

State vs Irfan

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Court : Delhi

Decided On : Apr-24-2026

Judge : Hon'Ble Ms. Justice Prathiba M. Singh, Hon'Ble Mr. Justice Madhu Jain

Appeal No. : CRL.A./64/2014

Appellant : STATE

Respondent : IRFAN

Advocate for Pet/Ap. : Mr. Aashneet Singh, Mr. S. K. Rai, Ms. Rupam Kumari,
Mr. Max Croson

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 17th March, 2026 Date of Decision: 24th April, 2026
Uploaded on: 24th April, 2026 + CRL.A. 64/2014 STATEAppellant
Through: Mr. Aashneet Singh, APP for State. Insp. Rishikesh Meena, SI
Ankit Sharma and SI Kiran Yadav, P.S. Fatehpur Beri.

versus

IRFANRespondent Through: Mr. S. K. Rai, Ms. Rupam Kumari and Mr. Max Croson, Advs. with Respondent-in-person.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

BACKGROUND:

1. The present appeal has been filed under Section 378 (3) read with

Section 482 Code of Criminal Procedure, 1973 (hereinafter Cr.P.C.) assailing the impugned judgment dated 6th December, 2012 passed by Ld. ASJ- 01(South), Saket District, New Delhi whereby, the Respondent herein has been acquitted in Session Case No. 25/11 arising out of FIR No. 06/11 registered at P.S. Fatehpur Beri, for offences punishable under Sections

BRIEF FACTS:

2. The present case arises out of an incident that occurred in the

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intervening night of 11-12th January, 2011 at about 1:30 AM. The allegations are that the prosecutrix woke up to attend the call of nature and, while returning to her house, the Accused/Respondent Irfan, a resident of the same neighbourhood, suddenly approached her and

gagged her by placing his hand over her mouth. He thereafter lifted her and took her to his room, where he removed her pyjama and undergarments and unzipped his trousers and committed rape upon her. After the commission of the offence, the Accused/Respondent fled from the spot. The prosecutrix then put on her clothes and raised an alarm, upon which her father (PW-2) reached the spot. Thereafter, her father made a call to the police.

3. Vide DD No. 4A dated 12th January, 2011 at about 3:00 AM (Ex. PW-

7/A), recorded by HC Madan Lal (PW-7), information was received that a minor girl aged about 13 years had been raped at Telephone Colony, near Lal Chand General Store, Barwali. The Respondent/Accused was subsequently arrested on 13th January, 2011.

4. On the basis of the said information and statement, a case under

Sections 363/376 IPC was registered against the Respondent/Accused Irfan. Upon appearance, the Accused/Respondent pleaded not guilty and claimed trial.

5. The statement of the prosecutrix under Section 164 Cr PC was also

recorded, and statements of other witnesses were duly recorded.

6. Upon completion of investigation, a charge-sheet was filed before the

concerned court, and cognizance of the offences was taken.

7. After compliance with the provisions of Section 207 Cr.P.C., vide order

dated 29th March, 2011, the case was committed to the Court of Sessions for trial.

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8. The prosecution examined fourteen (14) witnesses in support of its case

to establish the charges against the Respondent/Accused. They are prosecutrix (PW-1), Kailash Mandal(PW-2), Dr. Munish Sharma (PW-3), Brij Lal Sharma (PW-4), HC Mukesh Kumar(PW-5), Indu Devi(PW-6), HC Madan Lal(PW-7), Sh. Dheeraj Mittal(PW-8), Dr. Uruj Jahan(PW-9), Bipin Sharma(PW-10), HC Jaipal Singh(PW-11), HC Dilip Kumar(PW-12), HC Karan Singh(PW-13) and W.ASI Gyan Prabha (PW-14). The Id. Trial Court has discussed them as under:

5. In the present case, PW-1 prosecutrix is the star witness. She has deposed that on 12.01.11 she went to bathroom to answer the call of nature and when she was returning, accused Irfan who resides in their neighbourhood, suddenly came there and closed her mouth with hands. Thereafter, he lifted her and took her to his room. He removed her pyjama and underwear and unzipped his trouser. Thereafter, accused committed rape upon her. After committing rape, accused ran away from the spot. She wore her clothes and screamed for help, upon which her father reached there. She narrated the incident to him. Her father made a call to the police. Police arrived there and they were taken to PS. Her statement Ex. PW1/A was recorded. She has also proved her statement U/S 164 Cr.P.C as Ex. PW1/B.

6. In cross-examination, PW-1 has deposed that she

studied in a school in Bihar upto 1st Class. She has defied the suggestion that she studied upto 3rd Class in Bihar. She did not bring any school leaving certificate or janampatri from the school in Bihar. She

has further deposed in her cross-examination that she took admission in a school in Delhi after one year of their coming from Bihar. After having taken admission in the school, she had again left her

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studies for one year though she continued to live in Delhi during that period. She has further deposed that accused lifted her in both of his arms and her back was parallel and facing the ground when accused took her to his room. She did not resist nor she tried to scratch the face or arms of accused when he had lifted her in his arms. She has further deposed that she and accused were at home when her parents and parents of accused had reached there. She has deposed that she did not receive any kind of injury on her body. She was bleeding like water from her private part and her clothes were soaked with blood. She did not change her clothes when she went to hospital. There were no blood stains on the clothes of accused. She has denied the suggestion that she had a love affair with the accused.

7. PW-2 Kailash Mandal is the father of prosecutrix.

He has deposed that on 12.01.11 during night hours, his daughter aged about 13 years, went to toilet outside their house at about 1:30 AM. When she was coming back, she was picked up by accused Irfan after putting his hands on her mouth. She was taken by accused to his home, where he committed rape upon her and thereafter, he ran away from there. His daughter raised an alarm, on which, he (PW2) reached at the spot and his daughter narrated the incident to him. Police was called and accused was arrested after about one day in his presence. He signed the arrest memo Ex. PW2/A.

8. In cross-examination, PW-2 has deposed that

they shifted from Bihar to Delhi when his youngest child was three years old. He does not remember the name of the school in which his daughter was studying. He did not submit the date of birth certificate of his daughter in school at Delhi. He did not bring the school leaving certificate of

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prosecutrix from Bihar. He has further deposed that he shifted to Delhi from Bihar about 20 years ago.

