



2025:DHC:10212



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

% Reserved on : 18.11.2025
Pronounced on : 19.11.2025
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+ **CRL.A. 733/2018**

NARESH KUMARAppellant

Through: Mr.Mohd. Shamikh, Advocate

versus

STATERespondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Komal, P.S. Aman Vihar.
Mr. Aniruddha Ghosh, Advocate
(Amicus Curiae) for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. Aggrieved by the judgment of conviction dated 05.06.2018, and the order on sentence dated 07.06.2018, passed by Additional Sessions Judge, Special Fast Track Court, North- West, Rohini, Delhi in SC No. 107/2015, the appellant has challenged the same by filing the present appeal. The appellant was convicted for the offence under Section 376 IPC and sentenced to undergo RI for 07 years along with a fine of Rs.5,000/- and in default thereof, he was to undergo SI for period of 6 months. The benefit of Section 428 Cr.P.C was given to the appellant.

Appellant's sentence was suspended by this Court vide order dated 28.11.2018.



2. The investigation was set in motion with receipt of DD No. 55A on 01.02.2013 at 11:15 P.M., recording the information received via intercom that a lady caller was stating that, she had locked two people in her house who had committed *galat kaam* with her. Her phone number was recorded as 'xxxxxx9021'. The prosecutrix was brought to Police Post Prem Nagar. Her medical examination was conducted and thereafter her statement under section 161 CrPC was recorded. The prosecutrix stated therein, that on 01.02.2013 at around 9:30 pm, she had gone to a nearby shop for recharging her mobile. Her husband was on night duty, her children had gone to her sister's house and she had not locked the door when she went. Upon returning, she found one motorcycle parked near her house. The moment she entered the room, the appellant caught hold of her from behind. When she enquired why he was there at this time, he put his hand on her mouth and told her that, "*Tum par bahut din se mera manna a raha tha, aaj maza lekar hi rohoonga*". Thereafter, he (appellant) pushed her on a cot, removed their clothes and established physical relations with her. She managed to get out of the room and locked it from the outside. She called 100 number. After police reached, the room was opened and the appellant was apprehended.

3. Charges were framed under Sections 376 IPC, to which the appellant pleaded not guilty and claimed trial. In support of its case, the prosecution examined 13 witnesses. The prosecutrix was examined as PW-13. Dr. Ankur Jain was examined as PW-2, who proved the MLC of prosecutrix. Dr. Geeta Aggarwal, who conducted gynaecological examination of the prosecutrix was examined as PW-3. Inspector Savitri and SI Neeraj, the IOs of the case, were examined as PW-15 and PW-16. HC Satish, the beat officer was examined as PW7. Rest of the witnesses were formal in nature who deposed



as to various aspects of investigation.

4. In his statement recorded under Section 313 CrPC, the appellant claimed false implication due to prior enmity with the prosecutrix. He was called by the prosecutrix to reach a settlement in pending matters against his nephew, which had been filed by her. She had also demanded Rs.1 lac from him. She also had a dispute with the appellant's sister in regard to purchase of a property. She herself went to the kitchen and within minutes, police came and stripped him down and made a call at 100 number. In his defence, he examined 4 witnesses. DW1 was ASI Umesh Tiwari, DW2 was Chandershekhar, a Nodal Officer from Bharti Airtel, DW3 was HC Mohit and DW4 was Ms. Santosh Yadav (appellant's sister).

5. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated in the present case. The prosecutrix has a pending land dispute with the sister of the appellant and she had also made false cases against his sister and nephew. He submits that perusal of CDR would show that the prosecutrix had called him multiple times on the date of the incident. Her testimony is riddled with improvements and contradictions. Medical and scientific evidence is also non-supportive of her case.

6. Learned APP for the State, duly assisted by Mr. Aniruddha Ghosh, learned Amicus Curiae, (*pro bono*), have supported the impugned judgment and submits that the prosecutrix had been categorical and consistent in her testimony that the appellant had committed rape upon her. It is submitted that the MLC also records history of acid attack by the same person and burns on right hand.

7. The statement of prosecutrix under Section 164 CrPC was recorded



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on 04.02.2013, 3 days after the incident. In addition to what was stated in the statement under Section 161 CrPC, she stated that the bike parked outside was red in colour, the appellant had already removed his clothes, threatened to kill her if she made noise, he also had a knife which he showed her, she told him she was thirsty, took a glass and came to the kitchen where her phone was charging. She locked the room he was in and called the police from her kitchen. She stated that appellant lived in her neighbourhood and she had never met him.

