



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

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+ **CRL.A. 573/2018**

MOHD. ABIDAppellant
Through: Mr. Parminder Singh Goindi,
Advocate.
versus
STATERespondent
Through: Mr. Pradeep Gahalot, APP for State
Mr. Saurabh Seth, Advocate (Amicus
Curiae) for the Prosecutrix, with Ms.
Sumeera Seth, Ms. Neelampreet
Kaur, Mr. Abhiroop Rathore, Mr.
Sukhvir Singh and Mr. Kabir Dev,
Advocates.

+ **CRL.A. 786/2018**

MOHD. HASMUDEENAppellant
Through: Appearance not given.
versus
STATERespondent
Through: Mr. Pradeep Gahalot, APP for State
Mr. Saurabh Seth, Advocate (Amicus
Curiae) for the Prosecutrix, with Ms.
Sumeera Seth, Ms. Neelampreet
Kaur, Mr. Abhiroop Rathore, Mr.
Sukhvir Singh and Mr. Kabir Dev,
Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT



1. By way of the above-noted appeals, the appellants seek setting aside of the impugned judgment dated 12.02.2018 as well as the order on sentence dated 15.02.2018 passed by the learned Sessions Court in the context of trial held in FIR No. 713/2015 registered under Sections 376/34 IPC and Section 4 POCSO at P.S. Keshav Puram.
2. As the counsels for the appellants have argued the present appeals by adopting each other's submissions and as the impugned judgment is common, the present appeals are being disposed of vide this common judgment.
3. Vide the impugned judgment dated 12.02.2018, the Trial Court convicted both the appellants for the offence punishable under Section 376D IPC and the appellant/*Abid* was additionally convicted for the offence punishable under Section 506 IPC. Vide the order on sentence dated 15.02.2018, both the appellants were sentenced to RI for 20 years along with fine of Rs.1,000/- each, in default whereof they would each undergo SI for 1 year, under Section 376D IPC. The appellant/*Abid* was further sentenced to undergo RI for a period of 1 year along with fine of Rs.1,000/-, in default whereof he would undergo SI for 1 month, for the offence under Section 506(I) IPC. The appellant/*Abid*'s sentences were directed to run concurrently, and both the appellants were granted the benefit under Section 428 Cr.P.C.
4. The factual matrix as noted by the Trial Court is that on 06.10.2015, DD No. 58B came to be recorded upon which the concerned police officials reached the spot and found the PCR already present. The prosecutrix complained of commission of rape by some boys. She was medically examined and her statement under Sections 161 and 164 Cr.P.C. came to be



recorded.

5. The appellant/*Abid* was arrested on the same day on identification by the prosecutrix, which led to the arrest of the appellant/*Hasmudeen*. Though the chargesheet was filed under Sections 376/506/34 IPC and Section 4 POCSO; at the time of framing of charges, the Trial Court came to the conclusion that the prosecutrix was above 18 years of age, in terms of the opinion rendered by the Medical Board. Accordingly, charges only under Sections 376D/506 IPC were framed against the appellant/*Abid* and under Section 376D IPC against the appellant/*Hasmudeen*. Both the appellants pleaded not guilty and claimed trial.

6. The prosecution examined a total of 14 witnesses in support of its case. The prosecutrix was examined as PW-1 and her mother was examined as PW-3. One independent witness who had reached the spot and had seen the incident was examined as PW-2. The MLC of the prosecutrix was exhibited through the testimony of Dr. *Rupali Bhatia*, who was examined as PW-5. The MLCs of the accused persons were exhibited through Dr. *Deepak*, who was examined as PW-6 and PW-11. W/SI *Anita*, the I.O. of the case, was examined as PW-14. The other witnesses were police officials who deposed on various aspects of the investigation.

7. Learned counsel for the appellant/*Abid* has contended that the testimony of the prosecutrix does not inspire confidence as her Court deposition contains material improvements over the previous statements recorded during investigation. In this regard, it is submitted that in her initial statement the prosecutrix had stated that she was allured by the accused persons; however, in her statement recorded under Section 164 Cr.P.C. she stated that the accused were offering her money and when she refused, she



was followed, and then thereafter they forcibly took her to the place of the incident. In her Court deposition, she deposed that one boy caught her hand and threatened to beat her, and then both the boys took her behind the bushes. The appellant/*Abid* had closed her mouth while the appellant/*Hasmudeen* was holding her hand. It was next contended that the medical examination of the appellants was conducted prior to registration of the FIR and though the prosecutrix has claimed that the appellant/*Abid* was already known to her, his name was not mentioned by her in the history of assault. The prosecution's case is also challenged for the reason that though it has come on record that the prosecutrix's sister had informed the mother, she was not examined. The prosecution case is also doubted claiming that the independent witness (PW-2) has not identified the appellants. Lastly, it is stated that the first information about the incident was about a girl and a boy being caught committing wrong act, which shows that the physical relations established were consensual.

