



2026:DHC:484



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

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Judgment Reserved on: 19.01.2026

Judgment pronounced on: 21.01.2026

+ **CRL.A. 669/2018**

SHRAWAN

.....Appellant

Through: **Ms. Sagarika Kaul Advocate (*Amicus Curiae*)**

versus

STATE

.....Respondent

Through: **Mr. Pradeep Gahalot, APP for State**

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (the Cr.PC.) the appellant, the sole accused, in S.C. No. 249/2017 on the file of the learned Additional Sessions Judge (SFTC), South-West, Dwarka Courts, New Delhi, challenges the judgment dated 09.05.2018 and the order on sentence dated 16.05.2018 as per which, he has been convicted and sentenced for the



offences punishable under Section 376 and Section 506 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 27.01.2017 at about 5.00 PM, the appellant/accused, on the pretext of delivering food, entered the house of PW1, i.e., House No. D-105, Bindapur Gaon, Uttam Nagar, New Delhi, committed penetrative sexual assault on her and threatened her with the dire consequences in case she revealed the incident to others.
3. On the basis of Exhibit PW1/A FIS of PW1, given on 27.01.2017, crime No. 64/2017, Police Station Bindapur, i.e., Ex. PW8/B FIR was registered by PW8, ASI Ramesh Chand, on 27.01.2017 at around 9:38 P.M. PW11, Woman Sub-Inspector, conducted investigation into the crime and on completion of the same, submitted charge-sheet dated 11.04.2017 alleging commission of the offences punishable under Section 376 and Section 506 IPC.



4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court as per order dated 09.05.2017, framed a charge under Sections 376 and 506 IPC, which was read over and explained to the accused, to which he pleaded not guilty.
5. On behalf of the prosecution, PWs.1 to 11 were examined and Exhibits PW1/A-F, PW3/A, PW6/A, PW8/A-D, PW9/A, PW10/A, and PW11/A-H were marked in support of the case.
6. After the close of the prosecution evidence, the accused was questioned under Section 313 Cr.PC. The accused denied all those circumstances and maintained his innocence. According to the accused, he has been falsely implicated in the case at the instance of PW1's husband's brother (PW2) and his wife (*Jethani*) as PW2 lost his job on the complaint



made by the father of the accused. He also submitted that the relationship was consensual.

7. After questioning the accused under Section 313 Cr.PC., compliance of Section 232 Cr.PC. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.PC. is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (see **Moidu K. versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888**). In the case on hand, the accused has no case that noncompliance of Section 232 Cr.PC. has caused any prejudice to him.
8. In defence, the accused examined DW1, a factory worker, who deposed that he knew the appellant/accused through his father, with whom he had earlier worked, and was also



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acquainted with PW2 and his wife. DW1 testified that on two to three occasions he had seen PW1 and the accused together when PW1 used to take PW2's children from school, and that he had even seen them holding hands.

9. On consideration of the oral and documentary evidence and after hearing both sides, the trialcourt, *vide* the impugned judgment and order on sentencefound the accused guilty of the offences punishable under Sections 376 and 506 IPC and accordingly sentenced him to undergo rigorous imprisonment for a period of 7 years under Section 376 IPC and to fine of ₹5,000/-, and in default of payment of fine, to undergo simple imprisonment for 30 days as well as to undergo rigorous imprisonment for a period of 6 months for the offence punishable under Section 506 IPC and to fine of ₹1,000/-, and in default of payment of fine, to simple imprisonment for 30 days. The sentences have been directed



to run concurrently. Benefit under Section 428 Cr.PC has also been granted. Compensation of ₹5,00,000/- has been directed to be paid to PW1. Aggrieved, the accused has come up in appeal.

10. It was submitted by the learned counsel for the appellant/accused that there has been a misappreciation of material evidence by the trial court. Based on Ex. PW9/A FSL report dated 23.03.2017, and the testimony of PW9, no opinion could be given that the injuries seen on the face of the accused were inflicted by nails of PW1, and therefore the finding that such injuries corroborate the version of PW1 is erroneous.

10.1. It was further urged that PW10, in her cross-examination, admitted that no signs of forcible sexual intercourse were observed on PW1. The learned counsel further submitted that although the trial court noted prior acquaintance between



PW1 and the accused, it wrongly rejected the defence plea of consensual relationship.