8. The prosecutrix was examined in Court as PW-13. She deposed that on the day of the incident around 10/10.30 PM, she went to a nearby shop for mobile recharge, leaving her door open. Upon returning after 10/15 minutes, she saw a red motorcycle outside her house. Upon entering her room, the appellant, who she knew very well, since she had seen him coming and going, misbehaved with her. He scuffled with her, broke the cord of her *salwar*, committed *balatkar* upon her and also threatened her. She identified the appellant in the Court. The appellant threatened her that in case she raised alarm, the person accompanying the appellant would kill her. She got out of the room on the pretext of drinking water. She locked the room from outside. She went to the chowk and called the police at 100 number. At that time, she was wearing only kurta and not wearing any jumper as the appellant did not allow to wear her lower clothes. She called the police by dialling from her mobile phone. When the police opened the door, the appellant was in naked condition, only wearing his lower undergarments. She stated that the appellant was not her known and he along with his *jija*, who also lived in the same colony, had committed rape on one more lady. Upon this, she was asked by the Court whether she knew this incident at the



time the appellant committed rape upon her, to which she replied that she came to know the said facts subsequently. She did not know the name of the lady. She stated that police seized her bedsheet, clothes, top of child's dress. She stated that after committing rape, the appellant cleaned his private part with the frock of her child.

In her cross-examination, she stated that though she did not remember the mobile number from which she made the call, but it was her phone. She could not remember whether the mobile number 'xxxxxx9021' was hers. She deposed that she did not raise any alarm or called the neighbours because she was in naked condition. She reiterated that she did not know the appellant prior to the date of the incident, nor did she know her mobile number. She never made call to the appellant. She did not know any lady named *Santosh*. She was given a suggestion that she had sold her house to one *Santosh*, who was the sister of the appellant. However, the market price got higher and she wanted *Santosh* to return her house, which she refused to do and she also filed two cases her son *Naveen*, nephew of the appellant, FIR No. 21/13 and 46/13 at PS. Anand Vihar. This suggestion was denied. She also denied making calls to the appellant to settle the cases and demanding Rs.2 lacs.

9. She was confronted with her statement made to the police under Section 161 CrPC. She had not stated to the police about coming back from the shop in 10/15 minutes, or having seen the appellant once or twice in front of her house or misbehaving with her, appellant threatening her. She admitted not stating to the police about scuffle with the appellant. She deposed that she told the police about the appellant threatening her. However, she was confronted with her statement wherein it was not so



recorded. She was also confronted with various aspects of her testimony which were not mentioned in her initial complaint, such as the threat that he was accompanied by other persons who would kill her; or that she remained lying on the cot due to fear; the appellant removing his entire clothes and stating that he enjoyed a lot; going out of the room to the kitchen by stating that she was thirsty; telling the police that the appellant was not permitting her to wear even kurta; her phone getting charged in the kitchen or the colour of the bike; the appellant cleaning his private part with her child's frock. She denied telling in counselling that she had called HC *Satish*, who was the beat officer who came to the spot after five minutes and made the call to 100 number from her phone. She was confronted with a document Ex. PW-13/D1 bearing her thumb impression in this regard. She was also confronted with her statement where she had mentioned about the knife to the IO. She denied making calls to the appellant 10 times. She also denied making calls to him prior to 01.02.2013 for getting her house back from his sister, *Santosh* who had purchased it from her. She denied suggestions of deliberate improvements and false implications.

10. HC *Satish Kumar*, was examined as PW7. On the day of incident, he was on beat duty with Ct *Ramesh*. He received a wireless message at 11.15 PM that one lady had confined a person who committed rape upon her. They reached the spot and met the prosecutrix. She was wearing only a lady shirt and told that there are two boys inside the room. On opening the door, the appellant was found sitting in his *baniyan* and underwear. In his cross examination, he stated that he knew the prosecutrix from before, however she was not having his mobile number. He stated that there was a dispute ongoing between the prosecutrix and sister of the appellant. When they



reached the spot, no neighbour or family member of the prosecutrix was present. He further stated that the appellant was found naked and he asked him to wear underwear and he did not find any knife in the room.

Ct. Ramesh was dropped as a prosecution witness of repetitive facts.

11. Ct. Rakesh was examined as PW8. He deposed that on receipt of DD he along with ASI Satbir reached the spot where PW7 and beat staff was present. The door of the room was bolted from outside. Staff opened the door and the appellant came out from inside and was taken to PP Prem Nagar. He does not state that the appellant was found in his undergarments.

12. The MLC of the prosecutrix (Ex. PW2/A) was proved through Dr. Ankur Jain, CMO, SGMH Hospital, examined as PW2. MLC was recorded on 02.02.2013 at 2.15 A.M. History of sexual assault by the appellant was given. MLC records bruises over the face of the prosecutrix. PW3 Dr. Geeta Agrawal, SR Gynae, SGMH deposed that upon examination of prosecutrix, she found there was old hymen torn, no bleeding and no signs of injuries.

