



2025:DHC:10781



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

% Reserved on : 08.10.2025
Pronounced on : 02.12.2025
Uploaded on : 02.12.2025

+ **CRL.A. 978/2018**

GENERAL @ RAJA @ JUNDALAppellant
Through: Ms. Sunita Arora, Advocate
(DHCLSC).

versus

STATE OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State with
SI Ankita.
Ms. Urvi Kuthiala, Advocate (Amicus
Curiae) for victim
Mr. Vibhor Garg with Ms. Yadavi
Malhora and Ms. Diksha Kakkar,
Advocates for victim.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 374(2) Cr.P.C., the appellant seeks to assail the judgment of conviction dated 06.08.2018 and the order on sentence dated 10.08.2018 passed by the learned ASJ, SFTC, South District, Saket Courts, New Delhi, in SC No. 21/2017 arising out of FIR No. 64/2017 registered under Sections 376/392/506 IPC at P.S. Safdarjung Enclave.

Vide the impugned order on sentence, the appellant was directed to



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undergo RI for a period of 7 years alongwith fine of Rs.1,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 376 IPC; RI for a period of 1 year alongwith fine of Rs.500/-, in default whereof he would undergo SI for 15 days, for the offence punishable under Section 506 IPC; and RI for a period of 7 years alongwith fine of Rs.1,000/-, in default whereof he would undergo SI for 1 month, for the offence punishable under Section 392 IPC. All sentences were directed to run concurrently and benefit under Section 428 Cr.P.C. was extended to the appellant.

2. The prosecution case, as emerging from the record, is that on the intervening night of 18/19.02.2017, at about 9:30 PM, the prosecutrix alongwith her cousin sister/friend and two other female friends went to Hauz Khas Village for dinner. Thereafter, the two friends left, the prosecutrix and her cousin/friend went to another Bar. When they were returning two boys aged around 20-23 years met them and offered to drop them home. The prosecutrix refused and suggested that they could take an auto, but the cousin/friend readily agreed and told the prosecutrix that the boys were young and would not be able to do anything. The cousin/friend and the boy she was talking to got separated in the crowd, and the prosecutrix began searching for them. The other boy (appellant herein), aged about 19-20 years, told her that he knew where the other two had gone and that he would take the prosecutrix there. He instead led her to the other side of the road, into the bushes inside the park where it was dark, threatened her with a stone, forced her down into a ditch and compelled her to remove her clothes, also removing the napkin she was wearing as she was having her periods.



He then committed rape upon her. During this, the prosecutrix picked up a stone lying nearby and struck him on his head to save herself. He started bleeding, and his blood smeared her clothes and body, but he committed rape upon her again. Before fleeing, he took Rs.600/- and her iPhone 5S of black and silver colour from her handbag. Information about the incident in question was recorded vide DD No. 11A at about 3:20 a.m., on the basis of which *rukka* was prepared, leading to registration of the concerned FIR. After filing of the chargesheet, charges under Sections 506/376/392 IPC were framed against the appellant, to which he pleaded not guilty and claimed trial.

3. The prosecution examined 14 witnesses in support of its case. The prosecutrix was examined as PW-1; her cousin/friend 'A' as PW-12; and *Jeetu Verma*, the friend of the appellant who had accompanied 'A', as PW-9. The MLC of the prosecutrix was proved by Dr. *Anshul* deposing as PW-3. The Nodal Officer, Bharti Airtel Ltd., examined as PW-7, proved the CAF and the CDR pertaining to the robbed mobile phone. The learned MM who recorded the statement of the prosecutrix under Section 164 Cr.P.C. was examined as PW-2. The remaining witnesses are police officials who deposed as to various aspects of the investigation. The I.O., SI *Sonam Solanki*, in addition to deposing in detail as PW-14, was also examined as a Court Witness (CW-1) before the commencement of the prosecution evidence, wherein she exhibited the documents relating to the date of birth of the appellant establishing that he was above 18 years of age at the time of the incident.

The appellant admitted his own MLC (Ex. PX) as well as the DNA



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examination report alongwith the genotype profile prepared by Dr. *Garima Chaudhary* [Ex. PY (Colly)] under Section 294 Cr.P.C., and certain prosecution witnesses were dropped in view of the same.

