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

Date of reserving judgment: 16th January, 2026

Date of decision: 6th February, 2026

IN THE MATTER OF:

\+ CRL.A. 508/2004

SOORAJ KUMAR (IN J.C.) .....Appellant

Through: Mr. Ajay Verma, Ms. Smriti S. Nair, Ms. Sneha Sejwal, Advs.

versus

STATE .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State with SI Rahul Rathi, PS Sangam Vihar.

\+ CRL.A. 509/2004

ROONA (IN J.C.) .....Appellant

Through: Mr. Ajay Verma, Ms. Smriti S. Nair, Ms. Sneha Sejwal, Advs.
Appellant-in-person (through V.C.).

versus

STATE .....Respondent

Through: Mr. Yudhvir Singh Chauhan, APP for the State with SI Rahul Rathi, PS Sangam Vihar.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Aggrieved by the judgment dated 17.04.2004 and the order on

sentence dated 20.04.2004, the Appellants have assailed the same whereby Appellant Sooraj was charged under Section 376 of Indian Penal Code (IPC) and was held guilty and convicted too. He was sentenced to undergo Rigorous Imprisonment (RI) for a period of 10 years and with a fine of Rs. 5,000/- in default to further undergo RI for one year, whereas co-accused Roona was held guilty under Section 376 read with section 109 and sentenced to undergo RI of 10 years with a fine of Rs. 5,000/- and in default to further undergo RI for a period of one year. She was further sentenced under Section 342 with RI for a period of one year and with a fine of Rs. 500/- and in default to further undergo SI for one month.

2. This is a Pre-POCSO era case where a female child of about 15 years of age was assaulted by the Appellant Sooraj with the assistance of co-appellant / co-accused Roona. It so happened that on 19.12.2001, the victim 'S' (real name withheld in order to protect her identity) felt pain in her stomach and reported the same to her mother, who advised her to go to the clinic of a local doctor i.e. Appellant Sooraj which is in the same vicinity. Appellant Sooraj gave her a medicine/pill after which the victim started feeling uneasy, on which the Appellant took her to the neighbouring room where co-accused Roona was present. The victim was advised by the doctor to take rest on the bed and after sometime the victim noticed the co-accused/Appellant Roona going outside the room and when she was putting on the lock from outside the victim protested. Appellant Doctor Sooraj, however, consoled her by saying that "*not to worry she should take rest*". But, once the co-accused/Appellant Roona went outside the room after locking it, the victim was allegedly raped by Appellant Sooraj but somehow the victim was able to raise alarm which attracted the attention of the

neighbours and a crowd gathered. Lock of the door was broken and realizing the situation therein the room, Appellant Sooraj was beaten by the public and matter was reported to the police.

3. In the meanwhile, the mother of the victim also came at the spot and took the victim home. Police too arrived at the place of incident and took the victim to the hospital and got her medically examined. The medical examination of the Appellant Sooraj who was severely beaten by the public, was also done. Thereafter, a case under Section 376, 342 IPC was registered in the intervening night of 19/20.12.2001 at about 12:55 AM. Against the backdrop of these circumstances, a charge sheet containing the allegations under Section 376/34 IPC, 342/109 IPC was filed.

4. The accused Sooraj was charged under Section 376 of IPC, and after the examination of 17 prosecution witnesses, and taking into account Statement of two defence witnesses, the Appellant Sooraj was held guilty under Section 376 IPC and Roona was held guilty under Section 376/109 IPC and Section 342 and convicted, as she was charged under the aforesaid Sections of IPC.

5. It is contended on behalf of the Appellant Sooraj that there is no cogent evidence to prove the offence under Section 376 IPC actually took place, whereas on behalf of the Appellant Roona, it is contended that there is no evidence on record to connect her with the offence inasmuch as her identity is not conclusively brought on record. Learned counsel for the Appellant Sooraj asserted that the Appellant, at the most may be held accountable for an offence under Section 354 IPC and not under Section 376 IPC and so is the case with the allegations under Section 342 since there is no recovery of the broken lock and for that matter it is not established as to

whose room it was where the victim was allegedly confined since no evidence has been brought on record for the same.

6. While summing up his arguments, learned counsel for the Appellants concluded that there are material contradictions, lack of independent corroboration, weak medical evidence and fundamentally defective investigation, which renders the case of the prosecution unbelievable.

