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

Reserved on: 04th December, 2025

Date of Decision: 09th December, 2025

\+ **CRL.A. 228/2004**

JOGINDER .....Appellant

Through: Mr. S.S. Haider, Advocate along with Appellant in person.

versus

STATE (NCT OF DELHI) .....Respondent

Through: Mr. Mukesh Kumar, APP for State with Mr. Sunil Singh Rawat, Mr. Arsala Naik, Mr. Siddharth Goyal and Ms. Astha Dhingra, Advocates along with SI Aarti, PS-Delhi Cantt.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

1. The present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 is filed against judgment of conviction dated 21st February 2004 (hereinafter referred to as the *"impugned judgment"*) and against order on sentence dated 23rd February 2004 (hereinafter referred to as the *"impugned order on sentence"*) passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi (hereinafter referred to as the *"trial court"*) in Sessions Case bearing no. 290/2002, arising out of the FIR bearing no. 221/2002, registered at P.S. Delhi Cantt.

2. The appellant *vide* the impugned judgement was held guilty for the offence punishable under Section 376 of the Indian Penal Code, 1860

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(hereinafter referred to as the *"IPC"*). The appellant *vide* the impugned order on sentence was sentenced to undergo Rigorous Imprisonment for a period of 10 (ten) years under Section 376 IPC, along with a fine of Rs. 5,000/-, and in default to undergo Simple Imprisonment for a period of 05 (five) months.

3. The case of the prosecution, in brief, is that on 28th June 2002, the prosecutrix along with her husband Ramu approached PS Delhi Cantt and made her statement to SI Rajiv Kumar, which was duly recorded and on the basis of that statement the FIR was recorded. As per that statement on 27th June 2002, at about 02:45 pm in house no. 205 village *Jareda*, the appellant committed rape upon the prosecutrix. The prosecutrix was got medically examined. The appellant was arrested. The exhibits of the case were duly seized and were sent to FSL for examination.

3.1. Upon completion of Investigation, the chargesheet was filed under Section 376 IPC. Charge under Section 376 IPC was framed against the appellant, to which he pleaded not guilty and claimed trial. The prosecution, in order to prove its case, examined 10 witnesses. The statement of the appellant was recorded under Section 313 of the Cr.P.C, wherein the appellant denied the incriminating evidence, pleaded innocence, and claimed false implication. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

4. I have heard the learned counsel for the appellant and learned APP for the State and have examined the record.

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5. Learned counsel for the appellant has argued that the learned trial court has passed the impugned judgment on the basis of surmises and conjectures, which is contrary to the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution doubtful. It is further argued that the prosecutrix has lodged a false complaint against the appellant as there was enmity between the appellant and the husband of the prosecutrix. The absence of injuries on the person of prosecutrix makes the case of the prosecution doubtful. From the evidence on record, the prosecution has failed to prove its case beyond reasonable doubt against the appellant. On these grounds, it is prayed that the impugned judgment and order on sentence be set aside and the appellant be acquitted.

6. *Per contra*, learned APP for the State has argued that the learned trial court has passed the impugned judgment after considering the evidence on record. The evidence produced on behalf of the prosecution has proved the case beyond reasonable doubt against the appellant. The arguments of the appellant are without any merit, and hence, the appeal is liable to be dismissed.

7. PW-2 Dr. Rita Jindal, has medically examined the prosecutrix and proved the MLC of the prosecutrix as Ex PW2/A.

7.1. PW-3 is the prosecutrix and has deposed that she did not know the appellant and that she was seeing him for the first time. She did not remember the exact date, it was in summer season of 2002 that she was present in her house along with her brother Dinesh and her small child while her husband was away. At about 02:00 p.m., the appellant came to her house

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and raised the tone of television, and thereafter he inserted cloth in her mouth, took off his apparel, and committed rape with her. Before committing rape with her, the appellant sent her brother Dinesh to bring a packed of *Rajdarbar gutka*. At the time of incident, she was wearing petticoat and blouse only and that before committing rape the appellant had tied her hands. Her brother Dinesh had untied her hands and removed the cloth which had been inserted in her mouth by the appellant. At about 07:00–8:00 p.m., when her husband returned home, she narrated the facts to him and along with him she went to the concerned police station and lodged a report against the appellant which is Ex. PW3/A. She was got medically examined. The appellant belonged to the village of her husband and was known to her since before the incident.

In cross-examination on behalf of the appellant, the prosecutrix has denied the suggestion that her complaint Ex. PW 3/A was false or made at the instance of her husband or that she had been tutored or that there was enmity between the families. She had not washed her clothes after the incident. She had denied the suggestion that sexual intercourse if any was with her consent.

7.2. PW-4 Ramu is the husband of the prosecutrix and has deposed that the prosecutrix has narrated the alleged incident to him and he, along with her, went to the police station and the report was lodged against the appellant. The prosecutrix was medially examined. The appellant was also arrested.

7.3. PW-6 Dinesh is the brother of the prosecutrix and has deposed that when the appellant came to the house, the TV was already on, and the

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appellant sent him to purchase *Rajdarbar gutka*. He had returned because the shop was closed, and the appellant again sent him; when he refused, the appellant slapped him twice and again sent him, and thereafter he brought the packet. After taking the *gutka*, the appellant ran away and his sister was weeping.