11. On the other hand, the learned Additional Public Prosecutor submitted that PW1 in all her statements has categorically stated that the accused committed penetrative sexual assault on her and the testimony of PW2 and PW5 corroborates her version. It was submitted that the medical evidence and scientific evidence corroborates the prosecution case. It was also submitted that there are no materials on record indicating that physical relations between the accused and PW1 was consensual. Further, the defence of false implication has not been proved.

12. Heard both sides and perused the records.

13. The only point that arises for consideration in the present appeal is whether, though the factum of physical relationship between the appellant/accused and PW1 stands



established, the prosecution has proved beyond reasonable doubt that the act was non-consensual, so as to sustain the conviction and sentence imposed by the trial court.

14. I shall first briefly refer to the evidence on record relied on by the prosecution in support of the case. The incident in this case is alleged to have taken place on 27.01.2017 at about 5.00 PM at House No. B-105, Bindapur, Uttam Nagar, New Delhi. In Ext. PW1/A FIS, PW1 has stated thus:She was residing with her husband in a rented house at the stated address. Her husband was working in a factory at Bindapur. On 27.01.2017, she was alone at home. At about 5.00 PM, while the door of the house was closed and she was watching television, the accused, residing in the neighbourhood, knocked at the door. On opening the door and enquiring about the purpose of his visit, the accused informed her that her sister-in-law had sent “*chowmein*”(noodles) for her. On



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this pretext, the accused forcibly entered the room and bolted the door from inside. PW1 deposed that the accused started using force upon her and, when she resisted, threatened her with death if she raised any alarm. He forcibly threw her on the bed and, when she attempted to scream, gagged her mouth with his hand. The accused thereafter raped her. While leaving the house, the accused threatened her that if she disclosed the incident to anyone or reported the matter to the police, he would kill her and her family members. After the accused left, PW1 immediately went to the factory where her husband was working and narrated the entire incident to him.

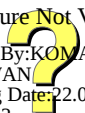
14.1. In her statement under Section 164 Cr.P.C., Ext. PW1/C, recorded on 28.01.2017, PW1 has stated that on the accused knocking at the door, she slightly opened it and enquired about the purpose of his visit, whereupon he stated that her sister had sent “*chowmein*” (noodles). She refused to accept



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the same and told him that her sister would herself come and give it. When she attempted to close the door, the accused pushed her forcefully, causing her to fall down, and before she could get up, he bolted the door from inside. PW1 stated that she screamed loudly, but due to the machines running downstairs, no one could hear her. She further stated that the accused threatened to stab her in the stomach with a knife if she raised an alarm, gagged her mouth by stuffing a cloth into it, and tightly held both her hands when she tried to free herself. She stated that she managed to break free and attempted to run to pick up her phone, but the accused snatched the phone from her hand and threw it away. Thereafter, the accused made her lie down on the bed and raped her. PW1 further stated that the accused was wearing a white shirt which had bloodstains on it and that he was bleeding from his face as she had scratched him. She stated





that the accused wiped the blood that had fallen on the floor and, while leaving, threatened that if she disclosed the incident to anyone, he would not spare anyone, particularly her.

14.2. PW1, when examined before the trial court reiterated her case in the FIS and Section 164 statement. She denied having an affair with the accused or that prior to the incident she had been in a consensual physical relationship with the accused. She denied having written letters to the accused or regularly calling him on the phone.

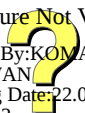
14.3. PW2, the brother-in-law of PW1, deposed that at about 5.00–5.30 PM, PW1 came to his place of work weeping and, on enquires, disclosed that the accused had raped her. In his cross-examination, PW2 admitted that he was working in the factory of one Monu and that the father of the accused had also been working there till about 10 to 15 days prior to the



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incident. He admitted that he was removed from service by the owner and claimed that the same was at the instance of the accused's father. He denied the suggestion that he was removed from service on account of theft of copper from the factory or that the father of the accused had informed the owner in this regard, or that he harboured any grudge against the accused or his family. PW2 admitted that he and his family had shifted to the house where the incident occurred about 5 to 10 days prior to the date of incident and that earlier they were residing in a room in the factory premises, where he lived on the ground floor, while the accused and his father were residing on the upper floor. He denied that during this period PW1 and the accused had come into contact or developed familiarity. He admitted that the families were known to each other as they resided in the same building and worked in the same factory, and that on the day of the





incident at about 11.00–11.30 AM, the accused had come to his room for food. PW2 denied that the accused was beaten when apprehended and also denied the suggestion that the relations between PW1 and the accused were consensual or that a false case had been lodged at his or his wife's instance.