7. So far as the contradictions are concerned, the same are bound to be there inasmuch as human memory has its own limitation and if the particular incident is to be reiterated, it would be found varying invariably. This does not, however, mean that the narrative is incorrect as long as the contradictions are not on very vital and material aspects, as only such contradictions would put the entire narrative under cloud. Therefore, only the material contradictions are required to be looked into.

8. Learned counsel for the Appellants could not point out any such contradictions, which may be termed as material substantial or vital contradiction.

9. In this context, reference can be made to the judgment in ***Rohtash Kumar vs. State of Haryana***, 2013 III AD (CRI.) (SC) 369, where relying upon the propositions in ***State of U.P. vs. M.K. Anthony***, AIR 1985 SC 48, ***State rep. by Inspector of Police vs. Saravanan & Anr.***, AIR 2009 SC 152; and ***Vijay Chinee Vs. State of M.P.***, (2010) 8 SCC 191, it has been observed in the following words:

> *"18. It is a settled legal proposition that while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the case of the prosecution, must not prompt the court to reject the evidence in its entirety. Therefore, unless irrelevant details which do not in any way corrode the credibility of a witness should be ignored. The court has to examine whether evidence read as a whole appears to*

have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witnesses and whether the earlier evaluation of the evidence is shaken, as to render it unworthy of belief. Thus, the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus, the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The said discrepancies as mentioned above, should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole. (See: State of U.P. Vs. M.K. Anthony, AIR 1985 SC 48; State rep. by Inspector of Police Vs. Saravanan & Anr., AIR 2009 SC 152; and Vijay @ Chinee Vs. State of M.P., (2010) 8 SCC 191).”

10. As such, in view of the aforesaid facts and the legal proposition, when the learned counsel for the Appellants has not been able to point out any material contradiction, the evidence cannot be rejected and has to be taken into consideration.

11. The investigation has also been questioned by the learned counsel for the Appellant and it is asserted that it was not proper. It is elaborated further that there is no evidence as to whether the room belonging to Roona where the offence took place, was locked from outside or merely bolted. The broken lock was also not seized by the police to give credence to the version of the witnesses about breaking open of the lock. It has not been specified as to who broke the lock, if it was locked. Neither there is any evidence to show as to who was the landlord and as to whether the room was rented out to Appellant Roona and finally, that who called the police is also not clear. It

is thus, asserted that the investigation is defective and on such an investigation, where lot of uncertainty and omissions are there, the Appellants, therefore, cannot be held responsible for the offences.

12. The lapses in the investigation may be there, but then the ground realities cannot be ignored. When the police reached at the spot, crowd of hundreds of persons was there. The atmosphere was charged up, people were agitated and Appellant Sooraj Kumar was being assaulted by the public. In such circumstances, the priority of the police was to save Appellant Sooraj Kumar. In such a melee, something as small as lock, may not be found by the police as the immediate priority was somewhat different. Thus, even if there is no evidence as to whether the room was bolted or locked or who broke the lock and where it has gone, cannot be over emphasized. In the testimony of victim, she has categorically stated that the room was locked from outside. The only missing part is that the broken lock could not be recovered. This in itself would not be a reason to discard the testimony coming on record. In any case, investigation was something which was being done by the police, in which the victim or her family had no role. Thus, merely on some sort of defective investigation, the entire case of the prosecution cannot be thrown out. In this context, reference can be made to the judgment in ***Dayal Singh Vs. State of Uttaranchal***, (2012) 8 SCC 263 while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, Hon'ble Apex Court held as under:

> *"27. Now, we may advert to the duty of the court in such cases. In* ***Sathi Prasad Vs. State of U.P.****, (1972) 3 SCC 613 this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon*

*and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in **Dhanraj Singh Vs. State of Punjab**, 2004 IV AD (S.C.) 365 = (2004) 3 SCC 654, held."*

> *'5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'*

Reference can also be made to the judgments in ***Paras Yadav Vs. State of Bihar***, (1999) 2 SCC 126; ***State of Karnataka Vs. K. Yarappa Reddy***, (1999) 8 SCC 715; ***Ram Bali Vs. State of U.P.***, (2004) 10 SCC 598 and ***Karnel Singh Vs. State of M.P.***, (1995) 5 SCC 518.