9. PW-3 Dr. Mukesh Kumar has proved the MLC of

accused Irfan as Ex. PW3/A.

10. PW-4 Brij Lal Sharma, PGT, Govt. Sr.

Secondary School, Bhati Mines, has produced the original record pertaining to prosecutrix, who was the student of 7th Class in their school. As per school record, date of birth of prosecutrix is 01.03.1999. PW-4 has proved the certificate issued by the Vice- Principal as Ex. PW4/A and school leaving certificate as Ex. PW4/B. He has also proved the copy of admission register as Ex. PW4/C.

11. In cross-examination, PW-4 has admitted that

they did not get the said date of birth certificate of prosecutrix verified from the records of MCD. They did not verify for how long student had studied in the previous school and they did not get the school leaving certificate furnished by the student, verified from the said school.

12. PW-5 HC Mukesh Kumar is a formal witness.

He has recorded the FIR Ex. PW5/A on the basis of rukka sent by W.ASI Gyan Prabha.

13. PW-6 Indu Devi is a public witness, who has

turned hostile.

14. PW-7 HC Madan Lal has proved DD No. 4A

dated 12.01.11 Ex. PW7/A which was recorded at about 3:00 AM on the receipt of information from the Control Room.

15. PW-8 Sh. Dheeraj Mittal, Ld. MM has deposed

that he had recorded the statement of prosecutrix U/S 164 Cr.P.C. He has proved the proceedings alongwith the statement recorded by him as Ex.

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PW1/B and the application for recording of statement as Ex. PW8/A.

16. PW-9 Dr. Uruj Jahan has proved the MLC of

prosecutrix as Ex. PW9/A. As per MLC on 12.01.11, the prosecutrix aged about 13 years was examined with the alleged history as stated by her that she was allegedly kidnapped from her home at about 1:30 AM when she went to bathroom, by a boy living in her neighbourhood and she was raped. There is no history of intoxication and physical assault. Menarche was two months back. LMP was 16.12.10. On local examination, pubic hair present and white stain marks were present. Hymen was ruptured. No bleeding per vagina. There were no bruises and bite marks.

17. In cross-examination, PW-9 has deposed that as

per MLC, it is clear that it has not been mentioned whether the hymen is old ruptured or fresh tear. She has admitted that doctor had advised for bone-age X-Ray of the prosecutrix. In response to court question, she has deposed that it is possible for the doctor examining the patient to opine whether the hymen is a fresh tear or an old tear. If it is fresh tear, same is noted on the MLC.

18. PW-10 Vipin Sharma is a public witness, who

turned hostile.

19. In cross-examination by Id. counsel for accused

PW-10 has deposed that no police official of this case has met him to make enquiry about this case and he had never given any statement to police.

20. PW-11 HC Jaipal Singh has deposed that on

13.01.11 he joined the investigation of this case with W.ASI Gyan Prabha. Accused Irfan was arrested from Gurgaon-Faridabad Road, Mangar Chowki vide arrest memo Ex. PW2/A. Accused was got

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medically examined and his medical exhibits were seized in his presence by the I.O. vide memo Ex. PW

11/A.

21. PW-12 Dilip Kumar is a formal witness. He has

deposed that on 24.01.11 he took the case property sealed with the seal of AIIMS from malkhana vide R.C No. 621/11 and deposited the same with FSL, Rohini.

22. PW-13 HC Karan Singh is the MHCM, who has

deposed that the case property was deposited in malkhana on 12.01.11 and was sent to FSL on 24.01.11. He has produced the original register No. 19 wherein the entries pertaining to the case property are given at serial No. 192 and 193, which are Ex. PW13/A. He has also proved the photocopy of acknowledgment of case property acceptance given by FSL, Rohini as Ex. PW13/B.

23. PW-14 ASI Gyan Prabha, who is I.O of the case,

has deposed that on 12.01.11 she was posted at P.S. Mehrauli. On receipt of DD No. 4A, she reached at P.S. Fatehpur Beri, where she met the complainant and her mother. She recorded the statement of complainant/prosecutrix. She got the complainant medically examined and seized the medical exhibits vide memo Ex.PW14/A. She prepared the detailed rukka Ex. PW14/B and got the FIR registered. Thereafter, she visited the place of occurrence and prepared the site plan Ex. PW14/C at the instance of complainant. She got recorded the statement of prosecutrix U/S 164 Cr.P.C. Prosecutrix was sent to 'Prayas' as per orders of Child Welfare Committee (CWC). On 13.01.11 accused was arrested from Gurgaon-Faridabad Road near Mangar Chowki. She has proved his arrest memo Ex. PW2/A and personal search memo Ex. PW14/D. Accused was got medically examined through Constable Jaipal

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Singh and his medical exhibits were seized vide memo Ex. PW11/A. Exhibits were deposited in malkhana and later on, sent to FSL and report

was filed in the court which is Ex. PW14/E and Ex. PW14/F. She also collected the date of birth certificate of prosecutrix. After completion of investigation, she filed the chargesheet against the accused.

9. After examination of the prosecution witnesses, the

Accused/Respondent was examined under Section 313, Cr.P.C, wherein he stated that he was innocent and that he was falsely implicated in the present case at the instance of the complainant in connivance with his step-father and the father of the prosecutrix.

10. DW-2, Smt. Shehnaz @ Sunita, the mother of the Accused/Respondent,

deposed that Anil Kumar was the stepfather of the Accused/Respondent and that her relations with him had become strained since August 2010. She stated that Anil Kumar had threatened to falsely implicate her son in a criminal case on account of disputes between them, as the Accused/Respondent had objected to his misbehaviour with her. According to her, the present case was lodged at the instance of Anil Kumar in connivance with PW-2, the father of the prosecutrix, thereby falsely implicating the accused.

11. The Accused/Respondent examined Roshni (DW-1) and Shehnaz @

Sunita (DW-2) in his defence. The Id. Trial court discussed them as under:

26. DW-1 Roshni has deposed that she knows accused Irfan since his childhood and his parents also. He has a good character. Anil Kumar is the step father of accused Irfan. Two-three days prior to present case, Anil Kumar had threatened the accused and his mother that he will falsely implicate

them in a false case as there was dispute between his mother and Anil Kumar. After registration of present case. Anil Kumar was heard saying that he has falsely implicated Irfan in the present case and very soon he will falsely implicate his mother also.