14.4. PW9, Dr. Jatin Bodwal, Specialist, Department of Forensic Medicine, DDU Hospital, deposed that on 22.03.2017 an application along with the MLC of the accused was submitted to him seeking an opinion as to whether the injuries noted therein could have been caused by the nails of PW1. Upon perusal of MLC No. 883/17 of the accused, PW9 opined that, in view of the nature of the injuries, it was not possible to comment whether the same were inflicted by nails. His report has been marked as Ex. PW9/A. In his cross-examination, PW9 stated that he had not personally examined the accused and that the opinion was rendered



solely on the basis of the MLC.

14.5. PW10, Dr. Madhu, Senior Resident (Gynaecology), DDU Hospital, deposed that she was acquainted with the handwriting and signatures of Dr. Mitali Mahapatra, who had prepared the MLC of PW1, who had since left the services of the hospital. PW10 identified the signatures of Dr. Mitali Mahapatra on the MLC of PW1, which was marked as Ex. PW1/B. She further deposed that as per the MLC, the requisite samples of PW1 were collected and handed over to the police. PW10 further stated that no signs of forcible sexual intercourse were observed on PW1 and that though a small linear abrasion was noted on the left wrist, it has not been specified whether the same was fresh or old and could not be definitively linked to sexual assault.

15. As per the MLC of PW1 (Ex. PW1/B), a small linear abrasion measuring about 1 cm was noted on the medial aspect of her



left wrist. No other fresh injuries were found on her person. The absence of multiple injuries on PW1, by itself, is not decisive and has to be appreciated in the backdrop of the manner in which the incident is alleged to have occurred. Also, the accused was medically examined vide MLC Ex. PW6/A. The said MLC records superficial abrasions on the face of the accused, including on the forehead, near the nose, jaw, neck and inside the upper lip. PW1 has consistently stated that she attempted to resist the assault during which attempt, she has also scratched the face of the accused with her nails. The presence of multiple superficial injuries on the face of the accused, for which no explanation has been offered by the accused, lends assurance to the version of PW1 that she did resist the assault.

16. It is true that PW10, the doctor, deposed that no signs of forcible sexual intercourse were observed on PW1. Offence of



rape is not a medical condition. It is not a diagnosis to be made by a medical expert, who examines the victim. Rape is an offence defined under Section 375 IPC, and it is a legal term. It is for the court to decide on the basis of the materials on record, whether the act of the accused constitutes rape as defined in Section 375 IPC. (See **Kunjumon Vs. State of Kerala, 2011 (4) KHC 72 : 2011 (2) KLD 555**)

17. Further, it is well settled that absence of injuries on the body of the prosecutrix does not *ipso facto* lead to an inference of consent. PW1 has consistently stated that she was threatened with death, gagged and restrained. Her testimony has not been discredited any way. Therefore, absence of injuries on PW1 does not detract from the prosecution case. The FSL reports (Ex. PW11/H-1 and PW11/H-2) conclusively establish that the DNA profile of the accused was detected in the vaginal, cervical and vulval swabs of PW1. The accused has not



disputed the FSL result and has admitted physical relation with PW1, taking the plea that the same was consensual. Thus, the factum of sexual intercourse stands established beyond dispute. The only issue that survives is whether the act was consensual or forcible.

18. Much emphasis was laid by the defence on the alleged acquaintance between PW1 and the accused. PW1 deposed that she had come to Delhi only 10 to 12 days prior to the incident and that the accused had accompanied her husband on one occasion and had visited the house in the morning on the date of the incident. Mere acquaintance or casual interaction cannot be equated with consent for sexual intercourse. There is no evidence on record to show any prior intimacy or romantic relationship between PW1 and the accused. Significantly, PW1's conduct immediately thereafter of, rushing to her family members and lodging a complaint with



the police on the very same day—clearly establishes that the act was not consensual.

- 19.** Also, it is important to note that the plea of false implication at the instance of PW2 and his wife also does not inspire confidence. If there had been such animosity, the accused would not have continued visiting the house of PW2 or accompanying his family members as revealed from the materials on record. The conduct of the accused is inconsistent with the defence adopted.
- 20.** The defence sought to establish consent by examining DW1, who claimed to have seen PW1 and the accused together on a few occasions. Though PW1 was alleged to have written letters and made calls to the accused, there are no materials to substantiate the same.
- 21.** Hence, I find no infirmity in the impugned judgement, calling for an interference by this Court.



22. In the result, the appeal *sans* merit is dismissed.

Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JANUARY 21, 2026/RN