



2025:DHC:11779



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

% Reserved on : 27.11.2025
Pronounced on : 22.12.2025
Uploaded on : 22.12.2025

+ **CRL.A. 551/2016**

SURENDRA RAM

.....Appellant

Through: Mr. Shashank Garg, Senior Advocate
(Amicus Curiae Pro Bono) with Ms.
Aradhya Chaturvedi, Advocates

versus

THE STATE (GOVT OF N.C.T DELHI)

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with
PSI Dheeraj Gupta and SI Prashant
Malik, P.S. Laxmi Nagar.
Ms. Neelampreet Kaur, Advocate
(Amicus Curiae Pro Bono) for victim.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374 Cr.P.C. seeking setting aside of the judgment of conviction dated 18.02.2016 and the order on sentence dated 26.02.2016 passed by the Sessions Court in SC No. 64/2014, whereby the appellant was held guilty and convicted under Section 376 IPC as well as Section 4 POCSO and sentenced to undergo RI for 7 years along with payment of fine of Rs.5,000/-, in default whereof he would further undergo SI for 3 months, for the offence punishable under Section 4 POCSO.



2. The investigation in the present case commenced in the context of a complaint lodged on 23.12.2013, whereby it was alleged that two days ago, i.e., on 21.12.2013, at about 3:00 PM, the victim, aged about 14 years, was alone at her house. The accused called her to fetch water and when she went inside his *jhuggi*, he forcibly made her lie on a cot and committed rape upon her. He also threatened her not to disclose the incident to anyone else. She narrated the incident to her mother on 23.12.2013, whereafter the subject FIR came to be lodged under Sections 376/506 IPC read with Section 4 POCSO. The victim was medically examined and her statement under Section 164 Cr.P.C. came to be recorded. The exhibits seized during the examination were sent to the FSL, and on completion of investigation the chargesheet came to be filed. The Trial Court framed charges under Section 376 IPC, and in the alternative under Section 4 POCSO, to which the appellant pleaded not guilty and claimed trial.

3. The prosecution examined a total of 7 witnesses in support of its case, with the most material ones being the victim herself, examined as PW-2; and her mother, who was examined as PW-1. Dr. *Vinay Kumar Singh*, who was a part of the Medical Board constituted to ascertain the age of the victim, was examined as PW-7. Dr. *Neha Mathur* exhibited the MLC of the victim (Ex. PW-4/A). The other witnesses were police officials who deposed on various aspects of investigation.

4. The appellant in his statement under Section 313 Cr.P.C. claimed false implication, and he also examined four defence witnesses in his support.

5. Mr. Shashank Garg, learned Senior Counsel (*Amicus Curiae*) appearing for the appellant, while assailing the impugned judgment, doubted



the veracity of the version of the victim by contending that there have been material improvements in all her statements. He contends that the FIR was lodged after a significant delay of 2 days, which is material in the facts and circumstances of the present case. Further, there are contradictions in the testimonies of the victim and her mother. Though the incident had statedly taken place during the daytime, no other independent witness was joined in the investigation. Lastly, it is contended that the FSL report also negates the allegations of rape.

6. Ms. Gupta, learned APP for the State, as well as Ms. Neelampreet Kaur, learned *Amicus Curiae* appointed to represent the victim, have opposed the contentions of the appellant and defended the impugned judgment. Learned *Amicus* submitted that the version of the victim on the aspect of rape being committed by the appellant, whose identity is not in doubt, is consistent and finds support in her MLC. The foundational facts have been proved and the appellant has failed to dislodge the presumption under Section 29 of the POCSO Act.

7. It is pertinent to state that there was no contest, during trial or in the present appeal, on the aspect of the victim's age. In the trial, a Medical Board was constituted to determine the victim's age, and its report was exhibited through Dr. *Vinay Kumar Singh* (PW-7). The age of the victim was established as between 14-15 years.

8. To appreciate the contentions raised by the learned Senior Counsel for the appellant, it is paramount to discuss and analyse the statements of the victim recorded during the investigation.

In the initial complaint made on 23.12.2013, which resulted in the registration of the subject FIR, the victim claimed that she was one of five



siblings and was illiterate. Two days prior, when she was alone at her house, the appellant, a neighbour, asked her for water. When she went to give him water, the appellant threw away the utensil, made her lie on a cot, opened her pants as well his own, and then did “*galat kaam*”, i.e., forcibly made physical relations. He then threatened her not to disclose the incident to anyone. She got scared but on the asking of her mother, confided in her.

In her statement under Section 164 Cr.P.C. however, the victim stated that when she went to give water, the appellant forcibly opened her “*salwar*”, his pant, and then started doing “*gandi baat*”. The appellant had inserted his penis into her body. She tried to scream; however, the appellant gagged her mouth by his hand. He then asked her to go to her house as his son was about to come. When she reached her *jhuggi*, her mother had come back from work. She disclosed the incident to her mother, after which her mother told the appellant’s wife. The appellant’s wife confronted the appellant, upon which he denied the incident.

In her Court deposition, the victim identified the appellant as her neighbour and deposed that the appellant had called her on the pretext of providing water. The appellant was alone. The appellant took the “*lotah*” (small container) of water, kept it aside, and put cloth over her mouth. She also deposed that the appellant had shown a knife and threatened her not to say anything to her parents. He then made her lie on a cot and after removing his pant as well as her “*salwar*”, inserted his penis into her vagina. She further deposed that as the wife of the appellant had come, she told the incident to her, but she rather scolded the victim and did not say anything to the appellant. She then came home and told her mother about the incident. Her mother scolded the appellant and called the police. As the victim had



not deposed completely in line with her previous statement, she was allowed to be put questions to by the learned APP for the State. In the said cross-examination, she admitted that the date of the incident was 21.12.2013, and the same was reported on 23.12.2013. She also stated that the correct name of the accused was *Surender*, which was told to her by the police during investigation. She further admitted that the incident was told by her to her mother on 23.12.2013, and then it was reported to the police.

