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

% ***Date of Decision: 20th March, 2025***

\+ **CRL.A. 242/2023 & CRL.M.(BAIL) 2172/2024**

NATHU .....Appellant

Through: Ms. Sunita Arora, Adv.

versus

STATE .....Respondent

Through: Mr. Sunil Kumar Gautam, APP for the State with SI Ramanoj, PS Nangloi, Delhi.
Ms. Astha, Adv. (DHCLSC) with Ms. Megha Singh, Adv. for the prosecutrix.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present appeal is filed challenging the judgment dated 23.12.2022 (hereafter '**the impugned judgment**') and order on sentence dated 28.01.2023 (hereafter '**the impugned order on sentence**') passed by the learned Additional Sessions Judge (FTSC) RC-01, Tis Hazari Court, Delhi in SC No.216/2018.

2. By the impugned judgment, the appellant was convicted under Sections 376(2)(n)/506 of the Indian Penal Code, 1860 ('**IPC**'). By the impugned order on sentence, the appellant was sentenced to undergo rigorous imprisonment for a period of ten years for the offence punishable under Section 376(2)(n) of the

IPC along with fine of ₹10,000/-, and in default of payment of fine to further undergo simple imprisonment for a period of two months. The appellant, for the offence punishable under Section 506 of the IPC, was sentenced to undergo one year of simple imprisonment.

Brief facts

3. Briefly stated, the present case arises out of a complaint filed by one – Ms. H/prosecutrix, who alleged that the accused/appellant, residing in the same locality as the complainant, had subjected her to repeated acts of sexual assault. She alleged that the accused used to call her to his house under the pretext of playing the board game Ludo. During these visits, he allegedly engaged in non-consensual sexual acts with her. The complainant stated that whenever she protested or resisted his advances, the accused would scold her and manipulate her into silence by telling her not to disclose the matter to anyone, warning her that she would face social stigma and humiliation if the incidents came to light.

4. The complainant further alleged that approximately six months prior to the registration of the FIR, the accused once again invited her over to play Ludo and forcibly raped her. She alleged that such incidents of sexual assault occurred on multiple occasions — about four to five times in total. The last incident, as per her account, occurred sometime around October or November, 2017. The complainant further narrated that she began experiencing continuous stomach pain a few months later, following which she informed her sister-in-law. Her sister-in-law

took her to a doctor, and upon medical examination, it was revealed that she was pregnant. It was only then that she disclosed the acts of sexual assault and proceeded to file a complaint.

5. Consequently, FIR No.30/2018 was registered at Police Station Nangloi, Delhi, on 30.01.2018 and the appellant was arrested on 13.02.2018.

6. The statement of the complainant under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**') was recorded on 02.02.2018 and subsequently, the charge sheet was filed upon conclusion of the investigation.

7. The learned Trial Court vide order dated 10.09.2008 proceeded to frame charges against the appellant for offences punishable under Sections 376(2)(n)/506 of the IPC.

8. The prosecution cited 10 witnesses in support of its case including PW 2 (brother of the prosecutrix and PW 3 (mother of the prosecutrix).

9. The appellant denied the allegations in his statement under Section 313 of the CrPC. He asserted that he had been falsely implicated in the case due to ulterior motives. Specifically, the appellant claimed that the prosecutrix and her family had fabricated the charges in order to extract money from him and to gain possession of his property. He further contended that the relationship, if any, between him and the prosecutrix was consensual in nature.

10. As noted above, the learned Trial Court convicted the appellant of the alleged offences by the impugned judgment,

taking into consideration the testimony of the prosecution witnesses, especially the prosecutrix and her family members. It was noted that the prosecutrix has completely supported the case of the prosecution and her testimony is corroborated by that of her family members. It was observed that the discrepancies in the statements of the prosecutrix were minor in nature and not fatal to the case of the prosecution.

11. Aggrieved by the impugned judgment and order on sentence passed by the learned Trial Court, the appellant has preferred the present appeal.

