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

Reserved on: 26th November,2025

Date of Decision: 4th December, 2025

\+ **CRL.A. 1436/2011**

RAJESH @ RAJU .....Appellant

Through: Mr. Nagender Deswal and Mr. Rishi Raj Deswal, Advocates along with Appellant in person.

versus

STATE .....Respondent

Through: Mr. Mukesh Kumar, APP with Mr. Sunil Singh Rawat and Mr. Arsalan Naik, Advocates for State.
SI Umair, P.S. Kanjhawala.
Ms. Astha (DHCLSC) with Ms.Megha Singh, Advocate for Prosecutrix.

CORAM:
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

JUDGMENT

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1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the *"Cr.P.C"*) is filed against judgment of conviction dated 10th May, 2011 (hereinafter referred to as the *"impugned judgment"*) and against order on sentence dated 13th May, 2011 (hereinafter referred to as the *"impugned order on sentence"*) passed by the learned ASJ, Rohini Courts, Delhi (hereinafter referred to as the *"Trial Court"*) in Sessions Case bearing no. 12/2010 arising out of the FIR bearing no. 161/2009, registered at P.S. Kanjhawala, Delhi.

2. The appellant *vide* the impugned judgement was held guilty for committing the offence punishable under Sections 376 of the Indian Penal Code, 1860 (hereinafter referred to as the *"IPC").* The appellant *vide* the impugned order on sentence was sentenced to undergo Rigorous Imprisonment for a period of 07 years under Section 376(1) IPC alongwith a fine of Rs. 1,000/- and in default of payment of fine, the appellant was sentenced to undergo Simple Imprisonment for a period of 03 months.

3. The case of the prosecution, in brief, is that on 11th September, 2009 at about 1:00 AM, the prosecutrix had gone to toilet at her house and at that time, the appellant entered in the bathroom and committed rape upon the prosecutrix. On the raising of the alarm of the prosecutrix, the brother of the prosecutrix namely, Praveen came there and apprehended the appellant.

On receiving the information as to the incident, the police went to the spot and the appellant was arrested. Police recorded statement of prosecutrix, she was got medically examined and her statement under section 164 Cr.P.C was got recorded. The exhibits of the case were sent to FSL for examination.

4. Upon completion of Investigation, the chargesheet was filed under Section 376/506 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 12 witnesses. The statement of the appellant was recorded under Section 313 of the Cr.P.C, wherein the appellant denied the incriminating evidences, pleaded innocence, and claimed false implication. The appellant has also examined two witnesses in his defence. The trial resulted in conviction, as aforesaid. Being aggrieved and dissatisfied, the present appeal has been preferred by the appellant.

5. I have heard the learned counsel for the Appellant and learned APP for the State and the learned Counsel for the prosecutrix. I have examined the record.

6. Learned counsel for the appellant has argued that the trial court has passed the impugned judgment on the basis of surmises and conjectures and is against the facts of the case. There are material contradictions in the testimonies of the prosecution witnesses which make the case of the prosecution highly doubtful. The family of the prosecutrix was against the relationship between the prosecutrix and the appellant and on account of this enmity, the prosecutrix was forced to file a false complaint against the appellant. From the evidence placed 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 be set aside and the appellant be acquitted.

On the other hand, learned APP for the State and the learned counsel for the Prosecutrix have 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. The prosecutrix has been examined as PW-1, and she had deposed that on 11th September, 2009, she had gone to toilet to urinate. There was no door of the urinal. The appellant entered the bathroom and pressed her mouth and led her on the floor of the bathroom and told her that if she would raise alarm, he would kill her. Thereafter, he committed rape on her. When he removed his hand from her mouth, she raised alarm. Her brother namely,

Praveen came there and caught the appellant. Police came at the spot and police arrested the appellant. The statement of the prosecutrix was recorded by the police, which is Ex. PW-1/A. Thereafter, she was taken to the Hospital, where she was medically examined. She has proved her statement recorded under Section 164 Cr.P.C, as Ex. PW-12/B.

In cross-examination on behalf of the appellant, PW-1 deposed that she had known the accused for many years as he was residing in her neighbourhood. She has denied the suggestion that she used to talk to the appellant for hours on his mobile phone and has written letters to him. She also denied the suggestion that on 10th September, 2009, she went to his house, knocked his door and called him at 12:45 AM and that her cousin brother-Praveen saw her alongwith the accused in the bathroom and gave her beatings. She also denied that she used to have sex with the appellant of her own free will and that her age was above 18 years.