8. The contentions are opposed by the learned APP for the State, as well as Mr. Seth, learned *Amicus Curiae* appointed to represent the prosecutrix. Learned *Amicus* contended that a reading of the testimony of the prosecutrix would show that she was aware that the appellant/*Abid* was working in a hotel/*dhaba*, but he was not known to her. The appellant/*Abid* had given a suggestion of consensual relationship; however, the same was denied by the prosecutrix. It is submitted that the testimony of the prosecutrix further inspires confidence as the incident was also witnessed by an independent person (PW-2), who stated that after hearing the screams of the prosecutrix, she saw the prosecutrix being sexually assaulted, and upon seeing the witness, the accused persons had run away. There was no delay in reporting



the incident and lastly, it is submitted that both, the MLC as well as the FSL report, support the version of the prosecutrix.

9. In her testimony, the prosecutrix deposed that she was illiterate and many days ago, when she was going to buy *samosas* for snacks, two boys followed her. She asked them not to do so else, she would tell her mother. When she turned to go back home, one of the boys, the appellant/*Abid* (correctly identified) caught her hand and threatened to beat her in case she told her mother. She stated that thereafter, both the accused took her behind the bushes in the jungle across the road. There was a railway line. While the appellant/*Abid* closed her mouth, the appellant/*Hasmudeen* caught hold of her hand. There was a *Gufa Mandir* (cave temple) in the jungle. The appellant/*Abid* laid upon her and put his penis into her vagina. She raised alarm, upon hearing which a lot of persons gathered near the spot. While the appellant/*Hasmudeen* fled, the appellant/*Abid* was initially apprehended; however, he too fled from the spot before the police could reach. The prosecutrix was thereafter taken to the police station, and to the hospital where she was medically examined. She disclosed the name of the appellant/*Abid*; however, the name of the other accused person was not known to her. She exhibited her statement recorded under Section 164 Cr.P.C., as well as her thumb impression on her MLC. She stated that her clothes had been seized by the examining doctor at the time, and she identified one black legging, one black dupatta, and one black ladies kurta with pink and green flower prints as Ex. P1 to P3 respectively. She further stated that the appellant/*Abid* had threatened to kill her in case she disclosed the incident to anyone. She also correctly identified the appellant/*Hasmudeen*.



In cross-examination on behalf of the appellant/*Hasmudeen*, she stated that the accused persons had stated that they will give her a lot of money, which she had refused. She had told some passersby about the misbehaviour of the accused; however, nobody paid any attention and simply went away. She stated that the appellant/*Hasmudeen* has not committed any rape; however, he was standing guard. She denied the suggestions that the appellant/*Hasmudeen* was not involved in the incident or that he had been falsely implicated.

During cross-examination on behalf of the appellant/*Abid*, she admitted the suggestion that her father was working in a hotel/*dhaba* near their house prior to working at Mahavir Hospital. She also admitted that the appellant/*Abid* was also working in the same hotel/*dhaba* at the time when her father was working. A suggestion was given that the appellants were falsely implicated at the behest of NGO counsellor, which she denied. Another suggestion was given that the prosecutrix used to roam with the appellant/*Abid* before the incident, which she also denied. Some more suggestions were given to the prosecutrix on the aspect of the prosecutrix knowing the appellant. In this regard, a question was put to her that her parents did not like her meeting with the appellant/*Abid*, to which she replied that she had not seen *Abid* earlier, but later stated that she had seen *Abid* making *chapattis* (flatbread) at the *dhaba* prior to the incident. She denied the suggestion that physical relations were established with the consent of the parties.

10. The independent witness (PW-2) deposed that on the day of the incident, she along with 2/3 ladies was going to attend nature's call on the side of the railway line. When they reached near the place of the incident,



she heard the shrieks of a lady coming from the bushes. She, accompanied by the other ladies, went closer and saw that a boy was standing inside the bushes and another boy was committing rape upon a girl. The prosecutrix was without clothes and the boy who was committing rape upon her was also not wearing pants. On seeing the ladies, the boy committing rape as well as the other boy, fled from the spot. The ladies helped the prosecutrix in wearing her clothes, whereafter they took her and made her sit near a temple. One of the ladies called the police. She, however, couldn't positively identify the appellants as those two boys.

In cross-examination, a question was asked as to whether the shrieks that were heard by her were of more than one person, to which she answered that she only heard the shrieks of the prosecutrix, who was saying "*hat ja hat ja*". A suggestion was given that she had not seen any boy committing wrongful act and running away from the spot, and the same was denied.

11. The mother of the prosecutrix was examined as PW-3. She deposed that on the day of the incident at about 4.50 pm, she received a call from her younger daughter about the incident in question, and when she reached the spot, the prosecutrix was present there along with the PCR, and was crying.

In the cross-examination, she stated that the hotel/*dhaba* where *Abid* was working was about 100 steps from her house; however, the same was not visible from their house as there were many high-rise buildings on the way. She denied that her husband had ever worked in the hotel/*dhaba* where the appellant/*Abid* was working. Another suggestion was given that the appellant/*Hasmudeen* had also worked in the said hotel/*dhaba* along with the appellant/*Abid*, which was denied.