Submissions on behalf of the appellant

12. The learned counsel for the appellant submits that the learned Trial Court erred in not granting benefit of doubt to the appellant and convicted him mechanically without appreciating that the prosecution has been unable to establish its case beyond reasonable doubt and that the burden of the same is not upon the appellant to have proved his innocence beyond reasonable doubt.

13. She submits that the learned Trial Court failed to appreciate the material contradictions and inconsistencies in the testimony of the prosecutrix, which cast serious doubt on the veracity of the prosecution's case. At the outset, she submits that the relationship between the appellant and the prosecutrix was consensual in nature. Attention was drawn to the cross-examination of PW-1 (prosecutrix), wherein she admitted that she used to play Ludo with the appellant for over a year, and that during this time she developed feelings of affection toward him

which also negates the prosecution's version of coercion or threat.

14. She submits that the allegations of force or threat were never stated by the prosecutrix in her initial statement under Section 164 of the CrPC, and were introduced for the first time during her deposition at the trial. Such material improvements in her version of events render her testimony unreliable. It is further argued that the prosecutrix had ample opportunities to report the alleged acts of rape but chose not to, thereby casting doubt on the credibility of her allegations. The learned counsel emphasized that no complaint was made to the police or any family member until the prosecutrix discovered she was pregnant and was taken to the doctor.

15. She submits that the medical evidence on record only confirms the fact of pregnancy but does not indicate any signs of forcible intercourse or assault. There is no medical evidence, no forensic evidence, and no DNA analysis to connect the appellant to the offence of rape. The case rests solely on the uncorroborated testimony of the prosecutrix, which is riddled with inconsistencies and improvements.

16. She further contends that the delay in lodging the FIR remained unexplained. The alleged acts occurred over a span of six months, but the complaint was only filed on 30.01.2018, after the pregnancy was discovered. Such unexplained delay is fatal to the prosecution's case, especially in light of the absence of continuous or imminent threat from the accused.

17. She further submits that the learned Trial Court erred in convicting the appellant under Section 506 of the IPC, as the prosecutrix made no such allegation in her complaint or in the statement recorded under Section 164 of the CrPC. The first mention of any threat to life appeared only during her deposition before the learned Trial Court, which again constitutes a material improvement.

18. The learned counsel concluded by submitting that the evidence led by the prosecution fails to establish the guilt of the appellant beyond reasonable doubt. On the contrary, it is the appellant who has been falsely implicated due to strained relations and ulterior motives.

Submissions on behalf of the State/Prosecutrix

19. The learned Additional Public Prosecutor (**APP**) for the State along with the learned counsel for the prosecutrix, supported the impugned judgment and vehemently opposed the appeal. It is submitted that the testimony of the prosecutrix was clear, consistent, and cogent, and that she had categorically deposed that the appellant repeatedly subjected her to forcible sexual intercourse against her will. The prosecution emphasized that the prosecutrix had no reason to falsely implicate the appellant, who was her neighbour and known to her family, unless the events had actually occurred.

20. It is contended that the delay in registration of the FIR was adequately explained, as the prosecutrix, a vulnerable young woman, was under constant threat from the appellant, who

warned her that any disclosure would result in the killing of her parents and brother, and that she would be defamed in society. The delay was further explained by the fact that the matter came to light only after she experienced stomach pain and was diagnosed as pregnant.

21. The learned APP argues that the evidence of the prosecutrix, even if uncorroborated, is sufficient to sustain a conviction for rape, as held in numerous decisions by the Hon'ble Apex Court, provided the testimony inspires confidence. In the present case, the prosecutrix was subjected to a thorough cross-examination but remained steadfast in her account of the events. The inconsistency in her Section 164 of the CrPC statement was sought to be minimized by contending that victims of sexual violence often find it difficult to narrate their trauma fully and accurately at the initial stage.

22. It is also pointed out that the prosecution's case was supported by medical evidence, which confirmed that the prosecutrix was pregnant, and the birth of a child followed soon thereafter. This, according to the State, provided strong circumstantial support to the version of the prosecutrix. The submission that the relationship was consensual was denied, with the State asserting that consent obtained under fear or coercion cannot be regarded as free consent.

