



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

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+ **CRL.A. 665/2017**

PRADEEP KUMARAppellant
Through: Mr. K. Singhal, Mr. Prasanna and Ms.
Avantika Shankar, Advocates

versus

STATE NCT OF DELHIRespondent
Through: Mr. Pradeep Gahalot, APP for State
with WSI Surbhi Aggarwal, P.S.
Punjabi Bagh
Mr. Rohan J. Alva, Advocate
(Amicus Curiae Pro Bono) for victim
with Mr. Anant Sanghi, Advocate

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of the present appeal filed under Section 374 Cr.P.C., the appellant seeks to assail the judgment of conviction dated 26.05.2017 and order on sentence dated 31.05.2017 passed by the learned ASJ-01, SFTC, West District, Tis Hazari Courts, New Delhi, in Sessions Case No. 62/2014 arising out of FIR No. 163/2014 registered under Sections 376/342/506 IPC at P.S. Punjabi Bagh.

Vide the impugned order on sentence, the appellant was sentenced to 7 years RI along with fine of Rs.20,000/-, in default whereof he would



undergo 1 month SI, for the offence under Section 376 IPC; 6 months RI along with fine of Rs.1,000/-, in default whereof he would undergo 7 days SI, for the offence under Section 344 IPC; and 3 years RI for the offence under Section 506 IPC. All the sentences were directed to run concurrently and the benefit under Section 428 Cr.P.C. was granted to the appellant.

2. The co-convict, namely *Lalita Devi*, had preferred a separate criminal appeal bearing CRL.A. No. 724/2017, which was abated and disposed of by this Court vide order dated 29.08.2025 on a verification report confirming the factum of her death being filed by the State.

3. The facts of the prosecution case, as recorded by the Trial Court, are reproduced hereunder:-

“1. Accused Pradeep Kumar & Lalita Devi have been charge sheeted by Police Station Punjabi Bagh, Delhi for the offences under sections 344, 376 and 506 of the Indian Penal Code (hereinafter referred to as the IPC) on the allegations that prosecutrix was married to Naval Kishore, who is brother in law of the accused Pradeep and son of accused Lalita Devi. Prosecutrix was residing with her husband at her matrimonial home. There she was subjected to cruelty by her husband and mother in law, therefore, she went to live with her parents. It is also the case of the prosecution that Prosecutrix had earlier filed a complaint against present accused Pradeep, on which FIR no. 349/15 was registered. During the pendency of that case, Prosecutrix was residing with her parents but lateron, on the assurance given by her mother in law ie present accused Lalita Devi, Prosecutrix was brought to her matrimonial home & she was pressurized to give consent for releasing the accused Pradeep on bail in FIR no. 349/13. Accordingly, accused was admitted to bail and after release on bail in October 2013, accused again came to her matrimonial home and started mis-behaving with the Prosecutrix. When she complained the matter to her mother in law ie accused Lalita Devi, both accused persons decided to teach a lesson to the Prosecutrix and thereby took the Prosecutrix to a jhuggi in Shakur Basti, where she was repeatedly raped by accused Pradeep and after leaving the Prosecutrix there, accused Lalita Devi came back to her house. Prosecutrix was kept there for the period of two months and one day, finding opportunity, to run away from the jhuggi, Prosecutrix came to her uncle’s house and thereafter criminal complaint was lodged by the Prosecutrix as police did not take



any action on her complaint and thereafter present FIR no 163/14 was lodged. After completion of the investigation, charge sheet was submitted in the court.

2. After hearing arguments, vide order dated 09/01/2015, accused Pradeep Kumar was charged for offence under sections 344/ 376/506 of the IPC & accused Lalita Devi was charged for the offence under section 376 read with section 109 IPC. Accused pleaded not guilty and claimed trial.”

4. The prosecution examined 8 witnesses in support of its case. The prosecutrix herself was examined as PW-1. Her aunt, who had accompanied her to the hospital at the time of her medical examination, was examined as PW-5. PW-8/SI Sandeep Bishnoi deposed as to registration of the present case and PW-4/Ct. Shaminder Maan handed over the *tehrir* and copy of the FIR to the I.O. The I.O. of the case, PW-7/SI Anita, deposed as to various aspects of the investigation carried out by her. PW-6/ASI Dalbir Singh and PW-2/Ct. Balwant Singh joined the investigation along with the I.O. and deposed as to the arrest and search of the appellant. PW-3/Ct. Nitesh Kumar took the exhibits of the present case from the MHCM and deposited the same at FSL, Rohini.

