



\$~23

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

+ **CRL.L.P. 161/2018 & CRL.M.A. 4361/2018**

STATE (GOVT. OF NCT OF DELHI)

.....Petitioner

Through: Ms. Kiran Bairwa, APP with SI
A Kumar, PS Mandawali

versus

RAJESH

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

%

19.02.2025

1. This is a petition seeking leave to appeal challenging the judgment dated 25.09.2017 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in SC No.103/2014 arising out of FIR No.51/2014 registered at PS Mandawali under Sections 363 and 366 of the Indian Penal Code, 1860 ("IPC").
2. *Vide* the impugned judgment, the respondent was acquitted for the offences punishable under Sections 363 and 366 of IPC.
3. The brief facts of the case are that on 17.01.2014 at about 09:00 PM, the prosecutrix aged about 14 years, left her house. On 18.01.2014, the brother of the prosecutrix received a phone call from his brother-in-law that he had received a phone call from the prosecutrix and she has informed him that she is at Ghaziabad Railway Station. Upon receipt of the said information, the brother of the prosecutrix went to Ghaziabad Railway Station to look for the prosecutrix but he could not find her there.



4. Thereafter, the brother of the prosecutrix/complainant registered the FIR under Section 363 of IPC suspecting that the prosecutrix had been kidnapped.
5. On 20.01.2014, the complainant brought the prosecutrix and the respondent to the police station. The prosecutrix stated that the respondent had taken her to his rented accommodation on the pretext of marrying her. The prosecutrix stayed with the respondent for 3 days. At night, when she was going out with the respondent, her brother saw them and brought them to the police station. Thereafter, the prosecutrix was medically examined.
6. The charge for offences under Sections 363 and 366 of IPC was framed against the respondent to which he pleaded not guilty and claimed a trial.
7. The prosecution in order to prove its case examined a total of 9 witnesses. The statement of the respondent/accused under Section 313 of CrPC was recorded wherein he stated that he had been falsely implicated in the present case due to the rivalry between the mother of the prosecutrix and the employer of the respondent. The respondent did not lead any evidence in his defence.
8. The learned Sessions Court after consideration, *vide* the impugned judgement acquitted the respondent under Sections 363 and 366 of IPC.
9. Aggrieved by the impugned judgement, the State has filed the present appeal.
10. Ms. Bairwa, learned APP appearing on behalf of the petitioner, challenges the impugned judgement and submits that the learned Sessions Court has wrongly come to the conclusion that there were



contradictions and improvements in the statement of the prosecutrix recorded by the police, statement of the prosecutrix recorded under Section 164 of CrPC and the court testimony of the prosecutrix.

11. I have heard learned counsel and perused the material available on record.

12. The operative paragraphs of the impugned judgement read as under:-

“ ... According to the FIR as well as deposition of the complainant PW-3, victim had called his brother in law (Sala) in the morning of 18-1-2014 mentioning that she was present at Ghaziabad railway station. PW-3 was informed about it by his brother in law and thereafter he along with PW-4 went to Ghaziabad railway station for search of the victim but she was not found. PW-3 also stated that he had even passed over telephone number to police from which call was made by victim to his brother in law. However, IO did not try to trace the location of the call allegedly made by the victim. On the other hand, stand of the accused is that victim never came in his room. Had the IO taken any such steps immediately, some clue about the whereabouts of the victim could have been found. Thus, non taking any such steps on the part of the IO are somehow fatal to the case of the prosecution.

If the statement of PW-3 is also taken into consideration then it contains a contradictory version regarding the place from where the accused was apprehended. At one stage, PW-3 stated that he saw the accused and victim in the lane near his house at about 11 p.m. on 21-1-2014 and he brought both of



them to police station but at another stage of the examination in chief itself, he stated that accused was apprehended from his own room. In the cross examination, PW-3 stated that the room of the accused was bolted from inside and when it was knocked, then accused himself opened the same. Police had also reached there within 10 minutes. PW-3 even denied a suggestion that victim was not recovered from the tenanted room of the accused. Police had not joined any other occupant of the building as a witness when the victim was recovered or the accused was arrested. PW-5 representative of the landlord also deposed that victim was recovered from room of the accused. However, as per IO PW-9, victim and accused were brought in police station by PW-3. He thus ruled out recovery of the victim from the room of the accused. Accordingly, there is a big contradiction whether the accused was apprehended from the lane near house of the victim or from his own house. The story alleged by the prosecution that victim was recovered by her brother from the lane when she was going somewhere with the accused is a wrong and concocted story.

According to victim PW-2 the room of the accused was situated on the first floor but as per PW-3, his room was on the ground floor. There is also contradiction in the statements of witnesses to the effect on which dates the statements of PW-3 and PW- 4 were recorded by the police. These facts also leads to the conclusion that prosecution allegations that victim remained in the room of the accused for 3 days in concealed



position is not fully correct.

In view of the above discussions, I am of the opinion that prosecution has failed to prove the case beyond doubt. Hence, by giving benefit of doubt, the accused is acquitted of charges.

... ”

13. On perusal, the contradictions and inconsistencies in the statements of the witnesses in the present case are as follows:
- A. The brother of the prosecutrix (PW-3) initially stated that he saw the prosecutrix and the respondent in a lane near his house and took them to the police station. Later, he claimed that the respondent was apprehended from the room of the respondent.
 - B. The representative of the landlord of the respondent (PW-5) stated the prosecutrix was recovered from the room of the respondent. However, the IO (PW-9) stated that both were brought to the police station by PW-3.
 - C. The prosecutrix stated that the room of the respondent was on the first floor, whereas PW-3 stated it was on the ground floor.
 - D. The prosecutrix allegedly called her brother-in-law from Ghaziabad railway station, however the IO did not trace the call location of the prosecutrix.
 - E. Further, no other tenants or building occupants were examined as witnesses in the present case to corroborate the claim that the prosecutrix remained hidden in the room of the respondent for three days.
14. Thus, the above noted contradictions are glaring and the evidence does not prove the guilt of the respondent beyond the reasonable doubt in the



present case.

15. In addition, the prosecutrix (PW-2) has deposed that she had gone voluntarily to reside with the respondent.
16. For the said reasons, the prosecution has failed to prove the case beyond reasonable doubt against the respondent and the learned Sessions Court has correctly granted the benefit of doubt to the respondent as per the basic tenets of the criminal jurisprudence.
17. In view of the matter, the judgment dated 25.09.2017 passed by the learned Additional Sessions Judge, Karkardooma Courts, Delhi in SC No.103/2014 arising out of FIR No.51/2014 is well-reasoned and does not require any interference.
18. The leave to appeal is rejected.
19. Consequently, the appeal is dismissed and is disposed of accordingly.

JASMEET SINGH, J

FEBRUARY 19, 2025 / (MS)

Click here to check corrigendum, if any