23. The learned APP further submits that the learned Trial Court had rightly appreciated the evidence on record and convicted the appellant in accordance with law. The appellant had failed to rebut the presumption arising under Section 114A of

the Indian Evidence Act and therefore, no infirmity or illegality can be found in the impugned judgment and the appeal is liable to be set aside.

Analysis

24. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. ***The Hon'ble Apex Court in the case of Jogi & Ors. v. The State of Madhya Pradesh*** **: Criminal Appeal No. 1350/2021** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

> *"9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in* ***Majjal v State of Haryaya*** *[(2013) 6 SCC 799] , where the Court held:*
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> > *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the*

> *trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.*
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> *7. **It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic**. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "*
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> (emphasis supplied)

25. With that lens, when this Court turns to the impugned judgment, it becomes evident that several aspects of the case were either hastily brushed aside or dealt with in sweeping generalizations. The reasoning is general, not granular; broad, but not precise. It fails to answer the critical question that lies at the heart of every criminal trial: Does the prosecution's evidence prove the case beyond reasonable doubt?

26. To answer that, this Court must first address the testimony of the prosecutrix. It is well-settled that the sole testimony of a

prosecutrix, if found trustworthy, can indeed form the basis for conviction. The Hon'ble Apex Court in the case of ***Sadashiv Ramrao Hadbe v. State of Maharashtra*** **: (2006) 10 SCC 92**, reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court but cautioned by holding as under :

> *"**9.** It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.*
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> *xxxx xxxx xxxx*
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> ***14.** On a consideration of the entire evidence in this case, we are of the view that there is a serious doubt regarding the sexual intercourse allegedly committed by the appellant on the prosecutrix. The appellant is entitled to the benefit of those doubts and we are of the view that the High Court and the Sessions Court erred in finding the appellant guilty. We set aside the conviction and sentence of the appellant. The appellant, who is in jail, is directed to be released forthwith, if not required in any other case."*
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> (emphasis supplied)

27. One of the central issues in the present case is the delay in the registration of the FIR. The prosecutrix alleged repeated acts of sexual assault over a period of six months, culminating in or around October or November 2017. Yet, the FIR was lodged only on 30.01.2018—approximately two to three months later, and notably, only after a medical examination revealed her pregnancy. The complaint (Ex. PW1/A) came only after this development. There is no explanation offered for why she did not

approach the authorities earlier, despite being an adult, educated, and living in the company of her family.

28. The Hon'ble Apex Court in ***Tulshidas Kanolkar v. State of Goa* : (2003) 8 SCC 590** considered the impact of delay in lodging an FIR in sexual offences and held as under :

> *"**5.** We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case….."*

29. The prosecution in this case failed to offer any reasonable explanation for the delay. Nor is there any medical evidence to indicate force or resistance. Instead, what we have is a prosecutrix who, by her own admission, continued to visit the appellant's home to play Ludo over an extended period, who developed feelings of affection toward him, and who made no disclosure to her family—even after the alleged incidents had occurred.

30. The issue of delay in lodging the FIR becomes even more pertinent when considered in light of the judgment of the Hon'ble Apex Court in ***Parkash Chand v. State of Himachal Pradesh* :**

(2019) 5 SCC 628, wherein the Hon'ble Apex Court set aside a conviction in a rape case where the FIR had been lodged after a delay of seven months. It was observed that delay in registration not only dilutes the inherent credibility of the prosecution's story but also results in the loss of valuable forensic evidence which, if collected promptly, could either substantiate or contradict the allegations. The relevant portion of the judgment reads as follows:

> *"**20.** There is admittedly a delay of 7 months in lodging the FIR in the case of alleged rape. If the case is reported immediately apart from the inherent strength of the case flowing from genuineness attributable to such promptitude, the perceptible advantage would be the medical examination to which the prosecutrix can be subjected and the result of such examination in a case where there is a resistance. It is the case of the prosecution that she raised hue and cry and therefore apparently she would have resisted. Possibly, a medical examination may have revealed signs of any resistance or injuries. In this case the High Court has proceeded on the basis of testimony of the prosecutrix and sought to fortify it by the extra-judicial confession made before PW 4 and PW 5."*

31. A further complication arises from the inconsistency in the prosecutrix's narrative. In her initial complaint and the statement under Section 164 of the CrPC, there was no mention of the appellant threatening her or her family. Yet, during trial, she introduced the claim that the appellant had threatened to kill her parents and brother if she disclosed the incidents. This amounts to a material improvement, an afterthought that diminishes the credibility of her testimony.

