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

Date of decision: 28.01.2025

+ **CRL.L.P. 345/2018 & CRL.M.A. 9666/2018**

NAGINA @ BILLO

.....Petitioner

Through: Mr Hamid Ali, Adv.

versus

THE STATE OF DELHI & ANR

.....Respondents

Through: Mr Raj Kumar, APP for
State

W/SI Promila Malik, PS-V.K. South

SI Lal Chand, PS-V.K. South

Mr Rohit Mehla, Adv. for R-2
(through VC)

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

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

1. This is an application seeking leave to appeal to challenge the judgement dated 31.03.2018 passed by the learned Additional Sessions Judge, Patiala House Court, New Delhi in SC No. 8651/2016 titled as “*State v. Rizwan Khan*” arising out of FIR No. 61/2016 registered at PS Vasant Kunj (South), New Delhi wherein the learned Trial Court acquitted the respondent No. 2 under sections 376/506 of Indian Penal Code, 1860 (“IPC”) and proceedings under section 344 of CrPC were initiated against the petitioner.

FACTUAL BACKGROUND

2. The brief facts of the case are that the petitioner along with her husband and three children resides in Kale Ki jhuggi at Inder Camp, Khohi,



near Milkpur Mandir, Rangpuri Pahari, New Delhi and does the work of housekeeping at the airport. On 04.12.2015, while she was returning from her duty at about 9:30 AM, the respondent No. 2 who resides along with his family at Hoti Camp, Rangpuri and was known to her, told her to meet him in the evening of the same day at Nangal Devat where he puts up a rehri of groundnuts and also threatened her that in case she does not, he will abduct her. She, scared by the threats given by him, went to meet him at about 8:30 PM and then the respondent No. 2 forcibly took her to DDA Park nearby and committed rape upon her and then threatened her that she should not tell about the rape to anybody.

3. On 15.01.2016 again, he called her to the DDA park and again raped her and threatened her that she should not tell anything to anybody. Again on 21.01.2016, while coming back from her work to her house was accosted by him and thereafter she called the police at 100 number. Hence, the present FIR was registered and the respondent No. 2 was arrested.

4. After completion of investigation, a charge sheet was filed against the respondent No. 2 and charges were framed under Sections 376/506 of IPC.

5. The prosecution examined a total of 6 witnesses and 1 witness was examined from the side of respondent No. 2.

6. *Vide* impugned judgement, the respondent No. 2 was acquitted from the charge under Sections 376/506 of IPC and proceedings were initiated against the petitioner under Section 344 of CrPC. The operative part of the impugned judgement reads as under:-

“17. In the considered opinion of this court, the aforementioned inconsistencies and discrepancies in the deposition of the prosecutrix make it apparently clear that the entire version put



forward by the prosecutrix is completely concocted and that she had got a false case of rape registered against the accused in connivance with the police officials of PS Vasant Kunj (S). It cannot be overlooked that admittedly PW6 SI Matwar Singh (who, as per the case of the investigating agency, was the first to reach the spot on receiving the call of the prosecutrix) was the IO of FIR No. 8/16 P.S. Vasant Kunj which was got registered by the brother in law of the prosecutrix and he was well aware that the accused is the brother of the same boy who had eloped with the daughter of brother in law of the prosecutrix. In such circumstances, it cannot at all be assumed that he was in no way aware that the prosecutrix was filing this false complaint only to pressurize the accused. The connivance of the police officials with the prosecutrix is also apparent if one considers the different versions given by the IO PW4 SI Saroj and PW6 SI Matwar in their depositions and the documents placed on record. According to the deposition of PW6 SI Matwar, he had reached the spot at about 5.15 p.m on receiving DD No.5A and the IO SI Saroj had reached half an hour thereafter and had then sent the prosecutrix alongwith one Ct. Sushila for her medical examination and that Ct. Sushila alongwith prosecutrix had come back to the spot itself and there and then had handed over the copy of MLC to SI Saroj. However, PW4 SI Saroj narrates that she had left the spot at about 8 p.m itself and admittedly as per the MLC of the prosecutrix on record, she was medically examined only at 9:40



p.m on 21.01.2016. Clearly, therefore, Ct. Sushila could not have come back to the spot along with the MLC of the prosecutrix before 8 p.m to handover the same to the 10, as deposed by SI Matwar Singh.

18. Both these police officials also appear to have deposed falsely with respect to the apprehension of the accused. Though both of them have chosen to state that the accused was nowhere to be seen at the spot on 21.01.2016 and SI Saroj has been categorically in deposing that the accused was apprehended only on 22.01.2016 from Nangal Devat at the pointing out of the prosecutrix, the prosecutrix herself in her cross examination has narrated that after she had called the Police at 100 number, the police officials had come and had taken both her and the accused to the Police Station. It is quite obvious to this court that the aforementioned discrepancies have come to the fore during trial only because the police officials in connivance with the prosecutrix have chosen to falsely implicate the accused and infact the facts narrated by the accused in his statement tendered u/s 313 Cr.P.C. are absolutely true and correct.