4. In trial, the prosecutrix/PW-1, reiterated her version given in the complaint. She stated that when she and her cousin/friend left the venue to return home, she was slightly drunk at the time. Two boys met them outside and started talking to her cousin/friend, stating that their car was parked at some distance and they could drop them to their residence. They stated that since the lane in which their car was parked was to be accessed through a gate which was already closed, they would all have to climb over a gate to reach their car. All four climbed over the gate. Owing to it being very dark, her cousin/friend and one of the boys got separated from the prosecutrix and the appellant. The appellant then caught hold of her hand and started pulling and touching her inappropriately. The appellant asked her to remove her clothes, and upon her refusal to do so, he picked up a stone and threatened to injure her, stating that no one would find out about it as they were in an isolated place. The prosecutrix removed her clothes and the appellant proceeded to have forcible sexual intercourse with her. She picked up the stone with which he had threatened her and hit him on his forehead. The appellant told her that since she had hit him with a stone, he, too, would hit her back and injure her. The prosecutrix apologized and told him that she would do whatever he asked, whereafter the appellant again tried to sexually assault her. On the prosecutrix protesting the same, the appellant told her to shake his penis with her hand. When she was leaving that place after wearing her clothes, the appellant snatched away mobile phone (make



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iphone 5S) along with Rs.500-600/- lying in her bag. The appellant also tried to snatch her bag, however, she held on to it and ran from there. She reached a gate and raised an alarm, and the appellant ran away. She reached the main road, went to the police station, and reported the matter. Her complaint (Ex. PW-1/A) was recorded by the police and she was taken to a hospital for her medical examination (MLC thereof is Ex. PW-1/B), where, the clothes she was wearing were also seized. Thereafter, her statement under Section 164 Cr.P.C. (Ex. PW-1/C) was recorded by the learned MM. The prosecutrix also identified her signature on the TIP proceedings (Ex. PW-1/A) wherein she was unable to identify the appellant. She stated that she could not identify the appellant during TIP because he had changed his hairstyle. However, she correctly identified him in Court. Upon being recalled for further examination, she identified the hair band, clothes, underwear, and sanitary pad that she was wearing at the time of the incident.

On being asked leading questions by the learned APP, she stated that the police seized two pieces of stone from the place of occurrence. On a broken piece of brick being produced, she identified it as the piece of brick used by her to hit the appellant. On another broken piece of brick being produced, she identified it as the one used by the appellant to threaten her. She identified the produced mobile phone which was seized by the I.O. She stated that she could not identify the currency notes in question as they had no specific mark or identification. She stated that she could not produce a receipt of the mobile phone in question as the same was lying at her residence in her native village. She admitted the suggestion that when she hit the appellant on his head, he had started bleeding and his blood fell on her



clothes. She further admitted it to be correct that when she started crying loudly the appellant left her.

During cross-examination, she was confronted with her previous statement on multiple aspects of her deposition, as several details she narrated in Court were not found recorded in her statement to the police. She stated that she was residing with her friend who bore her daily expenses as she had no source of income and was not doing any job. She denied the suggestion that she had gone with the appellant as she had a deal with him to have sexual intercourse for Rs.500/-. She denied the suggestion that after having consensual relations with the appellant, she demanded more money, and upon his refusal to pay more, she quarrelled with him. She denied that her phone was left behind at the spot after the quarrel and was later planted upon the appellant.

5. The cousin/friend of the prosecutrix, deposing as PW-12, stated that she had gone to Hauz Khas Village with the prosecutrix. It was about midnight-1:00 A.M., and both of them had consumed liquor. Two boys met them there and told them that they would drop them home. They were taken to Deer Park, where the gate was closed. The prosecutrix and one of the boys climbed over the gate. She stated that she did not know where they went. The other boy dropped her at her room, and she did not know what happened thereafter. The prosecutrix did not tell her anything. She did not wait for the prosecutrix as she did not have a phone and also did not know where the prosecutrix and the boy had gone. She identified the appellant in Court as the boy who had accompanied the prosecutrix.

During cross-examination, she stated that she and the other boy had



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also climbed over the gate of Deer Park. The prosecutrix and the appellant had climbed over first, followed by her and the other boy. She stated that the gate was high and she even received injuries while climbing, though the prosecutrix did not receive any injury. She last saw the appellant and the prosecutrix at a distance of about ten steps from where she and the other boy were standing. She did not ask the prosecutrix, when the prosecutrix and the appellant were moving away, whether she wished to come with her or would come later. She further stated that the appellant caught the prosecutrix by her hand and took her away. She admitted that the prosecutrix did not raise any alarm when the appellant was taking her with him. She also did not raise any alarm when the appellant caught hold of the prosecutrix's hand and took her with him.