32. The conduct of proceeding against the appellant only after the discovery of the prosecutrix's pregnancy gives rise to a strong inference that the FIR was not the result of a spontaneous or genuine complaint of rape, but rather a reaction to the perceived social stigma of an out-of-wedlock pregnancy. The inference becomes stronger when one considers that the prosecutrix had developed affectionate feelings for the appellant, as admitted in her cross-examination, and continued to voluntarily visit his house for months. The possibility that the allegations were made to retrospectively reframe a consensual relationship as rape, in order to shield the prosecutrix and her family from societal backlash, cannot be ruled out.

33. The prosecution relied on the testimonies of PW-2 (the brother of the prosecutrix) and PW-3 (mother of the prosecutrix) to establish corroboration. Both witnesses categorically stated that they came to know of the incident only after the prosecutrix began experiencing stomach pain. PW-3 specifically deposed that the prosecutrix was taken to the hospital for abdominal discomfort, where it was discovered that she was pregnant. On being questioned, the prosecutrix then named the appellant. Until that point, there had been no prior complaint, whisper of discomfort, or disclosure of any wrongdoing.

34. Importantly, PW-3 also admitted in her cross-examination that the prosecutrix used to go to the house of the appellant voluntarily. There was no suggestion from either family member that they were aware of any coercion, threat, or apprehension of harm. It is implausible that repeated sexual assaults over several

months would go unnoticed, unspoken, and unrevealed to anyone, particularly when the prosecutrix resided in a family environment.

35. The prosecution also placed reliance on the DNA report (Ex.PW9/A), which established that the child born to the prosecutrix was biologically fathered by the appellant. This fact is not disputed. However, the DNA report merely proves paternity—it does not and cannot, by itself, establish the absence of consent. It is trite law that the offence under Section 376 of the IPC hinges on the absence of consent. Mere proof of sexual relations, even if resulting in pregnancy, is insufficient to prove rape unless it is also shown that the act was non-consensual. In fact, the surrounding circumstances render the prosecution's case highly improbable.

36. It is well recognized in law that trauma, fear of social ostracism, and familial pressures may often delay the reporting of incidents of sexual assault. Courts have, on numerous occasions, acknowledged this reality and have not treated delay in lodging the FIR as fatal per se. However, as held in ***Sajid v. State* : 2013 SCC OnLine Del 895**, while courts are inclined to "discount some delay in lodging the report in rape cases on account of initial hesitation on the part of the prosecutrix and her family," the delay must be explained with "truthfulness and plausibility." A coordinate Bench of this Court while acquitting the accused held as under :

> *"8. There is a delay of about four months in lodging the report with the police. The Court has to discount some delay in lodging the report in rape cases on account of various reasons including initial hesitation on the part of*

the prosecutrix and her family members to lodge the report lest it may bring shame to the family and adversely affect the prosecutrix's marriage prospects.

9. In State of Rajasthan v. N.K., (2000) 5 SCC 30 the Supreme Court held that "mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the court it cannot be counted against the prosecution.

10. It is well settled that the testimony of a prosecutrix who is victim of sexual assault cannot be compared with that of an accomplice in a crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. The Courts sometimes look for an assurance when it is not convinced or there are doubts in the case of the prosecution.

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13. Thus, although the Courts do not insist on corroboration of the testimony of the victim of a sexual assault, however, in the instant case, it would be difficult to rely on her testimony without corroboration particularly when the explanation for the delay of four months in lodging the FIR is not very convincing.