In the cross-examination on behalf of the accused, she stated that she was not aware of the calendar month in which the incident had occurred. She admitted that there was a quarrel between her father and the appellant. She stated that a quarrel had taken place in front of her house. She clarified that the quarrel took place 3 days after the incident. She denied the suggestion of tutoring or false implication on account of the appellant's quarrel with her father.

9. The victim's mother was examined as PW-1. She deposed that the victim had complained of stomach pain, and on being asked, she had revealed that 3 days ago the appellant forcibly took her to his *jhuggi*, put her on a cot, bolted the main door, showed her a knife, put cloth in her mouth, and did sex without her consent.

In cross-examination she admitted that the accused, being from the same native place, was on visiting terms with them; and that on occasion, he also used to have liquor with her husband. She admitted that appellant and her husband had quarrelled with each other several times.

10. The victim's medical examination was exhibited through Dr. *Neha Mathur*, who deposed that on local examination the victim's hymen was found torn, but there is no injury mark on the person.



11. The FSL Report remained inconclusive as no male DNA could be generated from the source of exhibits '1h', '1i', '1k' (cervical swab, vaginal swab, and vaginal washing of victim) and '2b' ('*Salwar*' of victim).

12. The appellant, in his statement recorded under Section 313 Cr.P.C., denied the prosecution case and stated that after consuming liquor the victim's father used to give filthy abuses and when he stopped him from doing so, the present case was registered.

13. The appellant's wife, *Sunita*, was examined as DW-1. She stated that her husband was suffering from TB. The victim's father was habitual of abusing the locals and neighbours. There were often quarrels between him and appellant.

In cross-examination, she stated that she didn't remember any specific dates, but these incidents used to happen quite often. She admitted that no written complaint was given against the victim's father.

14. *Sanjay Ram*, a neighbour, was examined as DW-2. He deposed that he had been living in the neighbourhood for the last 15 years. He stated that victim's father, after consuming liquor, used to give filthy abuses to the neighbours. He tried to persuade victim's father not to do so but he was also threatened. When appellant tried to stop victim's father from misbehaviour, he was threatened that he would be implicated in a false case.

In cross-examination by the learned APP, he stated that the appellant was known to him for the last 15-16 years, whereas the victim's family had shifted to the area only about 3/4 years back. On being asked as if he could name the people who the victim's father had abused, the witness stated that besides the appellant, the victim's father had abused *Nage*, *Sri Chand* and *Sanjeev*, all residents of that locality.



15. Another neighbour, *Satnam*, was examined as DW-3, and he also deposed that the victim's father used to consume liquor and give filthy abuses to neighbours. He stated that he had also tried to persuade the victim's father to not do so; however, the victim's father threatened him, as well.

In cross-examination, he was asked if there was any specific date when he has lodged any complaint against victim's father, he deposed that in the month of December 2013 he had lodged a complaint at P.S. Shakarpur; however, no action was taken by the police.

16. One *Baijnath*, another neighbour, appeared as DW-4. He also deposed on the same lines that the victim's father was an alcoholic and used to give filthy abuses resulting in frequent quarrels with everyone including the appellant.

17. Coming to the contention raised by the learned Senior Counsel for the appellant that there are material improvements and omissions in the version of the incident given by the victim at different times. While in her initial complaint lodged two days after the alleged incident there is no mention of any confrontation between her/her mother and the appellant/his wife; in the victim's statement recorded under Section 164 Cr.P.C., the victim claimed that her mother had confronted the appellant's wife, who had then confronted the appellant. In her Court deposition, she introduced the factum of knife being shown and confronting the appellant's wife herself. The mother of the victim however, does not say about any confrontation either by her or by the victim, with the appellant or his wife.

18. Though a knife is stated to have been used; no such knife was recovered.



19. The appellant has claimed false implication for objecting to the abusive behaviour of the victim's father. While the victim denied any quarrel between her father and the appellant prior to the incident, her mother admitted the said fact. She rather stated that quarrels had taken place frequently between the two. The appellant examined three people who had been residing in the neighbourhood for long, and all of them stated about the abusive behaviour of the victim's father. They also stated about how not only them, but the appellant had also objected to such behaviour of the victim's father, resulting in threats of implication to each of them.

20. The MLC records the hymen of the victim to be torn; however, it must be borne in mind that the victim's estimated age was between 14-15 years, and no external injury was noted on the person of the victim. Further, in the forensic examination of the victim's exhibits, no male DNA could be generated.

21. This Court, in the totality of facts and circumstances as noted above and the possibility of false implication being not ruled out, is of the considered view that the prosecution has failed to conclusive prove its case beyond reasonable doubt; and the benefit of the doubt needs to be extended to the appellant. Accordingly, the present appeal succeeds and the appellant is acquitted. The impugned judgment as well as order on sentence are set aside.

22. The personal bonds furnished by the appellant stand cancelled and his surety is discharged.

23. Before parting, this Court appreciates the assistance provided by Mr. Shashank Garg, learned Senior Counsel appointed as *Amicus Curiae* to represent the appellant; and Ms. Neelampreet Kaur, learned counsel



2025:DHC:11779



appointed as *Amicus Curiae* to represent the victim.

24. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 22, 2025
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