The statements of ASI Parshadi Lal; Dr. Gurdeep; Dr. Bijender Das; Dr. Smita; Dr. Manoj Dhingra; Dr. Rachita; Ms. Ekta Gauba, learned MM; and Mr. Indresh Kumar Mishra were admitted by the learned counsel for the accused under Section 294 Cr.P.C.

5. PW-1, the prosecutrix, deposed that she got married to one Nawal Kishore on 22.04.2003 and was residing at her matrimonial home at Mangol Puri, Delhi. Co-convict/Lalita Devi is her mother-in-law and the appellant/Pradeep Kumar is the husband of her sister-in-law. She stated that she had earlier lodged a complaint against the appellant, resulting in



registration of FIR No. 349/2013 under Section 376 IPC at P.S *Punjabi Bagh*, alleging rape by him from December 2012 for about 9-10 months. In October 2013, the appellant was released on bail, after she was taken to the Court and made to depose in his favour under threat. She stated that she was brought back to her matrimonial home on assurances by co-convict/*Lalita Devi*, but was thereafter pressurised and threatened to secure the appellant's release on bail. After his release, the appellant started visiting the matrimonial home and misbehaving with her, and upon her objection, co-convict/*Lalita Devi* suggested that she be taken to the appellant's quarter at *Shakur Basti*. On 13.11.2013, she was taken there and left with the appellant, who, assaulted her, threatened her with harm to her children, forcibly raped her, and confined her for about 1-2 months. She further deposed that she became pregnant, and on 14.01.2014, when the appellant was inside the room, she escaped from the quarter and went to her uncle *Hira Lal*'s house at *Raghubir Nagar*. After police at P.S. *Punjabi Bagh* declined to act on her complaint, she filed a complaint in Court, leading to registration of the present FIR. She proved her statement under Section 164 Cr.P.C. as Ex. PW-1/A, her MLC prepared after medical examination conducted at *Sanjay Gandhi Memorial Hospital* as Ex. PW-1/B.

In her cross-examination, the complainant deposed that she had not herself written the complaint lodged against the appellant, the same having been got written by *Hira Lal*, her uncle, through *Deepak*. She stated that she was taken by the appellant and co-convict/*Lalita Devi* to *Shakur Basti* in October 2013, though she could not recall the exact date or the address of the place of confinement, and asserted that she remained confined till



14.01.2014, when she escaped. She clarified that she was confined in a *jhuggi* adjacent to a quarter of *kacchi* (temporary) construction, with no other person residing there, that the appellant used to stay with her, leave daily to mark his attendance at his office and return, and that no one met her during this period. She admitted being visible in photographs exhibited as Ex. P-1 to Ex. P-4, which were taken at *Haridwar*, though she denied having gone with the appellant of her own consent. She acknowledged that her signatures appeared on document Ex. PW-1/G but denied having authored it or knowing its contents. She further deposed regarding the physical structure of the *jhuggi*, the absence of windows, the presence of a removable '*chaddar*' roof, and asserted that she could not escape due to threats and the door being locked by the appellant. She admitted prior engagement with the legal process in an earlier case against the appellant, including legal and police assistance and awareness of Court procedure, but denied the suggestions that she had stayed with the appellant voluntarily, had consensual relations, had falsely implicated the appellant, or that the appellant and co-convict/*Lalita Devi* had neither confined nor assaulted her.

6. The prosecutrix's aunt, the wife of Mr. *Hira Lal*, was examined as PW-5. She stated that the prosecutrix is the daughter of her elder brother-in-law (*jeth*). On 08.03.2014, she had taken the prosecutrix to SGM Hospital for her medical examination, along with one lady police official.

In her cross-examination, she stated that the prosecutrix had visited her house in January 2014 and then stayed for 4 months; however, the prosecutrix did not disclose anything about the present case to her. She further stated that the prosecutrix did not disclose her reason for staying at



the witness' house for 4 months. She denied the suggestion that she, her husband, or her children, had gone to any police station or any Court with the prosecutrix.

7. The appellant's statement under Section 313 Cr.P.C. was recorded, wherein he denied all the allegations put to him and claimed false implication. No defence evidence was led.

