid glaring contradictions reflect that prosecution has not given a consistent version regarding the manner in which entire incident of rape took place. The



inconsistencies and contradictions in the testimony of prosecutrix, who is the sole witness of the incident, goes to the root of the matter. The inconsistent and contradictory stand taken by the prosecutrix on the material aspects raise several important questions i.e. whether the prosecutrix had become fully unconscious after drinking the water or she had lost her consciousness partially only; what was the time of losing consciousness i.e. immediately after drinking the water or after half an hour.

The aforementioned questions remained unanswered as no credible evidence has been led by the prosecution and the testimony of the prosecutrix is totally inconsistent on the aforesaid aspects. Therefore, in view of above, this court has no hesitation to hold that the prosecution has miserably failed to clearly establish and lead evidence regarding the timing, sequence of the incident, the mental state of prosecutrix at the time of the incident and the number of time she was subjected to sexual assault. In view of above, the testimony of prosecutrix cannot be termed as sterling quality. Therefore, it would be unsafe to base conviction on her solitary testimony.”

10. In the present case, it is pertinent to note that in the impugned judgment, the learned Trial Court has observed that there is no CCTV footage of the incident and there are no other persons who have witnessed the alleged incident. Hence, the testimony of the prosecutrix is to be solely relied upon to bring home the guilt of the



respondent. It is also note worthy to mention that during medical examination of the prosecutrix, no injuries were found on her private parts.

11. It is true that in the cases of sexual offences, the sole testimony of the prosecutrix can form the basis of the conviction of the accused. However, the Courts have to be extremely careful while examining the sole testimony of the prosecutrix as cautioned in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92***. In this case, the Hon'ble Supreme Court has observed that the accused can be convicted solely on the testimony of the prosecutrix, if the same is inspiring confidence of the Court. Since both the prosecutrix as well as the accused have a right for a fair trial, thus, if the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence, such as, medical evidence or the surrounding circumstances. The relevant para is extracted below:-

“9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the



entire case is improbable and unlikely to happen.”

12. The prosecutrix during cross examination deposed as under:-

“My statement Ex. PW1/A was read over to me. I have stated in my statement that my earlier husband had expired (confronted with Ex. PW1/A where it is recorded that she was divorced from her first husband). I had stated in my statement Ex. PW1/A, that I used to do some work of stitching of buttons of jeans/pants (confronted with Ex. PW1/A where it is not so recorded).

I had mentioned about buying of a suit from some other shop for my son and not for my daughter as it has been inadvertently mentioned in my previous statement in the court.

I had stated in my statement to police that I was walking while watching the shops and then I stayed at one shop which was of small children clothes (confronted with Ex. PW1/A where it is not so recorded).

I had told police in my statement that I went inside the shop and inquired from shop keeper who was alone in the shop regarding pant of child of age 12 year (confronted with Ex. PW1/A where it is not so recorded).

I have stated in my statement to police that shop keeper had showed 1-2 pants which I found to be small and he told me that he will show me more pants and I was asked



to sit down (confronted with Ex. PW1/A where it is not so recorded).

I had stated to police that I had become tired so I had asked for water from the shopkeeper (confronted with Ex. PW1/A where the word 'tired' is not mentioned).

I had stated in my statement to police that when I told this to the shopkeeper, he told me to get up and moved my chair towards the stairs in the shop (confronted with Ex. PW1/A where it is not so recorded).

I had stated in my statement to police that then the accused had caught hold of my arms and made me to sit on stair case and he started doing inappropriate things and I pushed away his hands. (confronted with Ex. PW1/A where it is not so recorded).

I had stated in my statement to police that accused suddenly had picked up my burqa towards upside and also pulled my underwear. (confronted with Ex. PW1IA where the words 'burqa' and 'underwear' were not mentioned).

I had stated in my statement to police that I sat on the bed sheet which was already in the shop as I wanted to wear my clothes but then accused suddenly came towards me and raise both my legs upwards and then again made physical relationship with me for 2-3 minutes (confronted with Ex. PW1/A where it is not so recorded).



I had stated in my statement to police that as I was in the process of wearing my underwear and salwar, accused raised alarm and call other shopkeepers and said 'look, what is this woman doing in my shop'(confronted with Ex. PW1/A where it is not so recorded).

I had stated in my statement to police that 2-3 person from the neighboring shop came and I was abused and ask to go from there (confronted with Ex. PW1/A where it is not so recorded)."