27. In cross-examination, DW-1 has admitted that

DW-2 Shehnaz never asked her to accompany to any police station or other authority in order to inform them about the false implication of accused. She has denied the suggestion that accused was not falsely implicated in the present case but he committed rape upon the prosecutrix.

28. DW-2 Smt. Shehnaz @Sunita has deposed that

accused Irfan is her son and Anil Kumar is step father of accused Irfan. She got married with Anil Kumar in the year 1994. In August, 2010 her relations with husband Anil Kumar became estranged and thereafter, he gave threat that he will falsely implicate Irfan in a false case as Irfan had objected Anil Kumar's misbehaviour with her. She has also filed a maintenance case against Anil Kumar, certified copy of which is Ex. DW2/1, The certified copy of W.S filed by Anil Kumar is Ex. DW2/2 in which it has been stated that one of his son has committed rape with daughter of his brother. The present case has been registered against Irfan at the instance of Anil Kumar and Kailash, father of the prosecutrix.

29. In cross-examination by Id. Addl. PP, DW-2 has

deposed that she started living separately from Anil in the month of August while this case came up in the month of January. The age of prosecutrix is about 18-20 years. She has denied the suggestion that the prosecutrix was 13 years of age at the time of incident.

12. The Id. Trial Court, upon perusal of the material placed on record and

after considering the submissions advanced on behalf of the parties, proceeded to hold as under:

34. Admittedly, PW-1 (prosecutrix) is the star witness of prosecution, who testified that on 12.01.11 she went to bathroom to answer the call of nature and when she was returning, accused Irfan who resides in their neighbourhood suddenly came there and closed her mouth with hands. Thereafter, he lifted her and took her to his room. He removed her pyjama and underwear and unzipped his pant. Thereafter, accused committed rape upon her

35. In cross-examination, she has deposed that

accused lifted her in both of his arms and her back was parallel to the ground when he took her to his room. This statement of prosecutrix is contradictory to the statements Ex. PW1/A and Ex. PW1/P wherein she has stated that she was dragged by the accused by gagging her mouth. She has further deposed that she did not raise any resistance nor tried to scratch the face and arms of accused when he was carrying her away. This statement of prosecutrix is also contradictory from her own statement. In further cross-examination, where she has deposed that she did not raise any noise when accused put her lie on the bed. She has voluntarily deposed that accused has pressed her mouth after about half an hour of having reached his room. She had stated before police as also before Id. MM about the accused carrying her in his arms. The above statement of prosecutrix is also contradictory with statements Ex. PW1/A and Ex. PW1/B. She has further deposed that the statement deposed by her in the court that accused took her in his arms, is

correct. Then she said that the statement made by her before police about accused taking her away forcibly by dragging/pulling her, was also correct. She has further deposed that accused dragged her about ten paces. She did not sustain any injury, abrasion or scratch marks due to this dragging by the accused. She did not raise any noise at the time when accused was dragging her.

36. Prosecutrix has further deposed that she did not

receive any injury of any kind on any part of her body. She has further deposed that she had bleeding like water from her private parts. Her clothes were soaked with blood and she did not change her clothes when she went to hospital. Police reached the spot after about one hour of the incident. There were no blood stains on the clothes of accused. She and accused were taken to police station first and then to hospital. This statement of prosecutrix has not been corroborated by the medical evidence and FSL report. It has come on the result of MLC, FSL that no semen and no blood was found on the underwear and pyjama of the prosecutrix and vaginal swab i.e. three slides which were taken by the doctor at the time of medical examination of prosecutrix. It is interesting that such statement has not been stated to the police or in the statement U/S 164 Cr.P.C. As per MLC of prosecutrix Ex. PW9/A, hymen was ruptured and no bleeding per vagina. There were no bruises and bite marks. In cross-examination of PW-9, PW-9 Dr. Umj Jahan has deposed that on perusal of MLC, it is clear that it has not been mentioned whether hymen is old ruptured or fresh ruptured. The doctor had advised for bone-age X-Ray of prosecutrix. But the I.O did not file the X-Ray report for bone-age. PW-9 has further deposed that if the hymen is fresh ruptured, same is noted in the MLC. As per the report of FSL, blood could not be detected on the underwear and

pyjama of prosecutrix and no semen could be detected on the underwear, pyjama and three macro slides of vaginal swab of prosecutrix.

The evidence of prosecutrix is not reliable. The medical evidence on record did not support the case of the prosecution, since no semen or blood stains were found on the medical examination of the prosecutrix nor were any injuries found on her person which she may have suffered while resisting the accused. The chemical analysis report also did not find any blood or semen on the clothes of the accused and the clothes of the prosecutrix or even on the bed sheet. There was, therefore, no corroborative evidence to support the case of the prosecution, and finding the evidence of the prosecutrix to be unreliable, the court cannot consider it safe to base a conviction on the un- corroborated testimony of the prosecutrix.

13. In view of the material contradictions and inconsistencies in the

prosecution evidence, vide judgement dated 6th December, 2012, the Id. Trial Court acquitted the Respondent by extending benefit of doubt. The relevant portion of the Judgement is reproduced hereinbelow:

44. In the present case, there are material contradictions in the statement of prosecutrix, and she cannot be called a trustworthy or reliable witness. The Medical evidence and FSL report are also in favour of the accused. After going through the material on record, I am of the considered view that prosecution has miserably failed to prove its case beyond reasonable doubt against the accused that he committed rape upon the prosecutrix. Accordingly, accused Irfan is acquitted of the offences, he was charged with.

45. Accused Irfan is in judicial custody in this case. He be released, if not wanted in any other case.

46. In view of amended provisions of Section 437A

Cr.P.C., accused is directed to furnish personal bond and surety bond in the sum of Rs. 15,000/- for a period of six months, with the directions that they will appear before Honble High Court as and when any notice is received by them in respect of any appeal filed by the State against this judgment.

14. Vide order dated 17th January, 2014, this Court was pleased to grant

leave in CRL.L.P. 198/2013 and directed its registration as Criminal Appeal No. 64/2014. Pursuant thereto, the present appeal was admitted.