12. The MLC of the prosecutrix was exhibited through Dr. *Rupali Bhatia*



(PW-5). She identified the signatures and handwriting of Dr. *Anita Shukla*, who had prepared the MLC. As per the MLC, the hymen of the prosecutrix was found ruptured.

13. The I.O. of the case, W/SI *Anita* (PW-14) deposed that on receipt of DD No. 58B, she had reached the spot where the prosecutrix had complained of commission of rape, whereafter the prosecutrix was taken for her medical examination along with her mother. Both the appellants were arrested from their respective houses, and she further deposed about the relevant exhibits being seized and sent to the FSL.

14. In their respective statements recorded under Section 313 Cr.P.C., both the appellants claimed innocence and false implication.

15. Learned counsels for the appellants have doubted the credibility of the allegations levelled by the prosecutrix by contending that different versions of the incident have appeared in her statements. Though the prosecutrix has stated differently as to how she was taken to the bushes by the appellants, inasmuch as during the investigation she stated that she was allured or offered money and in her Court deposition she stated that they caught hold of her hand and took her behind the bushes, her version that she was raped by the appellant/*Abid* while the appellant/*Hasmudeen* kept a close watch has remained consistent. The identity of the appellant/*Abid* is not in doubt as the prosecutrix claimed that she had seen the appellant/*Abid* working at the *dhaba* prior to the incident. In fact, suggestions were given on behalf of the appellant that she was already aware of, rather known to the appellant.

16. The prosecutrix has claimed that while she was being sexually assaulted, she screamed; and this portion of her testimony stands corroborated by the deposition of the independent witness PW-2, who



testified as to having heard the prosecutrix's screams and also to having witnessed the commission of rape by one of the two boys seen by her at the spot of the incident. Though the independent witness has not positively identified the appellants, their identity stands established through the testimony of the prosecutrix.

17. Though the appellant/*Abid* has tried to make out a case of the relations established between him and the prosecutrix being consensual and the present case being one of false implication owing to the parents of the prosecutrix not having consented to their relationship, all suggestions in this regard were denied by the prosecutrix; and in fact, no such suggestions were put to the mother of the prosecutrix.

18. As noted above, the MLC records "hymen ruptured" and there was no delay in reporting the incident. The appellants came to be arrested on the very same day and the FSL report also lends support to the case of prosecution, inasmuch as alleles from source of exhibits '8A' (gauze cloth piece of appellant/*Mohd. Abid*) were accounted in alleles from source of exhibit '1f' (cotton wool swab-cervical mucus collection), '1g1' (cotton wool swab-vaginal secretion), '1g2' (microslides-vaginal secretion), '1i' (fluid-washing from vagina) & '2b' (legging of victim/prosecutrix).

19. The contentions regarding the prosecutrix's sister not being examined or the MLC being prior in time to the FIR also have no merit as the prosecutrix's sister was not a witness to the incident in question and was not accompanying the prosecutrix at the relevant time; and no questions regarding the timing of the MLC were put to the I.O., who would've been the best person to answer the same. There appears some variance in the testimony of prosecutrix and her mother as to whether the father of the



prosecutrix was employed in the same *dhaba* as the appellant/*Abid*; however, the same would not dent the case of prosecution as the version of prosecutrix that she had seen the appellant/*Abid* in the *dhaba* is consistent. The said fact was even admitted by the appellant.

20. In light of the testimony of the prosecutrix, the independent witness, and the medical and forensic reports on record, this Court has no hesitation in concluding that the appellant/*Abid* committed the offence of rape. Insofar as the appellant/*Hasmudeen* is concerned, it has come in the testimony of the independent witness that there were two persons; and the appellant/*Hasmudeen* was arrested on the day of the incident upon identification by the prosecutrix and he was also identified in Court, and as such his complicity in the crime also stands established. A gainful reference in this regard may be made to the recent decision of the Supreme Court in Raju @ Umakant Vs. State of Madhya Pradesh¹.

21. Accordingly, finding no merit, the preset appeals are dismissed.

22. It is observed that the Trial Court awarded Rs.5,00,000/- as compensation to the victim. This Court is of the considered view that, given the facts of the case, the upper limit of compensation under the Delhi Victim Compensation Scheme, 2018, should be awarded to the prosecutrix. The Member Secretary, DSLSA, shall ensure that the remaining compensation is disbursed to the victim within 2 weeks.

23. The personal bonds furnished by the appellants stand cancelled and their sureties are discharged.

24. Before parting, this Court records its appreciation for the valuable assistance rendered by Mr. Saurabh Seth, Advocate, the learned *Amicus*



Curiae appointed to represent the prosecutrix in both the appeals.

25. A copy of this judgment be communicated to the Trial Court; the Member Secretary, DSLSA; and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 19, 2025

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¹ (2025) 8 SCC 281