13. Where there are material contradictions and improvements by the prosecutrix in her evidence and statement recorded under section 164 of CrPC, the narration of the incident and other allegations made in the present case by the prosecutrix has to be examined to determine the question of quality of the testimony of the prosecutrix. The following inconsistencies were noticed by the learned Trial Court:

I. The records indicate that the prosecutrix has made contradictory statements regarding the number of times the respondent allegedly raped her. In her complaint, she stated that she was raped only 'once' and mentioned becoming unconscious, only to regain consciousness and find her salwar opened, leading her to assume she was raped. However, during her medical examination, she claimed she was raped 'twice'. In her statement recorded under Section 164 of CrPC, she stated that the respondent committed forcible intercourse with her 2-3 times. Later, in her chief examination, she revised her statement again, asserting that



she was raped only twice on that day.

- II.** Her statement under Section 164 of CrPC is completely contradictory regarding the manner in which the incident occurred. In her complaint, the prosecutrix stated that she lost her consciousness. However, in her Section 164 statement, she claimed that she resisted the respondent but, due to being under the influence of an intoxicating substance, she voluntarily lay down on the floor, after which the respondent raped her two to three times.
- III.** Furthermore, there are conflicting accounts regarding the timing and extent of her loss of consciousness. In her complaint, the prosecutrix stated that she lost complete consciousness immediately after drinking the water. However, in her statement under Section 164 of CrPC, she claimed to have experienced only partial consciousness, occurring half an hour after drinking the water. While her complaint indicated that she did not witness the incident due to being unconscious, her Section 164 statement and court testimony revealed that she not only recounted the entire incident but also claimed to have resisted the sexual assault.
- IV.** The prosecutrix has also provided contradictory statements regarding the timing and sequence of her complaint to the police. In her complaint, she claimed to have gone directly to the police station after the incident. However, in her statement under Section 164 CrPC and her court testimony, she stated that she called the police at the shop, where PCR



officials arrived and she narrated the incident to them. At first, she stated that the officials took her and the respondent to the police chowki, and subsequently, she was taken to the police post, whereas, later she testified that the PCR officials first brought her to the police post and then to the police station.

14. Thus, on perusal of the aforementioned contradictions in the statements of the prosecutrix, the prosecution has failed to clearly establish and lead evidence regarding the timing, sequence of the incident, the mental state of prosecutrix at the time of the alleged incident and the number of time she was subjected to sexual assault. Therefore, in my considered opinion, the glaring contradictions in the testimony of the prosecutrix raises doubt over the authenticity of the prosecution's case which tilts the balance in favour of the respondent. It would be unsafe to base conviction on an inconsistent solitary testimony.
15. It is also true that in the cases of sexual offences, medical examination always plays a very important role. The medical evidence is one of the ways which helps to find out the true facts as alleged by the prosecution.
16. It is pertinent to note that the concerned IO seized the bedsheet as well as the clothes of the prosecutrix and the respondent and they were sent to FSL. However, the FSL report does not support the prosecution case as no semen was found on the bed sheet or on the clothes of the prosecutrix.
17. In addition, my attention was drawn to the fact that DW-1 i.e. mother



of the respondent, in her testimony, has stated that there was a landlord-tenant dispute with regard to the shop in question. One Dilshad, who was the former tenant of the respondent had threatened the respondent that he would implicate him in a false case, for which a written complaint was also filed. The relevant part of her testimony is extracted below:-

“I am the owner of two shops bearing number 981 and 982, Matiya Mahal, Jama Masjid, Delhi. One Dilshad was my tenant in respect of the shop number 981. I had got the said shop vacated through court on 14.08.2018 from Mohd. Dilshad. Accused Yasir Ali, present in court is my elder son and he was doing the business of readymade garments of children. After the shop was vacated on 14.08.2018 from Mohd. Dilshad, he started intimidating and harassing me and my family. He threatened that he will not let us to do any work at the shop. He also put his goods in front of the gate of shop to restrict the entry at shop. He also threatened us for our false implication by extending threat that he will cause stab injury to himself and will falsely implicated us. On 29.08.2018, I gave a written complaint against the Dilshad at PS Jama Masjid. I have brought receiving of the above said complaint today. Copy of the above said complaint having the endorsement of the PS vide DD No. 17 dt. 29.08.2018 is marked herein as Mark DW1/A (original endorsement seen and returned).”

18. DW-2 brought the complaint register pertaining to the year 2018



which corroborated the above testimony of DW-1 and also deposed about the said complaint filed against Dilshad by DW-1.

19. In view of major inconsistencies and contradictions and lack of any corroborating evidence, medical or otherwise, learned Trial Court has committed no error in acquitting the respondent.
20. For the said reasons, I am of the view that the impugned judgment is well reasoned based upon the evidences and material on record and has correctly concluded the acquittal of the respondent.
21. For the said reasons, the leave to appeal is dismissed.
22. Consequently, the appeal has become infructuous and is disposed of.

JASMEET SINGH, J

JANUARY 23, 2025 / (MS)

(Corrected and released on 03.02.2025)

Click here to check corrigendum, if any