19. In view of the discussion herein above, this court is of the considered opinion that not only is the accused entitled to be acquitted of the offences for which he has been charged with, namely Sections 376 and 506 IPC, but also that the prosecutrix is liable to be tried for having given intentionally false evidence/ statements before the court. This is an



unfortunate case in which a young boy of 22 years of age whose only livelihood was selling peanuts, was forced to spend five months in JC only because the prosecutrix chose to falsely allege that he had raped her in order to pressurize him and his family to tell the whereabouts of the daughter of her sister whom she suspected had run away with the brother of the accused. This amounts to nothing but a gross abuse of law. In the considered opinion of this court, such kind of women, as the prosecutrix in the present case, who misuse the law in order to falsely implicate innocent persons of the heinous offence of rape should be dealt with strictly, and therefore this court is of the opinion that it is in the interests of justice that a notice be issued to the prosecutrix under section 344 Cr.PC calling upon her to show cause as to why she should not be punished summarily for the offence of giving false evidence committed by her. (this court in taking this step is supported by the judgment of the Hon'ble Supreme Court of India pronounced in the case titled and reported as MAHILA VINOD KUMAR VS. STATE OF MADHYA PRADESH 2008 8 SCC 34.) Accordingly, it is hereby directed that a show cause notice be issued to the prosecutrix to appear before this court on 16.04.2018.....”

7. Mr Ali, learned counsel appearing on behalf of the petitioner restricts his challenge to the impugned judgement only to the notice issued to the petitioner under Section 344 of CrPC.
8. He states that in the present case, learned Trial Court has erred in coming to a finding that the petitioner has falsely implicated respondent No.



2, just because the petitioner was not able to establish with concrete evidence the allegations made against respondent No. 2.

9. Mr Mehla, learned counsel for the respondent No. 2 has supported the impugned judgement and submitted that the petitioner has miserably failed to establish and lead clear and cogent evidence and has falsely implicated the respondent No. 2.

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

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 petitioner during her cross-examination deposed as under:-
“I had stated in my statement before Ld. MM and in my complaint to police that ‘accused Rizwan was standing there at the bus stand’. (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that ‘accused told me to accompany him otherwise he will use force upon me and he continued asking me to accompany him but I did not accompany him’. (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that thereafter the ‘accused started threatening me that he will get my children lifted’. (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that ‘In the evening, when I was going to join my duty and reached at Chungi, the accused was present there. It was around 07-07.15 pm’. (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that ‘The accused started asking



me to accompany him and on my refusal, he pulled me forcibly with him and took me towards the bushes of Nangal Village. After taking me to the bushes, the accused committed rape upon me against my wishes', (confronted with complaint Ex.PW1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded, however it is mentioned that the witness at about 08.30 pm without telling to anybody went to the accused). I had stated in my statement before Ld. MM and in my complaint to police that 'It was around 09.00 pm when accused had already committed rape upon me and thereafter, I came back home and I was already late for my duty', (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had not stated in my statement before Ld. MM and in my complaint to police that 'My husband used to drink alcohol and therefore I could not disclose the incident to my husband'. I had stated in my statement before Ld. MM and in my complaint to police that 'On 15.1.2016, when I was going to Chungi for boarding the bus for my workplace, I saw that the accused was already standing there at about 07.00 pm. The accused asked me to accompany him and he again forcibly took me to the bushes near Nangal village and he again committed rape with me', (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded, however it is recorded there in the complaint that on 15.1.2016 accused called her and again in DDA Park, he committed rape with her). I had not stated in my statement



before Ld. MM and in my complaint to police that 'I quietly came to my house and did not disclose the incident to anyone. Due to fear of the accused'. I had stated in my statement before Ld. MM and in my complaint to police that 'I stopped going to my workplace to join my duties', (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where it is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that 'I quietly came to my house and did not disclose the Incident to anyone. Due to fear of the accused'. I had stated in my statement before Ld. MM and in my complaint to police that 'After about 10-12 days of the above incident, again when I reached near Chungi to board the bus for my workplace, the accused met me there and he again asked me to accompany him. The accused threatened me that if I did not accompany him, he would lift me and my children', (confronted with complaint Ex.PW-1/A and statement u/s.164 CrPC Ex.PW-1/F where It is not so recorded). I had stated in my statement before Ld. MM and in my complaint to police that 'Again, after about 10-12 days of the above incident, when I reached near Chungi to board the bus for my workplace, the accused met me there and he again asked me to accompany him. The accused threatened me that if I did not accompany him, he would lift me and my children. Despite my refusal, the accused pulled me towards the bushes near Nangal Village and he told me to establish physical relations with him.', (confronted with complaint Ex.PW-1/A and statement u/s.164



CrPC Ex.PW-1/F where it is not so recorded, however it is recorded there in complaint that "to mujhe fir se aanekeliye kaha").