6. PW-9, *Jeetu Verma*, deposed that in the intervening night of 18/19.02.2017, around 10:00-11:00 P.M., while leaving after duty hours, he met the appellant outside his *dhaba*, whom he knew as the appellant had earlier worked with him. Two girls met them near Hauz Khas Village, and the appellant told them that they could drop them home. He, along with one of the girls, went outside Hauz Khas Village. On returning to the spot where he had left the prosecutrix and the appellant, he found neither of them there. Thereafter, he dropped the other girl outside her house in an auto-rickshaw on her request and returned home. He identified the appellant in Court.

On a leading question being put to him by the learned APP, he denied having pointed out the appellant's house to the police. During cross-examination, he stated that he met the appellant outside his workplace and had not called him there. He stated that the appellant was intoxicated. They



walked ahead while talking and after about five minutes met the prosecutrix and her friend/cousin. While he and the friend/cousin were walking towards the red light near Hauz Khas, neither looked back to see whether the appellant and the prosecutrix were following. He and the friend/cousin returned within about five minutes to the spot where they had left them, searched for them for about 2-3 minutes, but neither of them were there. Thereafter she was dropped at her home. He denied the suggestions that the friend/cousin had asked the prosecutrix whether she wished to stay or accompany them, or that she had told the prosecutrix to go ahead and return home while she (the prosecutrix) would follow.

7. Dr. *Anshul* (PW-3) identified the handwriting and signatures of his colleague, Dr. *Nilu*, who had examined the prosecutrix and prepared the concerned MLC; and exhibited the MLC of the prosecutrix as Ex. PW-3/A. He stated that as per the MLC, the prosecutrix, aged 23 years, was brought by W/Ct. *Nirmala* (PW-4) on 19.02.2017 with an alleged history of forcible sexual assault in Deer Park by an unknown person. Scratch marks were noted on her left breast and below her right breast, and a small contusion of 2 x 2 cm with swelling was observed on the occipital region of her head. Various samples were collected during the medical examination and handed over to PW-4. The witness also proved the confidential form regarding report of sexual violence filled by Dr. *Nilu* as Ex. PW-3/B and identified her signatures on the medico-legal report already exhibited as Ex. PW-1/B.

8. Surender Kumar, Nodal Officer, Bharti Airtel Ltd., was examined as PW-7. He exhibited the CDR as well as CAF of the robbed mobile phone as Ex. PW-7/A and Ex. PW-7/B (colly) respectively. He also exhibited a copy



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of the location chart of the said mobile phone as Ex. PW-7/C. He further deposed that he issued a certificate under Section 65B Evidence Act regarding the aforesaid mobile and exhibited the same as Ex. PW-7/D.

9. The appellant, in his statement under Section 313 Cr.P.C., asserted that he was innocent and had been falsely implicated. He stated that he had been wrongly arrested and had not made any disclosure statement, alleging that his signatures were obtained on blank papers. He further claimed that the location chart was manipulated at the instance of the I.O. and was not correct, and that the prosecutrix had wrongly given the alleged history to the doctor at the time of preparation of her MLC. He admitted to sexual intercourse with the prosecutrix but claimed that she was a consenting party. He stated that the prosecutrix had asked her cousin/sister and *Jeetu* to go home and said that she would follow after some time. He alleged that the prosecutrix later made a false complaint because he refused to pay her more than the Rs.500/- initially agreed between them. He did not lead any defence evidence.

10. Ms. Sunita Arora, learned counsel appearing for the appellant, contends that the prosecution version is riddled with material inconsistencies. It is submitted that PW-1, PW-9 and PW-12 have stated different timings of the incident; that the prosecutrix failed to identify the appellant in TIP; that the recovery of the mobile phone is doubtful as no bill was produced; that the history recorded in the MLC diverges from her deposition in Court; and that the relations established between the parties were consensual.

11. Ms. Shubhi Gupta, learned APP for the State, along with Ms. Urvi



Kuthiala, learned *Amicus Curiae* and Mr. Vibhor Garg, learned counsels for the victim, opposed the contentions. Ms. Urvi submitted that the testimony of the prosecutrix is wholly consistent and natural, requiring no corroboration, though it stands duly supported by the medical and forensic evidence on record. It was urged that the DNA report conclusively establishes the presence of the appellant's blood and semen on the prosecutrix's clothes; that the recovery of the mobile phone and cash, the injuries found on both the prosecutrix as well as the appellant, and the prompt lodging of the FIR lend full assurance to the prosecution case; and that the plea of consent is inherently improbable and contrary to human conduct. Mr. Garg additionally submitted that the prosecutrix's inability to identify the appellant during TIP is of no consequence once the appellant himself admitted sexual intercourse.