15. The aforesaid impugned judgment dated 6th December, 2012 is under challenge in the present appeal.

SUBMISSIONS ON THE BEHALF OF THE STATE

16. At the outset, the Id. APP for the Appellant (State) submitted that

conviction can be based on the sole testimony of the prosecutrix. Id. APP contends that the Id. Trial Court has erred in discarding the testimony of PW- 1 on account of minor inconsistencies as the alleged discrepancies, such as whether the prosecutrix was dragged or lifted, are trivial in nature and do not go to the root of the matter. Such variations are natural and bound to occur in the testimony of a victim of a traumatic incident.

17. Id. APP submits that the Id. Trial Court has placed undue reliance on

medical and forensic evidence. The medical evidence is merely corroborative in nature and cannot override the direct and reliable ocular testimony of the prosecutrix. With respect to the medical evidence, it is contended that PW-9 has clearly noted that the hymen of the prosecutrix was ruptured. The absence

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of a specific opinion as to whether the rupture was fresh or old does not negate the allegation of rape.

18. Ld. APP further submits that absence of injuries or marks of violence

is not a decisive factor, particularly in cases of sexual assault wherein resistance may be minimal due to fear or coercion. It is further submitted that the absence of blood or semen on the clothes of the prosecutrix, as per the FSL report, is not fatal to the prosecution case. Such absence cannot be treated as conclusive proof of absence of sexual assault.

19. It is further submitted by the Ld. APP on the aspect of age, that PW-4

has duly proved the date of birth of the prosecutrix as 1st March, 1999 from the school records, thereby establishing that she was a minor at the time of the incident. It is contended that the non-production of the bone age test report does not discredit the documentary evidence on record.

SUBMISSIONS ON THE BEHALF OF THE

RESPONDENT / ACCUSED

20. Per contra, Ld. counsel for the Respondent submits that the entire

prosecution case hinges upon the sole testimony of PW-1, which is riddled with material contradictions and inconsistencies. The prosecutrix has made divergent statements at different stages, namely in the FIR, her statement under Section 164 Cr PC, and her deposition before the Court.

21. It is further submitted that there are material contradictions regarding

the manner in which the prosecutrix was allegedly taken by the Accused/Respondent, as in one version she states that she was dragged, whereas in another she deposes that she was lifted. It is further pointed out

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that the prosecutrix has given inconsistent statements regarding resistance and raising of alarm.

22. In addition, thereto the Id. counsel further submits that the medical

evidence does not support the prosecution case. As per the MLC proved by PW-9, there were no external injuries on the body of the prosecutrix, nor were there any signs of force or struggle. It is argued that the hymen was found to be ruptured, but there is no opinion as to whether the rupture was fresh or old. In cross-examination, it has come on record that in case of a fresh rupture, the same is ordinarily noted, which has not been done in the present case.

23. Insofar as the FSL report is concerned, Id. counsel for the Respondent

submitted that no blood or semen was detected on the clothes of the prosecutrix, the Accused/Respondent, or the bed sheet. This, it is argued, completely belies the allegation of recent sexual assault,

particularly in light of the claim of bleeding made by the prosecutrix.

24. On the aspect of age, Id. counsel submits that although a bone age test

was advised and conducted, the Investigating Officer failed to place the report on record. This omission, it is argued, is fatal to the prosecution case and gives rise to an adverse inference. It is contended that in the absence of such crucial evidence, the age of the prosecutrix has not been proved beyond reasonable doubt.

25. It is further submitted that the conduct of the prosecutrix is unnatural,

inasmuch as there was no resistance or injury despite the alleged use of force. The inconsistencies in her testimony, coupled with the absence of medical and forensic corroboration, render her evidence unreliable.

26. The Id. counsel thus submits that the Id. Trial Court has rightly

appreciated the evidence and has taken a plausible view in granting the benefit

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of doubt to the Accused/Respondent. It is argued that an order of acquittal ought not to be interfered with unless the findings are perverse, which is not the case here.

FINDINGS AND ANALYSIS

27. This Court has heard both the parties.

28. The issue before this Court is whether the testimony of the prosecutrix

inspires confidence so as to warrant interference with the order of acquittal, particularly in light of the material contradictions.

29. Upon a careful scrutiny of the testimony of the prosecutrix, both in her

examination-in-chief and cross-examination, this Court finds material contradictions emerging with respect to the incident in question. The relevant statements are reproduced hereinbelow: PW-1 Examination-In-Chief Cross- Examination On 12-01-11 I went to the by Shri I. S. Kapur, counsel for bathroom to answer the call of accused. the nature and when I was I was born in Bihar. I studied in returning, accused Irfan who Bihar in a school till 1st class. It used to reside in our is wrong to suggest that I studied neighbourhood, suddenly came upto 3rd class in Bihar. We are there and closed my mouth five brothers and sisters. My with his hands. Thereafter, he younger brother is two years lifted me and took me to his younger than me. My other room, thereafter he removed younger brother is 3-4 years my pajami and underwear and younger than my younger unzipped his trouser. brother. I am also having an elder Thereafter, accused brother who is one year elder committed rape upon me. than me. I am having a sister who After committing rape upon is two years younger than the me the accused ran away from brother who comes after me. there. I worn my clothes and Only my elder brother and myself screamed for help upon which used to study in Bihar. My father my father reached there and I was unemployed when we were in

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told about the incident to him. Bihar. All of siblings were born in My father made a call to Bihar. We shifted to Delhi about police by dialling 100. 10 years ago Accused lifted me in both of his arms and my back was facing and was parallel the ground when he took me to his room. I did not raise any resistance nor try to scratch the accused on his face or arms when he was carrying me away. I had raised noise when he was carrying me.

He had carried me for 5-6 paces when he reached his house. The door of the house of the accused was open. There was a single bed in the room. There was no other furniture in the room.

