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

% ***Date of decision: May 15, 2025***

+ **CRL.L.P. 577/2017 & CRL.M.A. 16439/2017**

STATE

.....Petitioner

Through: Mr. Yudhvair Singh Chauhan, APP for
the State with SI Vinod Bhati P.S.
Mehrauli

versus

PRAKASH

.....Respondent

Through: Mr. Subhash Chand Baisolya and
Mr. S.S. Parihar, Advocates along
with Respondent in person.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.L.P. 577/2017

1. Criminal Leave Petition under Section 378(3) Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C"*) has been filed on behalf of the Petitioner/State for Leave to Appeal against the Judgment dated 16.08.2016 *vide* which the Respondent/Prakash has been acquitted from the offence under Section 376 of the Indian Penal Code, 1860 (*hereinafter referred to as the "IPC"*) in case FIR No.891/2014, Police Station Mehrauli.

2. It is submitted on behalf of the Petitioner that the Prosecutrix has



supported the case of the Prosecution. The veracity of the Prosecutrix cannot be doubted only because of non-examination of the incidental witnesses. Hence, the Leave to Appeal is sought.

3. For the reasons stated in the Petition and the submissions made, the Leave Petition is allowed.

CRL.A. /2025 (To be numbered by the Registry)

4. Criminal Appeal under Section 378(1) Code of Criminal Procedure, 1973 (*hereinafter referred to as the "Cr.P.C"*) has been filed on behalf of the Petitioner/State to challenge the Judgment dated 16.08.2016, *acquitting the Respondent/Prakash for the offence punishable under Section 376 IPC* arising out of FIR No.891/2014, Police Station Mehrauli.

5. ***Briefly stated***, the case of the Prosecution is that on 10.06.2016 information was received *vide* DD No. 20B that one 14 years old girl was crying. SI Gopal along with SI Nitesh Sharma, IO, went to B-3, Birla Farm, Chhatarpur Extension where they met the Prosecutrix. She gave the statement that she was the permanent resident of Bangladesh and was presently residing in Mahipalpur. About 14-15 days back, she had come to the house of her elder sister, *Mala* for work, by train. Her sister took her to work for one *Meena* at her house in Chhatarpur Extension and told her to stay in the house for work, and she thereafter, left. There was only the *Respondent/Prakash, brother of Meena*, who was present in the house. She was told by Meena to go to her bedroom and rest. After some time, the Respondent came to her room and started removing her clothes forcibly. When she objected, he gave her beatings and told her that he would throw her out of the window if she would tell anyone about the incident. He closed



her mouth, removed her clothes and raped her. In the morning, when she was crying, the uncle residing in the other flat called the Police.

6. The IO after recording her statement took her to AIIMS Hospital for her examination. *FIR No. 891/2014 was registered under Sections 370/376 IPC read with Sections 23/26 of the JJ Act and Section 4 of the POCSO Act.* The statement of the Prosecutrix was got recorded under Section 164 Cr.P.C. wherein she stated that she had been raped twice by the Respondent.

7. On completion of investigation, Chargesheet was filed in the Court of learned M.M. on 30.07.2014.

8. ***Charges under Section 376 IPC*** was framed against the Respondent on 27.08.2014 to which, he pleaded not guilty and claimed trial.

9. Prosecution examined ***14 witnesses in all***, out of which, PW-3 was the Prosecutrix, who gave details of the incident. *PW-4/Sanjeev Kumar Bansal* was the resident of the neighbouring flat, who had called the Police. *PW-2/Dr. Mantaran Singh Bakshi*, proved the MLC Ex. PW2/A of the Prosecutrix. *PW-10/Dr. V.K. Mohapatra, Sr. Scientific Officer, CFSL, CBI* prepared his detailed report Ex. PW-7/G after examining the exhibits. *PW-11/Dr. Deepika Gupta, Sr. Resident, AIIMS* proved the MLC Ex. PW-3/B. *PW-7/SI Nitesh Sharma is the IO*, who along with *PW-13/SI Gopal*, had conducted the investigations.