8. Learned counsel for the appellant submits that the allegations in the present case were also raised by the prosecutrix in the trial arising out of FIR No. 349/2013, wherein the Trial Court, after due consideration of the same, found the prosecution case to be palpably false, the prosecutrix as not credible and as someone who had misused the process of the law, and duly acquitted the appellant of all charges. He further points out that the Coordinate Bench of this Court granted the appellant bail in case FIR No. 349/2013 on the basis of an affidavit filed by the prosecutrix stating that the physical relations established between her and the appellant were consensual and that she had filed the complaint under pressure from family members¹. It is further submitted that despite claiming to have been confined in a quarter in *Shakur Basti* for over two months, the prosecutrix could not provide details of the same. While the prosecutrix has stated that she was beaten by the appellant on several occasions, the same is not corroborated by her MLC; and for that matter, neither the medical evidence on record nor the forensic evidence supports the prosecution case. The prosecutrix has admitted the photographs exhibited as P-1 to P-4 and that they were taken at *Haridwar*; and the said photos clearly show her happy and content with the

¹ Order dated 11.10.2013 in Bail Application No. 1911/2013.



appellant. Furthermore, the said photos bear the date 16.11.2013, at which time the prosecutrix was allegedly captive in the *jhuggi* at *Shakur Basti*. The prosecutrix further admitted her signature on the letter exhibited as Ex. PW-1/G, which reflects that the allegations of rape put forth by her are false.

9. Learned APP for the State and learned *Amicus Curiae* appointed to represent the victim have opposed the contentions put forth on behalf of the appellant. Learned *Amicus* has submitted that the appellant has taken two different defences, insomuch as while he has taken the defence of complete denial in his statement under Section 313 Cr.P.C., stating that no incident as alleged took place at all, the suggestions put to the prosecutrix during her cross-examination seek to establish a case of consent. He has further contended that the mandatory presumption as to the absence of consent under Section 114A of the Evidence Act is squarely attracted.

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

11. A perusal of the record reveals a fundamental contradiction that strikes at the root of the prosecution case. The prosecutrix has alleged that she was kept in illegal confinement in a *jhuggi* at *Shakur Basti* for a continuous period from 13.11.2013 to 14.01.2014. This version is, however, belied by the photographic evidence on record. These photographs, the presence of the prosecutrix in which has been admitted by her, bear the date 16.11.2013 and indicate her presence in *Haridwar* during the very period she claims to have been confined. It is difficult to reconcile the allegation of forced captivity with the undisputed fact of her travel to and presence in another city.



12. It is also significant to note the conduct of the prosecutrix in the context of the prior litigation between the parties. The present allegations pertain to a period when the appellant was facing trial in connection with FIR No. 349/2013 lodged by the prosecutrix and was out on bail. It is noted that despite the second incident allegedly occurring during the pendency of the first trial, no steps were taken by the prosecutrix to seek the cancellation of the appellant's bail.

13. The record also clearly reflects that one of the factors for grant of bail to the appellant in proceedings arising out of FIR No. 349/2013 was the affidavit filed by the prosecutrix stating that physical relations established between her and the appellant were consensual and that she had filed the complaint under pressure from family members. She has claimed in her Court deposition that the same was given by her under threat to her life. It is, however, worthwhile to point out that the appellant was ultimately acquitted in the aforesaid proceedings by the Trial Court vide a detailed judgment dated 09.01.2015.

14. It is also worth mentioning that it is an admitted fact that the prosecutrix's complaint in the present case was drafted by her cousin, *Deepak*, at the instance of her uncle, *Hira Lal*, which further brings into doubt the veracity of the allegations put forth therein.

15. Insofar as the forensic evidence is concerned, the same does not support the prosecution case, as the FSL report has remained inconclusive. The same clearly reflects that DNA profile could not be generated from the blood sample of the appellant as well as from the preserved foetus, and therefore no question of a DNA match arises.



16. The defence put forth by the appellant requires some scrutiny in light of the contention raised by the learned *Amicus Curiae* representing the victim that the appellant has raised two separate defences. While the appellant in his Section 313 statement has adopted a stand of complete denial, stating that nothing as alleged had happened, a case of consent has been sought to be established later on, as evidenced by the suggestions given to the prosecutrix in her cross-examination, as well as by the arguments agitated before this Court. Notwithstanding this shift in defence however, it is well settled that the primary burden remains on the prosecution to establish the foundational facts of the case, which in the present instance, are shrouded in doubt. While the Court is cognizant of the statutory presumption under Section 114A of the Evidence Act, the same cannot be held to be a substitute for the requirement of the prosecution to prove its case beyond reasonable doubt.

17. Considering all of the above, this Court has no hesitation in holding that the allegations levelled by the prosecutrix are not credible, that the prosecution has failed to prove its case beyond reasonable doubt, and that the benefit of the said doubt must be extended to the appellant.

18. Consequently, the appellant is acquitted of all charges. The judgement of conviction and order on sentence are set aside.

19. The personal bond furnished by the appellant stands cancelled and his surety is discharged.

20. Before parting, this Court places on record its appreciation for Mr. Rohan J. Alva, Advocate, the learned *Amicus Curiae* appointed to represent the victim, for the valuable assistance rendered by him.



21. A copy of this judgment be communicated to the Trial Court as well as the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

JANUARY 12, 2025

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