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I did not raise any noise even when the accused lay me on the bed. Vol.- He had pressed my mouth. He pressed my mouth after about half an hour of having reached his room. I had stated before the police as also before the Ld. MM about the accused carrying me in his arms. Confronted with the statement Ex. PW1/A and Ex. PW1/B wherein it is not so recorded. What I have stated today about the accused carrying me in the arms is correct. Then said the statement made by me before the police about the accused taking me away forcibly by dragging/pulling me was

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correct. The statement made by me before the Ld. MM is also correct about the accused having dragged me away. He had dragged me for about 10 paces. I did not sustain any injury, abrasion or scratch marks due to this dragging by the accused. Accused was dragging me by my hand. I did not raise any noise at that time when accused was dragging me. People gathered at the spot after about half an hour. There were number of people

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Accused and I were at home when my parents and parents of accused reached there. My family members did not apprehend the accused. I did not receive any injury of any kind on any part of my body. I had bleeding like water from my private parts. My clothes were soaked with blood. I had not changed my clothes when I went to the hospital. Accused was

taken away by the police. Police had reached the spot after about one hour of the incident. There was no blood stains on the clothes of the accused. Accused and I were taken to the PS first and then to the hospital. The statement given by me earlier about the accused having run away from the spot after raping

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me is correct. What I have stated today is also correct. Court question Q: Then how do you co-relate the two contradictory statements? A: The witness remained silent despite the question being explained to her in Hindi in different forms.

30. It is significant to note that in her examination-in-chief, the prosecutrix

stated that the Accused/Respondent had fled immediately after the commission of the offence. However, in her cross-examination, she deposed that both she and the Accused/Respondent were present at the house when their respective parents arrived. These two versions are inconsistent and cannot be reconciled. Moreover, when questioned by the Id. Trial Court about these contradictory versions, the prosecutrix remained silent and offered no explanation. Such silence, in the face of material contradictions, assumes significance and casts a serious doubt on the reliability of her testimony. Relevant portion of the testimony in cross-examination of prosecutrix is extracted hereinbelow: The statement given by me earlier about the accused having run away from the spot after raping me is correct. What I have stated today is also correct. Court question Q: Then how do you co-relate the two contradictory statements? A: The witness remained silent despite the question being explained to her in Hindi in different

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forms.

31. Furthermore, even within her cross-examination, the prosecutrix has

given inconsistent versions regarding the raising of alarm. At one stage, she stated that she raised noise while being carried away by the Accused/Respondent; however, she subsequently deposed that she did not raise any alarm even when she was allegedly dragged by him. These versions are mutually inconsistent and cannot be reconciled, thereby rendering her conduct doubtful on a material aspect of the incident.

32. One of the material inconsistencies in the testimony of the prosecutrix

pertains to the very manner in which she was allegedly taken away by the Accused/Respondent. In her examination-in-chief, she stated that the Accused/Respondent lifted her and took her to his room. In cross-examination, she deposed that he carried her in both his arms with her back remaining parallel to the ground. However, in her earlier statement under Section 164 Cr.P.C. (Ex. PW-1/B), she had stated that she was dragged by the Accused/Respondent after being gagged. The relevant portion of the statement under 164 CrPc is as under:

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33. These three versions are mutually inconsistent and cannot stand

together. The manner in which the prosecutrix was taken away forms the

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foundational part of the prosecution story, and such contradictions go to the root of the incident, thereby rendering her testimony unreliable on a material aspect.

34. In light of the aforesaid contradictions, it becomes necessary to

examine whether the medical evidence lends any support to the prosecution case. The relevant portion of the MLC is extracted hereinbelow: As stated by girl Vibha student of Class VII 13 yrs old was allegedly kidnapped from her house at 1:30 A.M. when she went to bathroom by a boy living in her neighbourhood & was raped after taking her in boys room no H/o intoxication, physical assault

XXXXXX

Breast tanner Stage III No injury marks Pubic hairs White stain marks Hymn ruptured, No BVP Introitus easily admits one finger, Cervix backward nulliparous uterus normal size,. No bruises no bite marks

35. A perusal of the MLC of the prosecutrix shows that no external injuries

were found on her. This assumes significance in light of her allegation that she was forcibly dragged or carried away. In the ordinary course, such an incident would be expected to leave at least some visible marks, such as scratches or abrasions. However, the MLC does not record any bruises or signs of physical assault.

36. It is also to be noted that the prosecutrix has stated that she was bleeding

profusely, and that she had not changed her clothes before reaching the

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hospital. The relevant portion of her statement in cross-examination is reproduced herein below: I had bleeding like water from my private parts. My clothes were soaked with blood. I had not changed my clothes when I went to the hospital

37. The above statement of the prosecutrix stands contradicted by the

MLC. While she has alleged that she was bleeding like water and that her clothes were soaked with blood, the MLC records no such finding, including no indication of bleeding per vagina. Moreover, as per the FSL report, no blood was detected on the clothes of the prosecutrix and no semen was detected on the relevant exhibits. The medical and forensic evidence, therefore, directly undermines her version on a material particular.

38. On the question of the condition of the hymen, PW-9, Dr. Uruj Jahan,

was cross-examined. The relevant portion of her testimony is reproduced herein below: There is no history of intoxication and physical assault. The menarche was two months back. LMP was 16.12.2010. The girl is unmarried. On examination patient is conscious and oriented, breast tanner stage 3, no injury marks, per abdomen soft. On local examination pubic hair present, white stain marks present, hymen was ruptured, no bleeding per vagina. Introitus easily admits one finger, cervix backwards, nulliparous, uterus normal size, bilateral fornices non tender. There were no bruises and bite marks. Swabs from posterior fornix three slides and underwear of girl handed over to ASI XXX by Sh. S. K. Rai, Advocate for accused. On perusal of the MLC it is clear that it has not been mentioned that the hymen is old ruptured or

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fresh ruptured. It is correct that in the MLC the Doctor had advised for X-ray for boneage. In response to court question:- It is possible for the Doctor examining the patient to opine whether the hymen is freshly torn or whether the same was old tear and if it was fresh tear, the same is noted on MLC

39. After perusal of this testimony, it is evident that the MLC is silent on

the aspect whether the alleged rupture of the hymen was recent or old. In view of the clarification given by the doctor-PW-9 that a fresh tear is usually recorded, the absence of such a note assumes significance and seriously undermines the allegation of recent forcible sexual intercourse.

