



2025:DHC:8856



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

% Reserved on : 15.09.2025
Pronounced on : 06.10.2025

+ **CRL.A. 693/2016**

RAHUL TOMAR

.....Appellant

Through: Ms. Rakhi Dubey, Advocate
(DHCLSC) with Ms. Arpita
Srivastava, Advocate with appellant
in person

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State
with SI Manisha.
Ms. Gayatri Nandwani, Ms. Mudita
Sharda and Mr. Adrian Abbi,
Advocates for victim

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 374(2) Cr.P.C. seeking setting aside of the impugned judgment dated 08.04.2016 and the order on sentence dated 19.04.2016 passed by the learned ASJ, Special Fast Track Court-01, West, Tis Hazari Courts, Delhi in SC No. 108/2013, arising out of FIR No. 58/2013 registered under Section 376 IPC at P.S. Nihal Vihar.

2. The FIR came to be recorded on the statement of the victim with the allegation that in the first week of November 2012, the accused had followed her when she was returning after filling water, entered her house,



and thereafter committed rape upon her. On conclusion of investigation, the chargesheet was filed under Sections 376/506 IPC, and charges were framed on 04.05.2013 under the aforesaid sections. The order on charge was subsequently modified to reflect the correct address of the victim. The prosecution examined 11 witnesses in support of its case, the primary witness being the prosecutrix herself. The cousin of the prosecutrix was examined as PW-3, the doctor who had examined the prosecutrix was examined as PW-5, and the I.O. of the case, SI *Koyal*, was examined as PW-11. The appellant also examined 3 witnesses in his defence.

3. The prosecutrix, while appearing as PW-1, deposed that in the year 2011 she was residing with her cousin sister (daughter of her paternal uncle), who was a vegetable seller. On 26.08.2012, she, along with her sister, had gone to attend the birthday party of a friend of her sister, where she met the appellant for the first time. Two to three days later, when she went with her sister's toddler son to Mangal Bazar to fetch water from the common tap, she again met the appellant, who asked her for water. She did not respond, whereupon the appellant started following her. When she reached her house, the appellant also entered, bolted the door from within, removed her clothes and, after forcibly pushing her onto the floor, committed rape upon her. She raised an alarm, but only her nephew, aged about 2 ½ years, was present in the house at the time. Before leaving, the appellant threatened her not to disclose the incident to anyone.

After about three months, the sister of the prosecutrix became suspicious, whereupon the prosecutrix narrated the entire incident to her. A pregnancy test was conducted, which came out positive. Thereafter, the prosecutrix went to the police station, where her statement (Ex. PW-1/A)



was recorded. Her medical examination was also conducted. She further deposed that on 15.06.2013, she gave birth to a female child. The prosecutrix stated that the appellant had absconded after registration of the FIR, and that by making her an unmarried mother, the appellant had spoilt her life.

4. In cross-examination, she stated that though her parents became aware of the incident, they did not come to Delhi. There was some ambiguity as to where the offence had been committed, whereupon a Court question was also put to the prosecutrix, in response to which she clarified that the incident of rape had occurred while she was residing at XXXX address in Nihal Vihar. She further stated that since her coming to Delhi, she had been residing with her sister. She deposed that she was aware that the appellant was a driver by profession, as told to her by him. She admitted that after the birthday party and prior to the commission of rape, the appellant had met her two to three times. She also admitted that after the incident, she had visited an NGO by the name of *Sampurn Gharelo Kamgar Sarvakashan Avam Uthan Samiti*. After the incident, she was employed as a maid in a house at Punjabi Bagh and used to travel there by bus. She volunteered that the appellant was still threatening her through another person whose name she did not know, but admitted that she had not lodged any complaint regarding the subsequent threats. She admitted it to be correct that the appellant used to take people from the aforesaid NGO in his auto; however, she denied the suggestion that, due to differences arising over payment of money between the said NGO and the appellant, he had been falsely implicated by her. She also denied the suggestion that the appellant had never entered her house or committed the offence of rape upon her.



5. The cousin sister was examined as PW-3. She deposed that on 26.08.2012, the prosecutrix had gone along with her to attend a birthday party, where the appellant was also present, and both of them had talked to each other. In February 2013, she noticed that the prosecutrix had gained weight and, upon questioning her, the prosecutrix disclosed that she had missed her periods for the last 2–3 months. Thereafter, the prosecutrix narrated the incident of rape committed by the appellant. PW-3 purchased a pregnancy test kit and conducted the test, which came out positive. She further stated that when they confronted the appellant, he initially denied the allegation but later admitted that the child was his. She accompanied the prosecutrix at the time of lodging the complaint, and her statement was also recorded. The prosecutrix gave birth to a female child on 15.06.2013 at their house in Nihal Vihar. In cross-examination, she admitted that she used to be a member of *Sampurn Gharelo Kamgar Sarvakashan Avam Uthan Samiti*, but had surrendered her membership about two years ago.