13. In the present case, there are material contradictions by the petitioner in her evidence and statement recorded under section 164 of CrPC, thus the allegations made by the petitioner have to be examined to determine the question of quality of the testimony of the petitioner. The learned Trial Court has correctly analysed the testimony of the petitioner and has observed that the same does not inspire confidence as she gave three inconsistent statements in three stages of the proceedings:

- I. In her initial complaint to the investigating agency (Ex.PW1/A), she stated that on 04.12.2015, while returning home from work around 9:30 AM, the respondent No. 2 confronted her near a bus stand (referred to as Chungi) and threatened to abduct her if she did not meet him later that evening at Nangal Devat. Out of fear, she went to Nangal Devat at about 8:30 PM and was subsequently taken to DDA Park, where the respondent No. 2 raped her. She further alleged that on 15.01.2016, the respondent No. 2 called her to DDA Park again and raped her, threatening her not to disclose the incidents. On 21.01.2016, while returning from work, the respondent No. 2 attempted to accost her again, but this time she called the police.
- II. In her statement under Section 164 of Cr.P.C, she changed her account, claiming that on 04.12.2015, the respondent No. 2 had forcibly taken her to DDA Park after threatening

her. This contradicts her initial complaint, where she indicated she went to Nangal Devat due to fear. Additionally, she did not mention the 21.01.2016 incident in her Section 164 statement, only stating that the respondent No. 2 had been continuously harassing her, which affected her ability to work.

III. During her court deposition, she again altered her narrative, claiming that the respondent No. 2 stopped her both in the morning and evening of 04.12.2015, and that he pulled her towards the bushes near Nangal Devat. Notably, she did not mention 'DDA Park' in her examination-in-chief, only referring to being taken to the bushes.

14. The discrepancies among her statements are so significant that they cannot be reconciled. It is improbable that a 30-year-old woman with three children, working in the housekeeping department at the airport, would be intimidated by a 22-year-old vendor to the extent of agreeing to meet him at DDA Park and further not reporting the incidents of rape.

15. Furthermore, her claim that the respondent No. 2 dragged her towards the bushes is implausible, especially since she acknowledged that Nangal Village is a considerable distance from the bus stop, with shops and houses in between. The distance between the bus stand and DDA Park was estimated by her brother-in-law (PW2) to be about 2-3 km, while the IO suggested it was half a kilometer. This distance would make it unreasonable for a young man to drag a woman without her resisting or raising an alarm.

16. Thus, on perusal of the aforementioned contradictions in the statements of the petitioner, the petitioner has failed to establish and lead



clear and cogent evidence regarding the alleged rape. Therefore, in my considered opinion, the contradictions in the testimony of the petitioner raises doubt over the authenticity of the petitioner's case which tilts the balance in favour of the respondent No. 2. It would be unsafe to base conviction on an inconsistent solitary testimony.

17. 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.

18. It is pertinent to note that the MLC of the petitioner does not show any injuries on her.

19. Furthermore, the learned Trial Court has correctly appreciated the evidence as well as the motive of the petitioner in making allegations under Sections 376/506 of IPC against the respondent No. 2 which is the fact that the niece of the petitioner (daughter of elder sister of the petitioner) had eloped with the brother of respondent No. 2.

20. Therefore, in view of major inconsistencies and contradictions and lack of any corroborating evidence, medical or otherwise, the learned Trial Court has committed no error in acquitting respondent No. 2.

21. For the said reasons, I am of the view that the impugned judgment is well reasoned based upon the evidence and material on record and has correctly concluded the acquittal of the respondent No. 2.

22. For the said reasons, in my considered opinion, the learned Trial Court correctly came to the conclusion that the petitioner had levelled a false case resulting in five months incarceration of respondent No. 2.

23. Since the learned Trial Court came to the finding that the petitioner had tried to falsely implicate an innocent person for a heinous offence, the



initiation of proceedings under Section 344 of CrPC is the mandate of law. In this view of the matter, I find no infirmity in the impugned order dated 31.03.2018.

24. For the said reasons, the leave to appeal is dismissed.

25. Consequently, the appeal has become infructuous and is disposed of.

26. Having said that, the learned Trial Court shall adjudicate the proceedings under section 344 of CrPC in accordance with law. However, the Trial Court may keep in mind the petitioner is 40 years old widowed lady.

JASMEET SINGH, J

JANUARY 28, 2025/sr
(Corrected and released on 07.02.2025)

Click here to check corrigendum, if any