40. The forensic evidence does not support the conviction because as per

the FSL report, no blood was detected on the underwear and pyjama of the prosecutrix (Exhibits 1a and 1b), despite her categorical assertion that she was bleeding like water and that her clothes were soaked with blood. Further, no semen was detected on the clothes of the prosecutrix or on the vaginal swabs (Exhibits 2a, 2b and 2c). The absence of both blood and semen on the material exhibits, when read in conjunction with the medical evidence which records no bleeding, stands in direct contradiction to the version put forth by the prosecutrix. This inconsistency between the ocular testimony, medical findings, and forensic evidence strikes at the root of the prosecution case and renders the testimony of the prosecutrix unreliable on a material aspect. The relevant portion of FSL is reproduced herein below: Parcel 1 : One sealed cloth parcel sealed with the seal of CMO AIIMS HOPT ND containing exhibits 1a & 1b. Exhibit 1a : One underwear having dirty stains. Exhibit 1b : One pyjama having dirty stains.

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Parcel 2 : One sealed cloth parcel sealed with the seal of CMO AIIMS HOPT ND containing exhibits 2a, 2b & 2c. Exhibits 2a, 2b & 2c : Three microslides having faint whitish smear. Parcel 3 : One sealed cloth parcel sealed with the seal of

MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS

NEW DELHI containing exhibit 3. Exhibit 3 : One underwear. Parcel 4 : One sealed plastic container sealed with the seal of MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI containing exhibit 4. Exhibit 4 : Cotton wool swab described as Penile swab. Parcel 5 : One sealed plastic container sealed with the seal of MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS NEW DELHI containing exhibit 5. Exhibit 5 : Cotton wool swab described as Control swab. Parcel 6 : One sealed envelope sealed with the seal of

MSL DEPARTMENT OF FORENSIC MEDICINE AIIMS

NEW DELHI containing exhibit 6. Exhibit 6 : Gauze cloth piece having brown stains described as Blood in gauze

RESULTS OF ANALYSIS

1. Blood was detected on exhibit 6.
2. Blood could not be detected on exhibits 1a, 1b, 3, 4
and 5.
3. Semen could not be detected on exhibits 1a, 1b, 2a, 2b,
2c, 3, 4 and 5.
4. Report of serological analysis in original is attached
herewith.
41. The aforesaid inconsistencies, when read in conjunction with the

medical and forensic evidence on record, substantially weaken the prosecution case. The MLC of the prosecutrix does not record any external injuries or signs of bleeding, despite her categorical assertion that she was bleeding like water and that her clothes were soaked with blood. This version is further contradicted by the FSL report, which does not detect any blood on her clothes or any semen on the material exhibits. While the hymen was found to be ruptured, there is no indication as to whether the rupture was

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recent, and the medical evidence does not support the allegation of recent forcible sexual assault. These contradictions are not minor or trivial in nature but go to the root of the prosecution case, rendering the testimony of the prosecutrix unreliable and incapable of forming the sole basis for conviction.

42. This court places reliance upon the judgement of the Supreme Court in

Ved Pal v. State of Haryana, 2023 SCC OnLine SC 1611 , where it was observed that the testimony of the prosecutrix is not borne out by the surrounding circumstances, and the medical as well as forensic evidence fails to lend support to the prosecution case, the benefit of doubt must necessarily enure to the Accused/Respondent. The relevant portion of the judgement is reproduced hereinbelow: 8. Mr Nikhil Tyagi, learned counsel appearing on behalf of the appellants submitted that both the trial court as well as the High Court have grossly erred in recording the order of conviction. He submitted that, there are material contradictions between the evidence of the prosecutrix-PW 1 and PW 2 (Rajwati). He further submits that, even the evidence of the medical expert as well as the FSL report does not support the prosecution case. He further submitted that the case is full of coincidences. It is submitted that, according to the prosecution, PW 2 (Rajwati) went to fill up water and at

the same time, she heard the cries of the prosecutrix. He further submitted that, another coincidence is that Simran, who is the son of the uncle of the prosecutrix also comes at the same time from the function and accompanies PW 2. It is submitted that in any case, Simran has not been examined. He therefore submits that the order of conviction and sentence, as recorded, is not sustainable in law and the appellants are entitled to be acquitted.

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9. Ms Ruchi Kohli, learned counsel appearing for

the State vehemently opposed the appeal. She submitted that the learned trial court as well as the learned High Court concurrently, and on correct appreciation of the evidence, have recorded the

order of conviction which warrants no interference.

She further submits that the conviction can also be recorded on the sole testimony of the prosecutrix. It is submitted that the testimony of the prosecutrix (PW 1) is cogent, reliable and trustworthy. In any event, the testimony of the prosecutrix (PW 1) is supported by the version of PW 2 (Rajwati). She also submits that the minor contradictions between the evidence of (PW 1) and PW 2 (Rajwati) should not be given much weightage inasmuch as both are rustic villagers. She further submits that the prosecutrix is 70% physically handicapped and as such, was not in a position to resist the force used by the accused. It is therefore submitted that, much would not turn on the absence of injuries on the person of the prosecutrix.

10. Ms Ruchi Kohli, learned counsel appearing for

the State further submitted that the entire defence of the appellants has been that of consent. However, taking into consideration that the

prosecutrix at the relevant time was aged about 13 years, consent would be immaterial.

11. With the assistance of the learned counsel for

the appellants as well as the learned counsel for the State, we have scrutinised the evidence.

12. No doubt that the conviction of the appellants

under Section 376 IPC could be recorded on the sole testimony of the prosecutrix if the evidence is found to be trustworthy, cogent and reliable. As rightly pointed out by Ms. Ruchi Kohli, learned counsel appearing for the State, the minor

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contradictions in the evidence of the prosecution witnesses would not substantially deter the prosecution case

13. However, in the present case, upon the

consideration of the entire evidence together, we find that the prosecution has failed to prove the case against the appellants beyond reasonable doubt.

14. In the evidence of prosecutrix as well as in the

evidence of PW 2, it has come on record that there are three houses in between the house of the prosecutrix and house of the accused Suresh, where the incident is alleged to have taken place.

15. As such, it is clear that even according to the

prosecution, the prosecutrix was dragged from her house to the house of accused Suresh. It is difficult to believe that, at that time, the prosecutrix did not make any cries/hues.

16. It is further to be noted that in the medical

evidence, the doctor has specifically stated that no injuries were found on the person of the prosecutrix. Though he has opined that the possibility of the sexual intercourse could not be ruled out, he has also stated that the possibility of intercourse earlier to the MLR cannot be ruled out. It is further to be noted that the FSL report further finds that no semen was found on the clothes of the prosecutrix or on the vaginal swab. The semen was found on the underwear of accused Suresh.