13. The exhibits of the prosecutrix from the hospital were handed over to PW9 SI Asha Devi with seal of 'SGMH Gynae', which was seized vide memo Ex. PW9/A. The bed sheet and the frock of the child of the prosecutrix were also taken in possession by PW9 and sealed with seal of 'SS'. PW9 was also shown parcel 1 by desealing, which had been sent for FSL, and she confirmed the bedsheet and frock to be the same one which was seized. HC *Surender*, examined as PW1, confirmed deposit of sealed pullandas and two of them being handed over to Ct Ajit on 01.03.2013 for depositing at FSL, Rohini. Ct Ajit, examined as PW5, deposed as to the deposit of the samples at FSL. No suggestion was given to any of these witnesses as to the tampering or manipulation of the samples.



14. The FSL report was proved by Ms. Shashi Bala Pahuja, Senior Scientific Officer (biology), FSL Delhi. The report was exhibited as PW11/A. Semen was not detected on any exhibit, including on the vaginal samples of the prosecutrix or the child's cloth.

15. Sh. Chander Shekhar, nodal officer of Bharati Airtel Limited, was examined as DW2. He stated that the CDR of mobile no. 'xxxxxxx6659' from January to February 2013 was not available with the company. However, the number belonged to the appellant. CAF was produced as Ex. DW2/A. He was shown the CDR mark- D2. Analysing the same, he stated that on 01.02.2013, incoming calls were received from mobile no. 'xxxxxxx9021' (the number mentioned in the DD entry) at 13:06:09, 15:03:33, 18:56:37, 20:01:28, 21:49:17, 22:00:28 and 22:11:59. One outgoing call was made to the said number at 21:37:18.

16. Smt *Santosh Yadav*, sister of the appellant was examined as DW4. She deposed that she knew the prosecutrix as she used to come to her for work of stitching. She purchased a plot from the prosecutrix and sold it to a third person. However, the prosecutrix demanded the plot back, due to which dispute arose between them. The prosecutrix made false complaints against her son as well as his surety. Police also misbehaved with them, and in this context DD No. 26A dated 31.01.2013 was recorded, which was already exhibited as Ex. DW3/B. The prosecutrix threatened to implicate the appellant and thereafter the complaint was made. She had complained against ASI *Satyavir* and HC *Satish* as they demanded money for withdrawing the case. She got retrieved call details of the appellant as Mark D2. Her son has been acquitted in the case lodged by the prosecutrix.

17. ASI *Umesh Tiwari* was issued summons by the Trial Court with



directions to bring record of complaint dated 08.02.2013 of Smt. Santosh Devi, sister of the appellant. Deposing as DW1, he stated that he could not find any such complaint. However, he did find complaint by a lady named Santosh Yadav w/o Bharam Prakash in the register, produced as Ex. DW1/A. He could not state if it was the same complaint. In cross examination, he stated that sometimes the entry was made on the subsequent day of receiving it.

18. HC Mohit was examined as DW3. He brought DD register of PS Aman Vihar from 26.01.2013 to 10.02.2013. There was one DD No. 27A received at 8.30 pm on 06.02.2013 against ASI Satbir and HC Satish. There was also a complaint of police misbehaviour dated 31.01.2013 of a lady from mobile no. 'xxxxxx1557'.

Contentions & Contradictions:

19. It is settled that testimony of a witness can fall in 3 categories, wholly reliable, wholly unreliable, partly reliable and this is established in the Supreme Court judgement of Mahendra Singh v. State of M.P., where it is noted that:-

“12. It will be apposite to refer to the following observations of this Court in its celebrated judgment in Vadivelu Thevar [Vadivelu Thevar v. State of Madras, 1957 SCR 981 : AIR 1957 SC 614] : (AIR p. 619, paras 11-12)11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its



conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

13. *It could thus be seen that this Court has found that witnesses are of three types viz. (a) wholly reliable; (b) wholly unreliable; and (c) neither wholly reliable nor wholly unreliable. When the witness is “wholly reliable”, the court should not have any difficulty inasmuch as conviction or acquittal could be based on the testimony of such single witness. Equally, if the court finds that the witness is “wholly unreliable”, there would be no difficulty inasmuch as neither conviction nor acquittal can be based on the testimony of such witness. It is only in the third category of witnesses that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”*

There is no doubt that a conviction can be based on the sole testimony of the prosecutrix, provided that it is consistent, credible and reliable.

20. In the present case, there are variations and contradictions at every stage in the prosecutrix’s versions of the incident. In the DD No. 55A, it is recorded that the initial complaint was about two people being locked inside by the prosecutrix. However, in the complaint or even in her statement recorded under Section 164 CrPC, there is not even a whisper of this other person. This other person resurfaced in her deposition before Court, where she stated that the appellant threatened her that he was accompanied by other persons also and he would kill her. PW7 HC Satish was present when the door was opened and the appellant was apprehended. He did not make any mention of this other person, and the same appears to be a fabrication.

