



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

% Date of Decision: 15.09.2025

+ **CRL.A.215/2016**

STATEAppellant
Through: Ms Shubhi Gupta, APP for State.

Versus

VIPIN BANSALRespondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. The present matter was listed in the category of “Old/Targeted Cases” before the Predecessor Bench on 15.07.2025, and since no one entered appearance on behalf of the respondent, the Court directed notice to be issued to the respondent through the concerned I.O., returnable on 03.11.2025. The matter has been listed before this Bench today under the category of “Oldest Targeted Matters”, and the listing of the present matter was duly communicated to the parties by the Registry. However, once again, no one has entered appearance on behalf of the respondent. In view of the same, this Court has gone through the Trial Court record with the assistance of the learned APP for the State.

2. The present appeal filed under Section 378 Cr.P.C. assails the impugned judgment of acquittal dated 23.03.2013 passed by the learned ASJ-01 (West), Tis Hazari Courts, Delhi in Sessions Case No. 54/2013



arising out of FIR No. 190/2010 registered under Sections 363/376/34 IPC at P.S. Vikaspuri, qua which the appellant herein was acquitted of the offences punishable under Sections 363/34 and Section 376 IPC.

3. The prosecution case, in short, is that on the intervening night of 11/12.07.2010 the appellant with three accomplices kidnapped the prosecutrix aged 15–16 years in a car and later in a park, committed rape upon her. On the statement of the prosecutrix, an FIR was registered. She was medically examined, and at her instance, the appellant was arrested on 12.07.2010. The statement of the prosecutrix under Section 164 Cr.P.C. was subsequently recorded.

4. Upon committal, the Sessions Court framed charges under Sections 363/34 IPC and Section 376 IPC against the appellant, to which he pleaded not guilty and claimed trial.

5. The prosecution examined 17 witnesses in support of its case, with the material witnesses being the prosecutrix herself, examined as PW-2; her mother, examined as PW-1; Dr. *Shaifali Jain*/PW-4, who examined the potency of the respondent; Dr. *Jimmi Solanki*/PW-5, who medically examined the prosecutrix; Dr. *Rachna Pandey*/PW-7, who conducted the medical examination of the respondent; and the I.O. W/ASI *Sushila*, who was examined as PW-15. The remaining witnesses were formal in nature.

6. The prosecutrix (PW-2) deposed that on 11.07.2010 at about 8:45 p.m., she had come out of her house to walk her dog. On reaching the main road, an Alto car came from behind; two boys got down, gagged her mouth and pushed her into the car, where two others were already seated. She stated that they drove her to a park, where three of them left, leaving



her with the fourth boy, i.e. the respondent. She stated that he removed her clothes and committed rape upon her. She further stated that the respondent forcibly took her to his house, where his father, sister and brother were present. She correctly identified the respondent in Court. She stated that she did not tell the sister of the respondent that he had raped her. The father of the respondent thereafter called the mother of the prosecutrix, and soon her mother arrived at the respondent's house and took her back home. She told her mother that the respondent had raped her in a lonely park, whereafter she, along with her mother, went to the police station and her statement (Ex. PW-2/A) was recorded. She was taken to DDU Hospital for her medical examination, and her clothes were seized by the doctor. Her statement under Section 164 Cr.P.C. was recorded. Before the Trial Court, she duly identified her *salwar* and shirt, exhibited as Ex. P1, as the clothes she had been wearing at the time of the incident and which were seized during her medical examination.

In her cross-examination, the prosecutrix admitted that she knew the respondent from before as her elder sister used to work with him in arranging marriages, and she would also accompany them to assist and earn money. She stated that on 11.07.2010 she had gone with the respondent to a marriage function with the permission of her parents and of her own will, as her elder sister had already gone there. On the way, since her period started and the respondent's house was nearby, he took her to his house. She stated that she met the respondent's father and sister there. On seeing her condition, the father of the respondent quarrelled with the respondent, suspecting some wrong act, and called her parents. A



quarrel ensued between her parents and the father of the respondent, after which her parents took her home. She further stated that the respondent had not committed rape upon her. She also stated that she did not give any statement to the police of her own accord, and that the police recorded it on their own as she was under fear.