17. It is to be noted that the accused have taken a

specific defence that there was a civil dispute between grandfather of the appellant(s) and the grandfather of the prosecutrix. No doubt that the said suggestion is once denied by the prosecutrix and on other occasion she has stated that she is not aware about the same. Though the prosecutrix admits the letter addressed by her to accused Suresh, in the next blush, she states that she has

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neither visited the house of Suresh nor Suresh has visited to her house. Taking into consideration the fact that both the prosecutrix and the appellant(s) reside within the vicinity of three houses, the said version is difficult to believe.

18. In the totality of the circumstances, we find

that the prosecution has failed to prove the case beyond reasonable doubt. The accused are entitled to benefit of doubt

43. In *Santosh Prasad v. State of Bihar*, (2020) 3 SCC 443, the Supreme

Court held that where the testimony of the prosecutrix suffers from material contradictions, lacks credibility, and is not supported by medical or forensic evidence, it cannot be treated as a sterling piece of evidence to sustain conviction. The relevant portion of the judgment is extracted hereinbelow: 5.2. From the impugned judgments and orders passed by both the courts below, it appears that the appellant has been convicted solely relying upon the deposition of the prosecutrix (PW 5). Neither any independent witness nor even the medical evidence supports the case of the prosecution. From the deposition of PW 1, it has come on record that there was a land dispute going on between both the parties. Even in the cross-examination even PW 5, prosecutrix had admitted that she had an enmity with Santosh (accused). The prosecutrix was called for medical examination by Dr Renu Singh, Medical Officer and PW 7 Dr Renu Singh submitted injury report. In the injury report, no sperm as well as RBC and WBC were found. Dr Renu Singh, PW 7 Medical Officer in her deposition has specifically opined and stated that she did not find any violence marks on the body of the victim. She has also categorically stated that there is no physical or pathological evidence of rape. It is true that

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thereafter she has stated that possibility of rape cannot be ruled out (so stated in the examination- in-chief). However, in the cross-examination, she has stated that there was no physical or pathological evidence of rape. 5.3. As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the

evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties. 5.4. Before considering the evidence of the prosecutrix, the decisions of this Court in Raju [Raju v. State of M.P., (2008) 15 SCC 133 :

(2009) 3 SCC (Cri) 751] and Rai Sandeep [Rai

Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 :

(2012) 3 SCC (Cri) 750] , relied upon by the learned

advocate appearing on behalf of the appellant- accused, are required to be referred to and considered. 5.4.1. In Raju [Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] , it is observed and

held by this Court in paras 11 and 12 as under:

(SCC p. 141) 11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected

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against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not

tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh

case [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to

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be examined. 5.4.2. In Rai Sandeep [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , this Court had an occasion to consider who can be said to be a sterling witness. In para 22, it is observed and held as under: (SCC p. 29) 22. In our considered

opinion, the sterling witness should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to

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hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a sterling witness whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match

the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged. 5.4.3. In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. 5.5. With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the

deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per

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the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall the accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4.00 p.m. In her deposition, the prosecutrix has referred to

the name of Shanti Devi, PW 1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW 5, prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of sterling witness. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and the accused is to be given the benefit of doubt.

44. A similar view has been taken by the Supreme Court in *Dola v. State*

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of Odisha, (2018) 18 SCC 695. The relevant portion of the aforesaid judgment

is reproduced hereinbelow: 36. In our considered opinion, the trial court as well as the High Court have convicted the appellants without considering the aforementioned factors in their proper perspective. The testimony of the victim is full of inconsistencies and does not find support from any other evidence whatsoever. Moreover, the evidence of the informant/victim is inconsistent and self-destructive at different places. It is noticeable that the medical record and the doctor's evidence do not specify whether there were any signs of forcible sexual intercourse. It seems that the first information report was lodged with false allegations to extract revenge from the appellants, who had uncovered the theft of forest produce by the informant and her husband. The High Court has, in

our considered opinion, brushed aside the various inconsistencies pointed out by us only on the ground that the victim could not have deposed falsely before the Court. The High Court has proceeded on the basis of assumptions, conjectures and surmises, inasmuch as such assumptions are not corroborated by any reliable evidence. The medical evidence does not support the case of the prosecution relating to the offence of rape

45. Insofar as the question concerning the age of the prosecutrix is

concerned, in our considered opinion, the material placed on record by the prosecution to establish her age, particularly the entry in the school register, was insufficient to conclusively hold that the prosecutrix was below sixteen years of age, especially so in light of the contradictory evidence available before this court as in the present case, the only material placed on record to

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establish the age of the prosecutrix is the school record produced by PW-4, Brij Lal Sharma, PGT (Sanskrit), Government Co-educational Senior Secondary School, Delhi. Relevant portion of PW-4 statement is reproduced hereinbelow:

Today, I have brought the original record pertaining to Vibha Kumari who was the student of 7th standard in our school. As per the school record her date of birth is 1.03.99. Her date of birth was entered in our record on the basis of her previous SLC. Certificate issued to this effect by our Vice Principal is on Ex. PW 4/A bearing signature of Vice Principal Satpal Singh at point A. Copy of SLC is on Ex. PW 4/B and copy of admission register is on Ex. PW 4/C which are correct as per the original brought by me.

XXXX by Sh. I.S. Kapur, counsel for accused.

It is correct that there is an overwriting on the year of admission in the school in column in Ex. PW 4/B.

Court observation: Originally the year was written as 08 but was overwritten as 05.

As per our procedure we had not taken any birth certificate from the student as he had furnished the school leaving certificate (Ex. PW4/B) from the previous school. It is correct that we do not get the said date of birth furnished by the student, verified from the records of MCD. We did not verify for how long student had studied in the previous school. We do not get the school leaving certificate furnished by the student, verified from the said school.

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Vol- If the same is from Government school, we do not get it verified. Transfer certificate is attested by the Education Department of the State Government only if the student is seeking transfer to another State and if the student is in senior school. It is incorrect to suggest that I am deposing falsely about this fact. This cutting/overwriting on the said TC Ex.PW4/B was there when the same was produced in our school records. This certificate was taken in school records by another teacher at that time. It is incorrect to suggest that I am deposing falsely about this fact as I was not present at the time when this document was produced in the school. I cannot admit or deny the correctness of the school leaving certificate produced by the girl as the same was not verified by our school.