12. I have heard the learned counsels for the parties and carefully examined the record.

13. The testimony of the prosecutrix, examined as PW-1, remains consistent on the core aspects of the incident. She gave a clear and coherent account of being led into a dark, isolated portion of Deer Park at Hauz Khas Village, threatened with a stone, compelled to undress, and forcibly subjected to sexual intercourse. Her version of striking the appellant with a stone, leading to bleeding, also remains unshaken. The fact that she proceeded directly to the police station thereafter, and her statement was recorded without delay strengthens the prosecution version.

14. The MLC of the prosecutrix (Ex. PW-1/B) notes scratch marks on her breasts and a 2 × 2 cm contusion with swelling on the occipital region,



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injuries that are fully consistent with the physical force described by her. The appellant's own MLC (Ex. PX) records an abrasion of size 1×0.5 cm over the right temporal region with associated swelling, multiple vertically placed scratch abrasions over an area of 19×4 cm on the ventral aspect of the left forearm, and an obliquely placed scratch abrasion of size 2×0.3 cm on the ventral aspect of the lower third of the right forearm. These injuries, taken together, are entirely in line with the prosecution case that the prosecutrix resisted the assault and struck the appellant on his head with a stone/brick while attempting to save herself.

15. The forensic evidence on record provides further corroboration to the prosecution case. Blood was detected on the prosecutrix's undershirt and jacket. Semen was detected on the shirt as well as underwear of the appellant, and on the underwear of the prosecutrix. As per the DNA report, the DNA profile generated from the blood and semen detected on the prosecutrix's undershirt, underwear and jacket was similar to the DNA profile generated from the blood of the appellant.

16. The evidence of PW-12 (who, at times, is described as cousin/friend) and PW-9 (*Jeetu Verma*) consistently places the appellant with the prosecutrix immediately before the incident in question. Both witnesses confirm that they had all met at Hauz Khas Village, that the prosecutrix and the appellant went together, and that PW-12 and PW-9 thereafter lost sight of them. Minor differences in timing or sequence are natural given the late hour, admitted consumption of alcohol by PW-12, and the lapse of time before their respective Court depositions, and do not detract from the core corroborative value of their testimonies. Be that as it may, the appellant



himself has not denied his presence at the spot of the incident. Rather, the defence taken by the appellant is that the prosecutrix was a consenting party and that he had been implicated over a money dispute. For this reason, even his non-identification in TIP (though explained) becomes irrelevant. Further, the contention that at the time of medical examination, the prosecutrix had stated that her sister had left her alone, whereas in her deposition it is stated differently, also has no impact on the case. Even otherwise, the same cannot be expected to reflect the full particulars that were subsequently narrated by the prosecutrix, especially in view of the fact that, at the time of giving this history, the prosecutrix had just undergone a traumatic experience and was in a distressed state. The history recorded nonetheless preserves the core allegation of being misled and subjected to forcible sexual assault in Deer Park, Hauz Khas, by an unknown person.

17. There is no dispute as to the appellant's identity in the present case. His plea that the act was consensual is untenable in the face of the surrounding circumstances. The prosecutrix had met him only moments earlier, it was past midnight, and they were in a dark and isolated area. The prosecutrix has consistently stated that she was sexually assaulted by the appellant against her wishes.

18. As for the challenge to the recovery of the mobile phone, the absence of a purchase bill does not affect the fact that the phone was recovered from the appellant, the factum of which stands duly proved by the police witnesses and the CDR location chart.

19. Having considered the rival submissions and the material on record, this Court finds that the testimony of the prosecutrix inspires confidence.



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Her version is corroborated by the medical evidence on record which notes physical injuries consistent with resistance, and by the forensic evidence which records the DNA profile generated from the blood and semen detected on the prosecutrix's undershirt, underwear and jacket as being similar to the DNA profile generated from the appellant's blood.

20. Considering all of the above, this Court is of the considered view that the prosecution has proved its case beyond reasonable doubt and there exists no infirmity in the impugned judgment warranting interference. The present appeal is accordingly dismissed.

21. The bail bond furnished by the appellant stands cancelled and his surety is discharged.

22. Before parting, this Court records its appreciation for the valuable assistance rendered by Ms. Urvi Kuthiala, learned *Amicus Curiae*, and Mr. Vibhor Garg, learned counsels representing the victim.

23. A copy of this judgment be communicated to the Trial Court and the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 02, 2025

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