21. Another improvement was the appellant carrying a knife. There is no mention of any knife in her statement under Section 161 CrPC, and the same is introduced for the first time in the statement under Section 164 CrPC. She was confronted with this improvement at the time of her testimony. PW7 deposed that when the door was open and appellant apprehended, no knife



was recovered at that time. The prosecutrix made yet another improvement that the appellant after committing rape, cleaned his private part with her daughter's frock in order to repeat the act. This cloth was seized by PW9 and sent for FSL, however no semen was detected on it. Her deposition is littered with improvements such as appellant scuffling (*khicha tani*) with her, or threatening to kill her, him cursing her and uttering that he had fun, she leaving the room on the pretext of being thirsty.

22. The prosecutrix deposed that she could identify the appellant as she had seen him coming and going. She said he was not her known and he and his *Jija* had committed rape on another lady. On a court question she said that she came to know of this fact subsequently. At the time of her cross examination, she stated that the appellant was not known to her prior to the incident, she did not have his number, nor did she make any calls to him. She did not know his sister, *Santosh* either, nor did she sell any house to her, or filed cases against her son.

Her case was that he was an unknown prior to the incident, however, in the FIR, inexplicably, he is mentioned by name. DW4 Santosh, the sister of the appellant has deposed as to knowing the prosecutrix, buying a plot from her and there being a dispute between them because she refused to give the plot back. She also deposed that prosecutrix had filed 2 cases against her son. FIR No. 21/13 has been registered under Section 354/323 IPC on 15.01.2013 against *Santosh* and her son *Naveen* and FIR No. 46/13 under Section 324 IPC against *Naveen* was registered on 31.01.2013, both prior to the registration of the present case. She had gotten the CDR records of the appellant, marked as D2. The nodal officer from Bharti Airtel, DW2 was shown these records. Though he could not verify their authenticity, he



deposed that there were 7 calls made from 8743099021 to the appellant's phone at 13:06:09, 15:03:33, 18:56:37, 20:01:28, 21:49:17, 22:00:28 and 22:11:59 respectively on 01.02.2013, i.e. the day of the incident. On call was also made from the appellant to this number at 21:37:18. Notably, 'xxxxxxx9021' is the number which is recorded in the DD No. 55A to be from where the PCR call was made. The prosecutrix has pleaded ignorance as to whether this number was with which she made the PCR call, but she said that the phone was hers and she admitted that the initial call was made by her to police.

23. There is also variation as to from where the call was made. At one point, she has deposed that she went to the chowk and called police at 100 number. She admitted in cross examination that she told the police that she made the call from inside her house after coming out of the room. She was also confronted with a document bearing her thumb impression exhibited as Ex. PW13/D1 as per which she had called the beat officer Satish (PW7) who came with a police officer and made the phone call from his number. PW7 stated that he received information on wireless.

On the aspect that the appellant was found only in her undergarments when the lock was opened, there is inconsistency. While the prosecutrix and HC Satish says so, the testimony of HC Rakesh is silent. Further, if the appellant was found only in his undergarments then how wallet was shown to be recovered from his personal search memo. Notably, DW4 has stated that HC Satish used to misbehave with them in investigation relating to earlier complaints against her son.

24. Thus, all these improvements and contradictions cumulatively act to render the prosecutrix's deposition suspect. The same cannot be made the



sole basis of conviction. Looking at the other material on record, it is seen that the MLC records no external sign of injury on her private parts. PW3 deposed that upon examination of prosecutrix, she found there was old hymen torn, no bleeding and no signs of injuries. In the FSL report, no semen has been detected on any exhibits.

25. The appellant has built a defence of prior enmity due to land dispute with his sister. The cross examination of beat officer-HC Satish (PW7) sheds some light on the same. He had stated that he knew the prosecutrix from before the incident. When he was asked since when did he know her, he answered that there was a dispute going on between the prosecutrix and Santosh (sister of the appellant/DW4) and he had dealt with the complaints made by them. *Kalandras* under Section 107/150 CrPC were prepared against them by SI *Sumit Kumar*. Thus, there is some truth to the defence of the appellant. In view of the unreliable testimony of the prosecutrix and lack of supporting evidence, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. The benefit of the same must be extended to the appellant. As a necessary sequitur, the appeal is allowed and the appellant is acquitted of all the charges.

26. The appellant's bail bonds are cancelled and sureties discharged.

27. A copy of this judgement be communicated to the Trial Court and Jail Superintendent.

28. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Aniruddha Ghosh, Advocate, learned *Amicus Curiae* (*pro bono*).

MANOJ KUMAR OHRI
(JUDGE)

NOVEMBER 19, 2025/ry