It is incorrect to suggest that age of the girl depicted in the school records is not correct. It is incorrect to suggest that school record is wrong and is not depicting the correct age of the girl.

46. On a perusal of the aforesaid testimony, it is evident that the stated date

of birth was not obtained from the records of the Municipal Corporation. The witness has further admitted that no verification was conducted regarding the period for which the student had studied in the previous school. It has also come on record that the school leaving certificate furnished by the student was not verified from the concerned previous school.

47. Furthermore, as has been rightly observed by the Id. Trial Court, PW-

2, in his testimony, specifically stated that the family had migrated from Bihar approximately twenty years prior to the incident and that his youngest son was three years old. This statement assumes significance as it materially affects the prosecutions case with respect to the determination of age and renders the

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documentary evidence placed on record susceptible to doubt. The relevant portion of the said testimony is reproduced hereinbelow:

When we shifted from Bihar to Delhi my youngest child was 3 years old. I do not remember the name of the school in which my daughter Vibha was studying. My daughter Vibha was born in village. I did not submit date of birth certificate of my daughter Vibha in the school at Delhi. I did not bring School Leaving Certificate of Vibha from Bihar. I do not remember if the School Authority had asked me to furnish school leaving certificate or birth certificate of Vibha. I shifted to Delhi from Bihar about

20 years ago. I do not remember if Vibha was born one or two years after my marriage.

48. The Id. Trial Court has, in our considered view, rightly dealt with and

appreciated the issue concerning the age of the prosecutrix. Upon a careful scrutiny of the evidence and the reasoning adopted, this Court concurs with the findings so recorded and finds no reason to take a view different from that taken by the Id. Trial Court. The conclusion reached on the issue of age is well-founded and calls for no interference. The relevant portion is reproduced hereinbelow:

42. In the present case, PW-1 (Prosecutrix) has three brothers and one sister. Her elder brother, who is the eldest child of PW-2 (father of prosecutrix), is one year older to her. The youngest brother of prosecutrix is five-six years younger to her. PW-2 (father of prosecutrix) has deposed that he came to Delhi from Bihar about 20 years ago and his youngest child was three years old. Prosecutrix was born in the village in Bihar. He

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did not submit date of birth certificate of prosecutrix in the school at Delhi. He did not bring school leaving certificate from Bihar. PW-4, who has proved the date of birth certificate of prosecutrix submitted in the school, has admitted that he did not get the said date of birth certificate verified from the records of MCD. Hence, in the absence of bone-age X-Ray report of prosecutrix, which was however, got conducted as advised by the doctor examining the prosecutrix, and no verification of date of birth certificate of prosecutrix by the school authorities, the judgments referred above are squarely applicable to the facts and circumstances of the present case.

Further, from the testimonies of PW-1 and PW-2, it is clear that youngest child of father of prosecutrix was about 23 years old and prosecutrix was 25-26 years old at the time of incident.

49. From the testimony of PW-2, who is the father of the prosecutrix, it is

evident that the family migrated from Bihar approximately 20 years prior to the incident. According to PW-2, his youngest son was three years old at the time of migration. Even for the sake of argument, if it is assumed that the prosecutrix is only one year older than her younger brother, her age would still not be less than 23 years on the date of the incident.

50. PW-4, who is a teacher from the school, stated that the date of birth of

the prosecutrix was recorded on the basis of a previous school leaving certificate (SLC). However, the father of the prosecutrix deposed before the Court that he neither submitted any date of birth certificate at the school in Delhi nor brought any school leaving certificate from Bihar. Thus, the authenticity of the school leaving certificate allegedly issued by the Bihar school is doubtful.

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51. The view taken by this Court is further fortified by the judgment of the

Supreme Court in *Manak Chand v. State of Haryana*, (2024) 20 SCC 561. The relevant observations are reproduced hereinbelow: 18. This Court in *Birad Mal Singhvi v. Anand Purohi* had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth: (SCC p. 618, para 14) 14. The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

The entry contained in the admission form or in the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.

19. In our opinion, the proof submitted by the

prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the trial court as to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.

20. Secondly, we cannot lose sight of the fact that

since age was such a crucial factor in the present case, the prosecution should have done a bone

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ossification test for determination of the age of the prosecutrix. This has not been done in the present case. On the other hand, as per the clinical examination of the prosecutrix which was done by PW 1 Dr Kulwinder Kaur on 28-10-2000 and which has also been referred to in the preceding paragraph of the present judgment, we find that the secondary sex characteristics of the prosecutrix were well developed. The doctor in her report mentions that the prosecutrix is a well-built adult female. At another place it mentions well developed pubic hair and external

genitalia were fully developed and normal. It then records her age as sixteen years as told to her by the mother of the prosecutrix. The report records that there were no external marks of injury over her breast, neck, face, abdomen and thigh. The report then concludes, inter alia, about her age as under: At the time of medical examination of the patient, no force seems to have been used against her. I cannot opine about the age of the patient on the basis of development of her pubic hairs and genitalia, etc. The patient was habitual to sexual intercourse because her labia minora was hypertrophied and hymen admitted two fingers.

52. Keeping in view the aforesaid judgments and the material

inconsistencies emerging in the testimony of Prosecutrix PW-1, this Court is of the considered view that the prosecutions case does not inspire confidence and gives rise to a reasonable doubt. Moreover, the medical evidence does not support or corroborate the prosecution story and, therefore, does not lend any assurance to the case set up by the prosecution. Further, the documentary evidence placed on record is not of such a nature as would enable this Court to conclusively determine the age of PW-1 as a minor.

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CONCLUSION

53. In the considered opinion of this Court, the prosecution has failed to

prove its case beyond reasonable doubt. The view taken by the Id. Trial Court is plausible and no perversity, illegality, or manifest error is made out so as to warrant interference with the order of acquittal.

54. Accordingly, the impugned judgment of acquittal passed by the Id.

Trial Court is upheld.

55. The appeal is, accordingly, dismissed. Pending applications, if any,
stand disposed of.

MADHU JAIN

JUDGE

PRATHIBA M. SINGH, J

JUDGE

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