10. ***The statement of the Respondent under Section 313 Cr.P.C. was recorded wherein he pleaded is innocence.*** He stated that he never been to Birla Farm, Chhatarpur Extension. He was working for past 4-5 years in Satbari, Chhatarpur, Mehrauli. He further asserted that as per his knowledge Aman never lived in the neighbouring flat, but he also resided in Satbari,



Chhatarpur, Mehrauli. He was working for Aman as a driver from 2010 till June, 2014. Since he was being given less salary which Aman refused to increase, he left the work. He further stated that the injuries observed on his body in the MLC Ex. PW-2/A were because of the fall from the stairs on 06/07.06.2014. He denied knowing Prosecutrix ever. He further claimed that Mala had been working in the neighbouring house in Satbari, Chhatarpur, Mehrauli in the house where he was employed and she had taken Rs.12,000/- from him in 2012. When she asked Mala for return of money, she got him falsely implicated in this case.

11. The learned ASJ considered the contradictions in the testimony of the prosecution witnesses in detail to conclude that the case of the Prosecution was not free from suspicion. ***Benefit of doubt was given to the Respondent who was acquitted for the offence punishable under Section 376 IPC.***

12. Aggrieved by the acquittal, **the Appeal under Section 378(1) Cr.P.C. has been filed by the State.**

13. The ***grounds of challenge*** are that while considering her testimony, it has not been considered that the Prosecutrix had come from Bangladesh and was not well conversant with Hindi language. It has further not been appreciated that the Police had been called by the neighbour after he found the Prosecutrix crying in the morning. It is a settled proposition of law that the testimony of the Prosecutrix is sufficient for conviction and does not require any corroboration in case it inspires confidence.

14. The statement of the Prosecutrix was fully corroborated by the testimony of the IO as well as the medical record, which has been overlooked.



15. ***It is therefore submitted that the impugned judgment be set aside and the Respondent be convicted under Section 376 IPC.***

16. ***Reply has been filed by the Respondent/accused*** who has submitted that the present case is one of no evidence and the impugned Order is clear and unambiguous. It is further submitted that the testimony of the Complainant/PW-3 is contradictory and cannot be corroborated by other evidences. PW-3 in her chief and cross examination says that Meena is the house owner and the accused is the servant. Hence, her statements have been inconsistent at various stages, as rightly noted by learned ASJ. Similarly, there has been various instances where the address of the place of alleged instance is uncertain, which again makes the case of the Prosecution doubtful and unreliable. The medical examination of the victim also does not support the case of the Prosecution.

17. ***It is submitted that there is no merit in the present Appeal, which is liable to be dismissed.***

18. **Submissions heard and record perused.**

19. The main witness on which the entire case of the prosecution rested was **PW-3, the Prosecutrix**. She was consistent in stating that she had come from Bangladesh in a train to the house of her sister in Delhi, some 10-12 days back for work. Her sister Mala took her to Birla Farms, Chhatarpur Extension for employment and went away. She further deposed that Meena in whose house she was employed, told her that Prosecutrix could stay in her house and assured that she would get her employment in some place.

20. She was further informed that her servant who is the Respondent, also resides in the house situated in the area of Shakarpur. Thereafter, Meena left



the house while the Respondent was present inside. He also left the house after locking it from outside. After some time, he came back with a bottle of alcohol, which he consumed and said something, which she could not comprehend. Thereafter, he tried to have sexual intercourse with her. Though she resisted by pushing him aside, but he finally succeeded in having sexual intercourse with her forcibly. He also gave her beatings and threatened her to throw her out of the window. He did not allow her to leave the house. On the next day, she somehow managed to get out of the house and knocked at the neighbour's house from where one man came out to whom she narrated the incident and he called the Police.

