



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.09.2025

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CRL.A. 502/2017

BIMLA DEVI

.....Appellant

Through: Mr. Kanhaiya Singhal, Advocate (DHCLSC) with Mr. Pulkit Jolly, Ms. Nivedita Tiwari, Mr. Rishabh Bhardwaj and Ms. Avantika Shankar, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with SI Rajesh Kumar PS Vijay Vihar, Delhi. Ms. Pallavi Garg, Advocate (DHCLSC) with Ms. Sanjana Sharma, Advocates for victim.

JUDGMENT (ORAL)

1. By way of the present appeal filed under Section 374(2) Cr.P.C., the appellant seeks setting aside of the impugned judgment dated 23.02.2017 and order on sentence dated 04.03.2017 passed by ASJ-01, North West District, Rohini Courts, New Delhi, in Session Case No.76/12, arising out of FIR No.18/2012 registered under Sections 363/366/368/376/34 IPC at P.S.: Vijay Vihar, Delhi.
2. The appellant was convicted along with co-accused *Umesh Kumar Sharma* and *Ramesh Kumar Sharma*, who have also preferred their respective separate appeals challenging the conviction. While the appeal of *Ramesh Kumar Sharma* being Crl.501/2017 and *Ram Kishore Sharma* being Crl.504/2017 stood abetted on account of their death and accordingly



disposed of on 15.09.2023 and 12.10.2017 respectively, the appeal filed by *Umesh Kumar Sharma* being Crl.A. No.690/2017 came to be disposed of vide a separate order passed today as not pressed, the appellant having undergone the entire sentence.

3. Insofar as the appellant is concerned, her sentence was suspended on 28.11.2017.

4. The brief facts in nutshell are that on 20.01.2012, the complainant/father of the girl child 'P' lodged a complaint that his daughter aged 14 years and another boy 'A' aged about 10 years living in the neighbourhood was suspected of being abducted by the accused/*Umesh Kumar Sharma*, who was also residing in the vicinity. On receipt of this information, a case under Section 363 IPC came to be registered.

Both the child victims were recovered on 01.02.2012 from the native village of accused persons. Their statements were recorded under Section 164 Cr.P.C. In the light of the allegations levelled, medical examination of accused *Ramesh Kumar Sharma* (since deceased) and the child victim P was conducted and exhibits were sent to the FSL. A charge-sheet was filed against the accused persons i.e., *Bimla Devi* and *Ram Kishore Sharma* (parents of *Umesh Kumar Sharma* and *Ramesh Kumar Sharma*). The accused persons were charged for their offences. *Ramesh Kumar Sharma* was charged for offences punishable under Sections 120-B/363/366 and 109 r/w 376 IPC while *Umesh Kumar Sharma* was charged under Sections 120-B/368/366/376 IPC. *Bimla Devi* and *Ramkishore Sharma* were framed against charges punishable under Sections 120-B/368 and 109 read with 376 IPC.

In the trial court, the prosecution examined a total of 13 witnesses.



The accused persons including the appellant denied their involvement and claimed false implications by the victim P at the instance of her parents. The accused, however, did not lead any evidence. The child victim P was examined as PW-8.

5. Learned counsel for the appellant contends that though the appellant has been charged for abetting the offence of rape however, there are no material allegations regarding the same. It is contended that such allegation had come for the first time at the time of deposition in the court and amounts to material improvement of child victim 'P'. It is next contended that for the said reason, even the charge under Section 368 IPC is not made out.

6. Learned APP, on the other hand, contends that the testimony of the child victims has been found cogent and credible by the trial court and the impugned judgment calls for no interference.

7. Before proceed further, it is apt to note that the age of the child victims was 14 and 10 years respectively, and the same is not contested. In fact, no contention has been raised, and as such both the child victims are held to be minor. Even otherwise, the date of birth of the child victims has been proved through the testimony of PW-5 and PW-6.

8. Child victim P was examined as PW-8. She stated that she along with her parents were tenants and in the same building in which the accused *Ramesh Kumar Sharma* was also residing as tenant. The other child victim A was also residing in the said house as a tenant with his family. She further deposed that her parents were working as labourers and used to leave home in the morning at 9-10 AM. In their absence, she used to play with child victim A and another girl adjacent to the neighbourhood.

9. On 20.01.2012, she was told by *Umesh* that her father had met with an



accident at Anand Vihar. He brought a tempo like vehicle accompanied by child victim. The accused called his brother Ramesh, who assured taking her to the spot of accident. As she was nervous and shocked with the news, she went with the accused *Ramesh* to Anand Vihar. The accused instead of taking her to Anand Vihar, rather took her to his village in Shahjahanpur by bus.