14. The rule relating to corroboration of the version of the prosecutrix in a case of rape was based on the ground that it was easy to make allegations of rape and difficult to repel them. Even when the alleged victim is a consenting party, she may, when an act of sexual intercourse has been discovered, alleged rape only to protect her honour and reputation."

37. That is precisely the concern here. The prosecutrix was a major—18 years and 6 months old at the time of the incident. She was matriculate, literate in Hindi, and mentally sound by her own testimony. Despite having multiple opportunities to report the alleged acts, she remained silent. Her complaint came only after the pregnancy was discovered. Viewed cumulatively, these facts lend credence to the possibility that the FIR was a reaction

to social pressure and that the nature of the relationship was re-cast retrospectively to explain an unwanted pregnancy.

38. The law, of course, does not presume consent merely from silence. But it also does not convict in the absence of proof beyond reasonable doubt. And in this case, doubt persists—not due to conjecture, but due to the evidence itself. The testimony is inconsistent; the medical and forensic evidence is absent to establish the offence of rape; the conduct of the prosecutrix is incompatible with the narrative of coercion; and the delay is wholly unexplained.

39. Viewed cumulatively, these facts significantly weaken the prosecution's version. The delay is not merely a procedural lapse, but one that directly affects the credibility of the prosecution's case. In the absence of convincing explanation for the delay and in light of the prosecutrix's conduct, the possibility of a consensual relationship later being reframed under societal pressure cannot be ruled out. The benefit of doubt must, therefore, go to the appellant.

40. The learned Trial Court also convicted the appellant under Section 506 of the IPC, accepting the prosecutrix's statement that the appellant threatened to kill her parents and brother if she disclosed the alleged sexual assaults. However, when this particular charge is examined against the standard of proof required in criminal law, and in light of the evidence on record, it fails to withstand scrutiny.

41. To attract a conviction under Section 506 of the IPC, it is not sufficient to show that threatening words were uttered. The

prosecution must establish, beyond reasonable doubt, that there was an intention on the part of the accused to cause alarm, or to compel the victim to do or abstain from doing something she was legally entitled to do. The threat must be real, proximate, and capable of causing reasonable fear in the mind of the person threatened. It cannot be a casual remark or a vague expression.

42. In the present case, neither the initial complaint (Ex. PW1/A) nor the Section 164 of the CrPC statement mentions any threat issued by the appellant. The prosecutrix, at those earlier stages, stated only that the appellant had asked her not to tell anyone. It is only during her deposition before the Trial Court—after a significant lapse of time — that she added that the appellant had threatened to kill her family. No explanation was offered for this belated assertion. This embellishment casts serious doubt on the veracity of the claim, especially when viewed in conjunction with her otherwise consistent conduct of continuing to visit the appellant's house and showing no visible signs of fear or distress.

43. The learned Trial Court appears to have accepted the prosecutrix's statement on this point without evaluating whether it was corroborated or even consistent with her earlier versions. The law, however, does not permit conviction on the basis of improved statements that were never tested or supported through contemporaneous conduct or evidence. The charge under Section 506 of the IPC thus fails, not only for want of evidence, but for want of credibility.

Conclusion

44. The solemn duty of a criminal court is not to convict merely because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt.

45. It is a settled principle that when two views are possible—one pointing to the guilt of the accused and the other towards his innocence — the view favourable to the accused must be adopted. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.

46. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned Trial Court is unsustainable. The evidence led by the prosecution does not meet the standard of proof required in a case of this nature. The benefit of doubt must, and does, go to the appellant.

47. Accordingly, the impugned judgment and the impugned order on sentence passed by the learned Additional Sessions Judge (West), Tis Hazari Courts, Delhi, in Sessions Case No. 123/2018 arising out of FIR No. 30/2018, are hereby set aside.

48. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other case. The bail bond, if furnished, stands discharged.

49. The appeal is allowed and disposed of in the above terms. Pending application (s), if any, stands disposed of.

AMIT MAHAJAN, J

MARCH 20, 2025 / *vg*