21. The Police arrived and took her to the Police Station. She was medically examined and her statement, Ex. PW-3/A was recorded. Thereafter, she was taken by the Police to the house where the incident had taken place. The Respondent was arrested from there on the next date *vide* Arrest Memo Ex. PW-3/C. Prosecutrix in her cross-examination while deposing about the happening of the incident, explained that while committing the act, the Respondent had slapped her and also beaten her brutally and her eye became swollen. However, he did not beat her on the next day.

22. Learned ASJ noted the improvements and inconsistencies in the version of the Prosecutrix. It was noted that while in the examination-in-chief, she had stated that Meena had assured her employment in the house of Mala, but both Mala and Meena left. However in her cross-examination, she stated that while leaving, Mala as well as Meena told her that they would return after some time and they would show her the house where she would



be sent for work. However, in her Complaint, Ex. PW-3/A, she had claimed that after Meena left, she on the asking of Meena, went to the bedroom where the Respondent came after some time and tried removing her clothes and thereafter, forcibly raped her and also threatened her against reporting the incident.

23. In the evidence of the Prosecutrix, there is a discrepancy about the relationship between Mala, Meena and the Respondent. While at some place Mala has been stated to be an acquaintance belonging to the same native region in Bangladesh, but in her Complaint and in the history given in the MLC, she had referred Mala as her sister. Further, she had claimed in her testimony that Meena was the owner of the house where she had been taken by Mala for work, but in her Complaint, Ex. PW-3/A, she had stated that the house was of Meena and that the Respondent was her brother.

24. In the MLC Ex. PW-3/B, it is mentioned that she was employed with a property dealer in Chhatarpur and that both, she and the Respondent, work for the same employer. In the statement under Section 164 Cr.P.C., Ex. PW-5/B, she did not name Mala or Meena and in fact, stated that her mother and sister left her in Chhatarpur and the mistress of the house had told her to eat food and that she would come on the next day and tell her the work and that she could sleep in the room while the Respondent/ driver, slept in the other room. *There is therefore, inconsistency and contradiction about the relationship between Mala, Meena and the Respondent, creating an uncertainty about who took the Prosecutrix where and their inter se relationship.*

25. It was further observed by the learned ASJ that **there were material**



contradictions and improvements in the testimony of the Prosecutrix when considered in the light of the Complaint, Ex. PW-3/A. There were ***different versions of the incident given by the Prosecutrix***. She stated that both Mala and Meena left while the Respondent had gone out to get a bottle of drink, which he consumed, which was never stated by her in her complaint Ex. Ex. PW-3/A.

26. The learned ASJ further noted that while in her Complaint, Ex. PW-3/A, she had made allegations of being raped but in her statement under Section 164 Cr.P.C., Ex. PW-5/B, she stated that she had been raped twice, which was an exaggeration made by her.

27. Pertinently, the history given in her MLC, Ex. PW-3/B, also gives a different version. She stated that there was no penetration and that the Respondent had only attempted penetration by his penis in the vagina, though it could not be completed. Also, it was mentioned that there was masturbation of the Respondent by the victim and that the ejaculation occurred outside the body or the ejaculation has been stated to be in the condom. **As per the MLC, there was no history of penetrative sexual assault.** The different versions stated by the Complainant, therefore, made the entire incident of rape, suspicious and doubtful.

28. ***Learned ASJ, further noted the contradictions, post the incident in the reporting of the incident.*** It was noted that the information about the alleged incident was conveyed on the next day by the neighbour whose name was Jitender. In his statement under Section 161 Cr.P.C., Jitender had stated that the place of incident was the Flat adjoining to his, which belongs to one Bunty and that the Respondent and her sister Meena, sometimes came



to that Flat. He also stated that in the night of 09.06.2014, the Respondent consumed alcohol and thereafter, raped the Prosecutrix and that he had called the Police at Number 100. Significantly, while Jitender claimed that he had reported about what had happened to the Prosecutrix, but the initial information given to the ***Police was only that the Prosecutrix was crying and there was no mention of the rape.***

29. It was further noted by the learned ASJ that even though as per the Prosecutrix, the incident had happened between 10.00 PM to 12 midnight but it has not been explained that as to why she did not make any endeavour to escape from the house till the morning. Although, she had claimed that Respondent did not allow her to leave the house, but then it is not understandable as to how she managed to get out of the house on the next day in the morning and contact the neighbour.