PW-2 Sh. V.V. Gautam, Sub Registrar, Birth and Death, MCD Office, has proved the relevant birth records of the prosecutrix as Ex. PW-2/A and PW-2/B. As per the birth records, the date of birth of the prosecutrix is 12th October, 1994.

PW-3 Smt. Shiksha is the mother of the prosecutrix has deposed that the prosecutrix is aged 14 years and has supported the case of the prosecution. In cross examination, PW3 had denied the suggestion that the prosecutrix was more than 16 years of age on the date of incident.

PW-4 Praveen Kumar deposed that on the night intervening of 10th/11th September, 2009, he came downstairs for urinating. He heard the alarm of prosecutrix. She was in the toilet. The appellant came out of the toilet and started running and he apprehended him.

PW-7 Dr. Ish Kumar Midha proved the MLC of the prosecutrix as Ex.PW-7/A.

PW-11 Dr. Megha Khare from the gynaecology department has examined the prosecutrix and has proved her examination report on MLC Ex. PW-7/A.

8. It is the case of the prosecution that the prosecutrix was below 16 years of age on the date of the alleged incident. However, learned counsel for the appellant has argued that the age of the prosecutrix was above 18 years on the date of alleged incident. The prosecutrix, when examined in the court on 26th February, 2010, has deposed her age about 15 years. In her statement recorded under Section 164 Cr.P.C recorded on 14th September, 2009, which is PW-12/B, she has deposed her age as 14 years. PW-3 who is the mother of the prosecutrix has also testified that the prosecutrix was aged 14 years. The birth records, which are Ex. PW-2/A and PW-2/B, show the date of birth of the prosecutrix as 12th October, 1994. Nothing has come on record from the cross-examination of these witnesses which would show that the prosecutrix is aged more than 16 years on the date of alleged incident. From these evidences on record, it is proved that prosecutrix was aged below 16 years on the date of the alleged incident.

9. 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 has been held by the Hon'ble Supreme Court *in* ***Deepak Kumar Sahu V State of Chhattisgarh***, (2025) SCC OnLine SC

1610 as follows:

> *"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."*

10. The prosecutrix in her testimony supported the case of the prosecution and gave a consistent account of the alleged incident of sexual assault. The testimony of the prosecutrix is also corroborated by her statement recorded under Section 164 Cr.P.C which is Ex. PW-12/B and also by her statement, which is Ex. PW-1/A and on the basis of which the FIR has been registered. Moreover, the MLC of the prosecutrix which is Ex. PW-7/A, also corroborates the case of the prosecution as her hymen was found torn. FSL report which is Ex. Px also shows the presence of human semen on the vaginal swab and perineal swab of the prosecutrix.

In cross-examination, the appellant has taken the plea that the prosecutrix used to have sex with the appellant of her own free will. This defence is without any merits because the consent of the prosecutrix is immaterial as she was below 16 years of age on the date of alleged incident.

11. The learned counsel for the appellant had also argued that there were no injuries present as per the MLC Ex. PW-7/A on the body of the prosecutrix. As per the said MLC, there was no evidence of fresh external injury at the time of examination. 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 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."*

12. 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 on the prosecutrix. Therefore, the

conviction recorded by the trial Court does not call for any interference and is affirmed.

13. The appellant has, however prayed for modification of the sentence, seeking reduction to the period already undergone. In support of his plea, the appellant submitted that he is now aged about 36 years and has a wife and two minor children. He is the sole earning member of his family, and in case he is sent to jail, his incarceration would cause grave hardship to his entire family.

As per the Nominal Roll, the appellant has already undergone sentence of approximately 05 years and 05 months (including the remission earned by him) out of the total period of 07 years of 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 fine has already been deposited by the appellant.

The present case relates to an incident which had occurred 16 years ago, while the impugned judgment itself was delivered nearly 14 years ago. Undergoing 07 years of rigorous imprisonment as awarded, at this distant point of time, would be too harsh.

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 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] '"

14. After considering all the facts and circumstances of the case as well as the mitigating circumstances and the law as noted above, 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 noticed above and it does not, in any

manner, impact the seriousness of the offence for which the appellant was convicted.

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

16. A Copy of this judgment be communicated forthwith to the concerned trial Court as well as to the concerned Jail Superintendent for necessary information.

RAJNEESH KUMAR GUPTA
JUDGE

DECEMBER 4, 2025/*nd*/*ik*