Witness further deposed that in the house of *Ramesh*, parents of *Ramesh* were also present. Though *Umesh* was already married, however, both *Umesh* and *Ramesh* wanted to marry her. Mother and sister of the accused made her wear a sari by stating that the victim should behave like *bahu* (daughter-in-law). She further stated that the mother of the accused put vermilion on her *maang* and along with her daughter dragged the child victim to a room where accused *Umesh* committed wrong act (*galatkaam*). She clarified that her clothes were removed and physical relations were established without her consent. Thereafter, on three-four occasions, the accused *Umesh* committed rape upon her and was taking her to different places.

10. The child victim P was medically examined and her MLC was proved by Dr Megha Malik Aneja, SR Gynecologist, BSA Hospital who was examined as PW-9. She deposed that on examination of child victim P, though her hymen was found torn, no fresh injury or bleeding were found.

11. The prosecution has also examined brother of child victim P as PW-9, who deposed that on 20.01.2012, on his return from his work place, he became aware of missing of child victims 'P' and 'A'. He further deposed that on 31.01.2012, he went to Shahjahanpur in search of the child victims 'P' and 'A' and when he was present at Railway Station Shahjahanpur, he



met with the two officials of Delhi Police including the IO of the present case. At about 11.00 - 12.00 noon, the child victim P was found weeping at Railway Station. He immediately informed the police. Later, the child victim 'A' was recovered from the house of the accused.

12. In cross-examination, the child victim P was confronted with her earlier statements wherein the factum of appellant putting vermilion on her *maang* and dragging the victim P to a room where the rape was committed upon her, was not stated.

13. The child victim A was examined as PW-3. He deposed that he had accompanied child victim P and that Ramesh had taken child victim P and him to his native village. He stated that the family of Umesh wanted P to be their daughter-in-law. The appellant had made her wear sari.

14. The trial court recorded that the forensic evidence is inconclusive as *Umesh* was arrested on 31.07.2012 and his control sample was not provided for comparison with the DNA profile generated from the exhibits of child victim 'P'. Child victim 'P' in her statements recorded under Sections 161 and 164 Cr.P.C. has not stated that the appellant had put vermilion on her *maang* and dragged her to a room where her son *Umesh* had committed offence of rape. The said statement was made for the first time at the time of recording of her deposition in court. The said statement is clearly a material improvement over her previous statement. In fact, in her statement recorded during investigation, the child victim P categorically stated that both the parents of the accused had gone to her neighbourhood and in their absence, *Umesh* committed the offence.

Thus, the statement made in the court with the aforesaid allegation is clearly a material improvement and needs to be discarded. There is no other



allegation against the appellant and as such her conviction under Section 109 and 376 IPC is set aside.

15. However, it is evident that the child victims brought by her son were kept in their house. It has come in the testimony of both the child victims that the appellant had also wished that the child victim P be the daughter-in-law, however, the appellant made no efforts to reach out to the family of the child victim 'P', she being minor. The grievance of the offence under Section 368 IPC is clearly made out. The appellant has been convicted for the same and sentenced to undergo rigorous imprisonment for three years along with fine of Rs. 1,000/- and in default of payment of fine, to further undergo simple imprisonment for one week.

16. At this stage, learned counsel for the appellant states that she does not wish to press the appeal insofar as conviction under Section 368 IPC is concerned and prays that keeping in view the appellant's age and other mitigating circumstances, her sentence be reduced to the period already undergone. It is further, on instructions, prayed that the appellant would deposit the fine within three weeks.

17. The appellant is stated to be aged about around 70 years old and is a senior citizen. Nothing has been brought on record to show any criminal antecedents. As per the nominal roll, the appellant has undergone a period of almost 10 months, including remission. She worked as a Garden Sahayak during her incarceration and she did not violate any Delhi Prison Rules during this time.

18. Accordingly, keeping in view the entire facts and circumstances, the appeal is partly allowed. The appellant is acquitted under Section 109 IPC read with Section 376 IPC. However, her conviction under Section 368 IPC



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is maintained. The order on substantive sentence is modified to the period already undergone. However, the sentence of fine of Rs.1000/- imposed by the Trial Court, as well as the default sentence in case of non-payment, shall stand maintained.

19. The appeal is partly allowed to the aforesaid extent, subject to deposit of fine within two weeks with a receipt submitted to the IO, failing which, she would serve her default sentence.

20. A copy of this judgment be furnished to the trial court as well as Jail Superintendant for information.

MANOJ KUMAR OHRI
(JUDGE)

SEPTEMBER 09, 2025

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