30. Though this neighbour Jitender had been cited as a witness, but could not be produced in evidence since he was not traceable. He was observed to be an important witness to corroborate the testimony of the Prosecutrix, but could not be examined to understand if the Prosecutrix had raised any alarm. Significantly, had the Prosecutrix raised any alarm or shouted for help, it would not have gone unnoticed. As has emerged from the testimony of the prosecution witnesses, there were Flats in the vicinity. Had the prosecutrix resisted or raised as alarm, there was every likelihood that somebody would have heard her. However, **no independent person has been examined or cited as a witness to corroborate if they heard any voices from the Flat, on the date of incident.**

31. This aspect also assumes significance as according to the MLC, the



ejaculation may have been in the condom, creating a doubt about the entire incident.

32. Also, Mala and Meena who were two important link witnesses, were neither cited nor examined as the witnesses to corroborate the version of the Prosecutrix.

33. No clothes of the Prosecutrix were seized despite her assertion that she had not taken bath. No endeavour was made to explain in any effort was made to recover the condom, which could have clinched the happening of incident. There is **no forensic evidence to corroborate the version of the Prosecutrix**. As per the FSL, Ex. PW-7/G, no semen was detected in the vaginal smear and vaginal swab, which again contradicts her case of vaginal penetrative assault.

34. It is further observed that there was a **discrepancy in the address of the place where the alleged incident happened**. The Prosecutrix had asserted that the incident had happened at Birla Farms, Chhatarpur Extension but in the Site Plan, it has been indicated as UGE-4 and the road near the place of incident is shown as '*towards Mehrauli*'. Further, the place of arrest of the Respondent in the arrest memo Ex. PW-3/C is shown as Birla Farms, Chhatarpur Extension. PW-7/SI Nitesh Sharma, the IO had explained that the address of Chhatarpur Farms was given by the Prosecutrix but on subsequent verification, proper address was found as Flat No. 4, UGF, A-8, Birla Enclave, Chhatarpur, New Delhi, which was also verified from property papers. However, in the *Rukka*, it was mentioned that on enquiry, the flat was found to be in the name of Anil Tomar Builder where allegedly the Prosecutrix had been raped.



35. Learned ASJ rightly concluded that there was no satisfactory explanation about the place of incident and about its owner. Though PW-4/Sanjeev Kumar Bansal had proved the ownership papers with regard to Flat No. 4, UGF, A-8, Birla Enclave, Chhatarpur, New Delhi and testified that it had been given on rent to one Aman Kumar, who was the employer of the Respondent but pertinently, this Aman Kumar himself, was not made a witness.

36. Learned ASJ, thus, rightly concluded that while the sole testimony of the Prosecutrix can be the basis for conviction, but it has to be of sterling quality, to be accepted by the Court without any independent corroboration and be made the basis for convicting the Accused.

37. However, in the present case, there are material contractions in the place where the alleged incident took place. The corroborative evidence has been found missing and most pertinently, the alleged act of sexual assault is at variance with the act of masturbation as stated in the history given in the MLC. Also, while in her Complaint she had stated that she had been allegedly raped once, but in her statement under Section 164 Cr.P.C., she claimed to have been raped twice.

38. Learned ASJ has rightly considered all these contradictions and inconsistencies, to conclude that *the Prosecution has not been able to prove its case beyond reasonable doubt and acquitted the Respondent.*

39. **There is no merit in the present Appeal, which is hereby dismissed.**

40. Pending Application, if any, also stand disposed of.

2025:DHC:5327



(NEENA BANSAL KRISHNA)
JUDGE

MAY 15, 2025

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