8. It is a well-settled law that the appellant can be convicted on the sole testimony of the prosecutrix, if it inspires confidence, and no corroboration is required unless there are compelling reasons which necessitate insisting on corroboration of her statement. Minor contradictions should not be a ground for throwing out the testimony of the prosecutrix. In this respect, it is relevant to mention some of the findings of the Hon'ble Supreme Court which are as under:

In ***State of Himachal Pradesh V Manga Singh*, (2019) 16 SCC 759,** the Hon'ble Supreme Court held that:

> *"10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.*
>
> *11. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities*

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> *factor" does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court."*

Also, the Hon'ble Supreme Court in ***Deepak Kumar Sahu V State of Chhattisgarh***, (2025) SCC OnLine SC 1610, held that:

> *"5.5.2. This Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy evidence, the conviction could base solely on the evidence of the prosecutrix. It was further observed that as a general rule there is no reason to insist on the corroboration accept in certain cases, it was stated.*
> *5.5.3. The medical evidence may not be available in which circumstance, solitary testimony of the prosecutrix could be sufficient to base the conviction.*
> *"The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix."*

9. The prosecutrix, in her testimony, fully supported the case of the prosecution and gave a consistent account of the alleged incident of sexual

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assault committed upon her by the appellant. Her testimony also stands corroborated by her statement, which is Ex. PW 3/A, on the basis of which the FIR was registered. Furthermore, the FSL reports, which are Ex. PW9/D and Ex. PW9/E, also lend corroboration to the prosecution case. As per the FSL reports, the semen stains of the 'AB' group were detected on the petticoat (Ex. P1) of the prosecutrix, the cloth piece (Ex. P2) with which the appellant had cleared his private part and his underwear (Ex. P3). PW-6 Dinesh, the brother of the prosecutrix, also supported the case of the prosecution as to the presence of the appellant at the alleged place of incident.

In cross-examination of the prosecutrix, no such material has come on record that would show that the prosecutrix has lodged a false complaint against the appellant at the instance of her husband (PW 4) and also that she had sexual intercourse with her consent with the appellant. The appellant has also failed to show any such material contradictions in the testimony of the prosecutrix that would affect the case of the prosecution on merits. The material facts, as deposed by the prosecutrix, remained unchallenged and un-controverted in her cross examination. There are no good and sufficient reasons to discard the evidence of the prosecutrix.

10. The learned counsel for the appellant had also argued that as there were no injuries present, as per the MLC Ex. PW2/A, on the body of the prosecutrix, so the case of the prosecution becomes doubtful. This contention has no merit, for the reason that the presence of injuries is not a *sine qua non* for determining whether the offence of rape has been

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committed. It has been observed by the Hon'ble Supreme Court in ***Lalliram & Anr. V State of M.P., (2008) 10 SCC 69*** that:

> *"11. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa [(1977) 3 SCC 41: 1977 SCC (Cri) 447] where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration."*

11. In view of the analysis above, this Court finds that the evidence of the prosecutrix is cogent, consistent and reliable. In the absence of any cogent reason to disbelieve her version, this Court finds no sufficient reason to discard the evidence of the prosecutrix. It stands proved beyond reasonable doubt that the appellant committed rape upon the prosecutrix. Therefore, the conviction recorded by the trial court does not call for any interference and is affirmed.

12. The appellant has, however, prayed for modification of the sentence, seeking its reduction to the period already undergone. In support of his plea, the appellant submits that he is now 48 years of age. In the family he has an ailing wife who is suffering from mental disease and two unmarried children. He is the sole earning member of the family and is doing the work of a labourer. In case he is sent to jail, his entire family will be ruined. The fine has already been deposited by the appellant.

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13. As per the Nominal Roll, the appellant has already undergone sentence of approximately 05 years and 02 months (including the remission earned by him) out of the total period of 10 years of Rigorous Imprisonment and his conduct in jail has remained satisfactory. It is further noted that the appellant has not misused the liberty granted to him during the pendency of the appeal. The present case relates to an incident which had occurred 23 years ago, while the impugned judgment itself was delivered nearly 21 years ago. The prosecutrix has also appeared in person in the court and has submitted that she does not wish to pursue the case, as the appellant has already spent more than 04 years in jail.

14. The Hon'ble Supreme Court in ***Mohammad Giasuddin vs State of Andhra Pradesh (1977) 3 SCC 287*** has observed as under:

> *"9. It is thus plain that crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual, and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defence. We, therefore, consider a therapeutic, rather than an "in terrorem" outlook, should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind.*
> *16. … „A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior*

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> *criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These factors have to be taken into account by the Court in deciding upon the appropriate sentence. [As observed in Santa Singh v. State of Punjab, (1976) 4 SCC 190 at p. 191: 1976 SCC (Cri) 546] '"*

Similarly, in ***Pramod Kumar Mishra v. State of Uttar Pradesh, 2023 SCC Online SC 1104,*** the Hon'ble Supreme Court while relying on the judgment of Mohammad Giasuddin (supra) reiterated the importance of considering mitigating factors while awarding sentence, particularly in cases involving long pending prosecutions has held as under:

> "*10. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration."*

15. After considering the facts of the case and the aforesaid mitigating circumstances, this Court is of the opinion that this is a fit case for modifying the impugned order on sentence. Accordingly, while maintaining the conviction of the appellant, the substantive sentence of imprisonment of the appellant is modified to the period already undergone by him in jail. This modification of sentence is on account of the mitigating circumstances

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noticed above and it does not, in any manner, impact the seriousness of the offence for which the appellant was convicted.

16. The appeal is partly allowed in the above terms. All pending applications, if any, also stand disposed of.

17. A Copy of this judgment be communicated forthwith to the concerned Trial Court as well as to the concerned Jail Superintendent for information.

RAJNEESH KUMAR GUPTA
JUDGE

DECEMBER 09, 2025/*v/abk*

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