13. Another aspect which has been highlighted by the learned counsel for the Appellants is the lack of independent corroboration, by which he meant that despite the presence of score of people at the spot, there is no independent public witness related to the incident or the post incident events. The so called public witnesses examined by the prosecution cannot be termed as independent witnesses since they are the mother and brother of the victim. Therefore, they become interested witnesses.

So far as the instant case is concerned, there is no compulsion to have any independent public witness inasmuch as it is settled law that the testimony of the victim/prosecutrix herself, if found above board, is sufficient to record a finding against the Appellant and in any case, the mother and brother are there, whose testimony cannot be simply brushed aside, being not independent or being interested witnesses.

14. The ultimate test of acceptability of testimony of the witnesses being creditworthiness, credibility and truthfulness. If the testimony of the

witnesses, is apparently, creditworthy and reliable, free from any blemish, then in that case, the witnesses can be relied upon, irrespective of the relationship of the witness with the victim. Reference in this context can be made to the judgment in ***Alamgir vs. State (NCT of Delhi)***, AIR 2003 SC 282 and ***Fizaquat Ali vs. State & Anr.***, 2013 VII AD (Delhi) 569.

15. It is further asserted on behalf of the Appellants that there is no corroboration to the testimony of the victim, which is otherwise difficult to find in such circumstances, but the medical evidence is also not supportive of the case set up by the prosecution. In this context, learned counsel for the Appellants has drawn the attention of the Court to the MLC of the victim Ex.PW10/A in which no injury, etc. has been reflected on the person of the victim and for that matter, hymen of the victim is also intact, ruling out the possibility of rape.

16. In addition to that, it is further submitted that no scientific evidence is there in support of the case of the prosecution inasmuch as the FSL result is also inconclusive and does not connect the Appellant Sooraj Kumar with the offence, notwithstanding the fact that traces of human semen were found on the clothes of the victim i.e. salwar and lady shirt. However, it could not be established by the prosecution that the human semen found on the clothes of the victim were that of the Appellant Sooraj Kumar.

17. In these circumstances, in the absence of medical and scientific evidence, it is asserted that there is no corroboration to the testimony of the victim so far as sexual assault/rape is concerned.

18. The blood sample of the Appellant was taken, as can be seen in the MLC of Appellant Sooraj Kumar Ex.PW1/A. It was sealed, signed and handed over to the police. That very blood sample was sent for medical

examination to the Forensic Science Laboratory (FSL), where on examination, no reaction could be noticed, thus, the blood sample was rendered useless/wasted. Although, on the salwar of the victim, the semen stains were found, as can be seen from the document Ex.PW9/A and Ex.PW9/B. This could've given the requisite corroboration to the evidence of the victim, had there been a conclusive report qua blood group. Appellant Sooraj Kumar either before the sexual assault, at the time of assault or thereafter ejaculated leaving stains of semen on the cloth of the victim, which alone is the possibility in the given set of facts and circumstances, but for the absence of complete report, nothing can be said conclusively in this context, howsoever, strong the possibilities may appear.

19. The contention that the hymen of the victim was intact, therefore, no rape can be concluded, is not correct in view of the fact that complete sexual intercourse is not mandatory to hold a person responsible for the offence of rape as a mere penetration is sufficient to constitute the offence as has been provided in the Explanation to Section 375 IPC.

> "*penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.*"

20. The evidence coming on record is to be read in its perspective keeping in view the fact that the victim was about 16 years of age, not exposed to the sexual activities as can be inferred from the MLC Ex.PW10/A, wherein it has been reflected by PW10 Dr. Suman Lal:

> *"No evidence of external injury on breast, perineum, lips or anywhere. Hymen was found intact. No evidence of external injury. Admitting small finger with mild pain. Vagina smear made impression unlikely full act of intercourse. However, possibility of sexual assault or attempt to penetration cannot be ruled out*."

21. It reflects that complete act of intercourse was not there and that the victim was not exposed to sexual activities. It has also not been ruled out that there was an attempt to penetrate.

22. The victim in her statement under Section 164 Cr.P.C., has categorically stated that the Appellant Sooraj Kumar undressed the victim and himself and tried to penetrate. She raised alarm despite the fact that the Appellant tried to gag the victim.

In her deposition before the Court, the victim has narrated the incident in the following words.