6. The medical examination of the prosecutrix was conducted on 22.02.2013. She subsequently delivered a female child, and thereafter the blood samples of the prosecutrix, the child, and the appellant were collected and sent for DNA analysis. The FSL report dated 08.08.2013 (Ex. PW-11/D) conclusively established that the appellant is the biological father of the child. Notably, the child did not survive.

7. The learned counsel for the appellant has contended that there was delay in reporting the incident, as though the offence is said to have been committed 2 to 3 days after 26.08.2012, the FIR came to be registered only after nearly six months, i.e., on 23.02.2013. It is further contended that there are no specific details regarding the date, time, and place of the incident, and



that the testimony of the prosecutrix is unreliable, having been given at the behest of the NGO. Further, the Trial Court failed to appreciate that the stand of appellant was established through the testimony of defence witnesses.

8. The contentions are contested by the learned APP for the State, duly supported by the learned counsel for the victim. It is submitted that the testimony of the prosecutrix is consistent and cogent regarding the appellant as well as the rape committed by him at her house. The learned APP emphasises that the testimony finds support in the aforesaid FSL report. He further submits that while during the prosecution evidence the defence of the appellant was that he had not entered the prosecutrix's house and established sexual relations, in his statement recorded under Section 313 Cr.P.C. he committed a volte-face and took up the defence that the sexual relations established were consensual.

9. It has been contended on behalf of the appellant that there is ambiguity with regard to the address at which the alleged offence was committed; however, a perusal of the record reveals that the prosecutrix, in her statements recorded both during investigation and at trial, has consistently stated that the offence was committed by the appellant at her house. She deposed that on the pretext of asking for water, he had followed her, entered the house, bolted the door from inside, and committed rape upon her.

10. The appellant's identity is not in dispute, as he was known to the prosecutrix from their having attended a birthday party together. While answering Question No. 4 at the time of recording his statement under Section 313 Cr.P.C., the appellant himself admitted to having attended the



said birthday party.

11. The contention regarding delay in reporting the incident, in the present facts where the FSL report connects the appellant with the female child delivered by the prosecutrix, is of little relevance. For the same reason, the contention about ambiguity in the date, time, and place of the incident also pales into insignificance. It is, however, noteworthy that the prosecutrix has stated that the incident of rape was committed by the appellant within two to three days after 26.08.2012, the date when she had met him for the first time.

12. As noted earlier, the charge was amended by the Trial Court to the extent of correcting the address of the prosecutrix. During the recording of her testimony, a Court question was put to her regarding the address where the incident had occurred, to which she replied that the offence had been committed when she was residing with her cousin sister at XXXX address in Nihal Vihar.

13. Learned counsel for the appellant has referred to the testimony of DW-1, contending that the prosecutrix, being a major, had entered into a relationship with the appellant of her own consent. DW-1/Ms. *Soni*, described herself as the landlady of house no. 18/12, Laxmi Park, and stated that the appellant was her tenant for more than four years. She deposed that the prosecutrix used to visit the appellant in his rented room and that the appellant introduced her as his friend. However, in cross-examination, she denied the suggestion that the prosecutrix used to visit the appellant in his rented room or that he had introduced her as his friend. The appellant is stated to have been arrested from house no. 11/12. The witness clarified that her address was house no. 18/12, and that she did not know who owned or



resided at house no. 11/12.

14. In this regard, DW-2, a grocery shop owner, stated that the appellant and the prosecutrix had come to his shop together. DW-3, a property dealer, also initially stated that the appellant and the prosecutrix had come to his office together; however, in his cross-examination, he later stated that it was wrong to suggest that the accused and the prosecutrix had visited his office. The testimonies of DW-1 and DW-3 are topsy-turvy. Even otherwise, these witnesses were examined in support of the defence taken by the appellant at the stage of recording of his statement under Section 313 Cr.P.C., namely, that the prosecutrix used to visit him and that the relations between them were consensual, however, no such suggestion was put either to the prosecutrix or to her cousin during their examination, making the said defence appear to be nothing but an afterthought.

15. The time gap stated by the prosecutrix between the birthday party on 26.08.2012 and the incident was only 2–3 days. The appellant himself admitted to having attended the said party on that date. This Court is of the considered view that the testimony of the prosecutrix, found to be credible and reliable and further corroborated by the concerned FSL report, leaves no ground to interfere with the impugned judgment of conviction.

16. The conviction and sentence of the appellant are upheld, and the present appeal is accordingly dismissed.

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



2025:DHC:8856



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

MANOJ KUMAR OHRI
(JUDGE)

OCTOBER 06, 2025

sn