On re-examination by the learned APP, the prosecutrix stuck to her statement made in cross-examination. She reiterated that she had given her examination-in-chief on 08.04.2011 under fear and had deposed whatever was told to her. She denied the suggestion that she was not under fear on that day. She admitted that she had not informed the Court, the police officials present, or the Magistrate who had earlier recorded her statement under Section 164 Cr.P.C. in chambers, that she was under fear or under any pressure, but volunteered that she was perplexed at that time. She volunteered that she was under fear and had stated what was told to her by the police. She denied the suggestion that she had not been tutored by any police officials, though she stated that she could not name them, and further denied that she was deposing falsely in Court after being won over by the respondent or his family members.

7. The mother of the prosecutrix/PW-1 stated that, on 11.07.2010 at about 8:40 p.m., her daughter had taken their pet dog for a walk but did not return home, although the dog did. Her husband was away at Meerut. After searching for her daughter, she went with her nephew to P.S. Tilak Vihar to lodge a complaint, where the police advised her to continue searching and return in the morning if the prosecutrix was not found. At about 1:00 a.m., she received a call from the respondent's father



informing her that the prosecutrix was with them. She, along with one relative, went to Paushangipur, where she found the respondent, his father, his sister, and her daughter present, and noticed that the prosecutrix's clothes were soaked in blood. She further stated that the prosecutrix had told her she had been forced into a blue car by four boys, and that three of them later left her alone with the respondent, who committed "*galat kaam*" with her.

8. The MLC of the prosecutrix (Ex. PW-5/A) was proved by PW5/Dr. *Jimmi Solanki*, who deposed that local examination of the prosecutrix revealed bleeding through vagina, however, her hymen appeared to be intact.

In her cross-examination, Dr. *Solanki* stated that there was no external injury on the private parts of the prosecutrix. She further stated that she could not opine whether the bleeding was due to internal injury or a natural menstrual period.

9. PW-15 W/ASI *Sushila*, the Investigating Officer of the case exhibited the FSL report (Ex. PW-15/E) and the Biology Division report (Ex. PW-15/F).

10. After closure of prosecution evidence, the statement of the respondent was recorded under Section 313 Cr.P.C. He denied the allegations of abduction and sexual assault, terming them a false story fabricated by the parents of the prosecutrix. He admitted that he had taken her to his house but stated that it was only because she was feeling ill and bleeding. He stated that he had been falsely implicated as the prosecutrix



was under the influence of her parents and police officials. He opted not to lead defence evidence before the Trial Court.

11. Learned APP for the State contends that the Trial Court erred in acquitting the respondent, as the prosecutrix consistently implicated him. She further pointed out that the prosecutrix's mother had supported the prosecution case, and referred to the testimony of PW-5, who stated that it is not necessary for hymen to be torn after sexual intercourse.

12. On a careful perusal of the record, it is noted that while in her examination-in-chief, the prosecutrix alleged kidnapping and rape, in cross-examination she admitted that she had gone with the respondent of her own will to a marriage function with parental permission, that he had taken her home because she felt unwell, and that no offence was committed. She further stated that her police statement was not voluntary, and in re-examination added that even her examination-in-chief had been given under fear and as told. This was not a minor discrepancy but a complete reversal on core facts.

13. The medical evidence also did not advance the prosecution case. PW-5/Dr. *Jimmi Solanki* proved the MLC (Ex. PW-5/A), which recorded bleeding through vagina with the hymen intact. In cross-examination she stated that there was no external injury and that she could not say whether the bleeding was due to injury or a regular menstrual period. The medical evidence was, therefore, inconclusive and did not corroborate the case of the prosecution.

14. The forensic evidence was equally inconclusive. The FSL report (Ex. PW-15/E) detected semen on the prosecutrix's *salwar* and underwear, but no



DNA profiling was conducted to connect it to the respondent, and the Biology Division report (Ex. PW-15/F) did not advance the prosecution case. No expert was examined to elaborate upon the findings.

15. It is well settled that the appellate Court must be slow to interfere in an appeal against acquittal unless the Trial Court's view is perverse. 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.'"

16. 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 accused persons in an appeal against 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.’”

17. In these circumstances, with the failure to prove minority, the material



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reversal of the prosecutrix on material particulars, and the absence of corroborative medical or scientific evidence, the prosecution has failed to prove its case beyond reasonable doubt. The view taken by the Trial Court is a plausible one on the evidence, and in an appeal against acquittal such a view does not warrant interference.

18. After hearing the learned APP for the State at length and perusing the Trial Court record, this Court concurs with the conclusion arrived at by the Trial Court. Accordingly, the impugned judgment acquitting the respondent of the charges under Sections 363/376/34 IPC is upheld and the present appeal is dismissed.

19. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

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

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 15, 2025/nb
(corrected & released on 25.9.2025)