> "*Thereafter Roona left the room and locked the room from outside. I asked her as to what you are doing aunty. Thereafter doctor Suraj put off my Salwar and started moving his hand on my body. He also put off his pant and put his penis in my vegina. And close my mouth. I removed his hand and raised alarm and public came. Public broken the lock of the room from outside and entered. Suraj was apprehended when he was trying to ran away.*"

23. On the conjoint reading of statement of the victim before the Court, her statement under Section 164 Cr.P.C. medical and scientific evidence, it can be seen that the victim was confined in the room of Appellant Roona, who left the victim and the Appellant Sooraj Kumar inside, locked it from outside, giving an opportunity to the Appellant Sooraj Kumar to commit rape upon the victim and that the Appellant indeed committed rape upon the victim, while he may not have been able to successfully complete the intercourse, but then for the purpose of Section 375 IPC, as defined, the offence of rape was there.

24. In the case titled as ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat***, AIR 1983 SC 753, Hon'ble Apex Court observed as follows:

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? It was further pointed out that on principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. The aforesaid observation was made by this Court because of the following factors: (1) A girl or a woman in the tradition bound non- permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3)She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or as acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross- examination by counsel for the culprit,

and the risk of being disbelieved, act as a deterrent."

25. Both the Appellants, in their statements under Section 313 Cr.P.C., opted to lead evidence in their defence and for that matter, examined two witnesses i.e. DW-1 Allaudin i.e. husband of Appellant Roona and DW-2 Mahavir. Suggestions were given to the witnesses with regard to some dispute concerning the electricity, but then the witness examined on behalf of Appellant Sooraj Kumar i.e. DW-2, merely gives a reference of some scuffle, whereas on the aspect of occurrence of rape, he is totally silent. DW-2 nowhere reflects that who all were involved in the scuffle and whether Appellant Sooraj Kumar and anyone from the family of the victim or from her side, were involved or not. He seems to be a witness who has nothing material to show or say about the incident or for that matter, any defence of Appellant Sooraj Kumar.

26. On the other hand, DW-1 is not a witness either to the incident or pre or post incident events, since he was not present there, rather what was orally deposed by him, was based upon what his daughter Bubli told him. He also refers about a quarrel which has taken place regarding electricity between victim and before naming the other party, he comes up with the name of one Sarafat Ali, related to victim. But in the same breath, he stated that Roona was not involved in the altercation. According to him, no scuffle had taken place and in any case, he also does not clarify whether any of the parties to the scuffle i.e. Sooraj Kumar and Sarafat Ali harmed each other physically. However, in the cross examination, he totally surrenders when he says that he came to know that Sooraj was caught hold by the public and was given beatings and also admits that he was not present at his house at that time, therefore, cannot tell anything else about the case. As referred

above, he was deposing on the basis of what his daughter told him.

27. Appellant Roona, in her statement under Section 313 Cr.P.C. stated that she was not present at her place, so there was no occasion for her being there at the time of incident since she had gone to her job. However, she has not brought any evidence to the effect that where she was working, what were her duty timings, or where the place of work was or any attendance sheet, etc. showing her to be present at her work place and not present at the place of incident. Thus, her *plea of alibi* is nothing but a bald assertion and she could not bring any evidence to dispel the case of the prosecution.

28. In view of the aforesaid discussion, it is evident that the victim who went to the neighbourhood doctor, having some pain in her stomach, where she was administered some pill, thereafter, she felt dizzy and when she told this fact to the doctor, he took the victim to the room of a neighbour, where there was a lady Roona, where the victim was made to lie down on the assurance that she will be alright after sometime. But after a small conversation, Roona left the room, leaving Appellant Sooraj Kumar and the victim inside and locked it from outside. Thereafter, the Appellant removed the clothes of the victim and also removed his pant and sexually assaulted her, in which he was not completely successful as the victim was still in her senses and raised hue and cry, which attracted the attention of the neighbourhood. Sensing the situation, the public/brother of the victim broke open the lock, took out the victim and the Appellant out, assaulted the Appellant and in the meantime, mother of the victim too came there and took the victim to their place.

29. The learned Trial Court has thus, rightly held both the Appellants guilty and convicted. As a result, the appeal fails and stands dismissed. The

Appellants to surrender forthwith.

30. Copy of the judgment be transmitted to learned Trial Court for information and necessary compliance.

VIMAL KUMAR YADAV, J

FEBRUARY 06, 2026/hk/akc