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

% Judgment reserved on: 15.12.2025
Judgment pronounced on: 17.02.2026

\+ **CRL.A. 1270/2025, CRL.M.A. 27136/2025 & CRL.M.(BAIL) 1897/2025**

**KARAN** .....Appellant

versus

**STATE NCT OF DELHI & ANR.** ..... Respondents

**Advocates who appeared in this case:**

For the Appellant : Mr. Vikram Singh, Mr. Deepak Sharma, Mr. Vishruti Chauhan & Mr. Bhanu Pant, Advs.

For the Respondents : Mr. Raj Kumar, APP for the State.
SI Pravesh, PS Mundka.
Ms. Supriya Juneja, Adv. for R-2/ victim.

**CORAM**
**HON'BLE MR JUSTICE AMIT MAHAJAN**

**JUDGMENT**

1. The present appeal is filed under Section 415 of the Bhartiya Nagarik Suraksha Sanhita, 2023 ('**BNSS**') against final order and judgment dated 09.07.2025 (hereafter '**impugned judgment**') and order of sentencing dated 30.07.2025 (hereafter '**impugned order on**

**sentence**') passed by the learned Additional Sessions Judge (POCSO)-6, West District, Tis Hazari Court, Delhi ('**ASJ**') in S.C. No. 80/2021.

2. By the impugned judgment, the learned ASJ convicted the appellant for the offences under Sections 342/363/365/376AB/506 of the Indian Penal Code, 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**'). By the impugned order on sentence, the learned ASJ sentenced the appellant to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.10,000/- for the commission of the offence under Section 6 of the POCSO Act; rigorous imprisonment for a period of 1 year and to pay a fine of Rs.1,000/- for the commission of the offence under Section 342 of the IPC; rigorous imprisonment for the period of 1 year and to pay a fine of Rs. 1,000/- for the commission of the offence under Section 363 of the IPC; rigorous imprisonment for the period of 2 years and to pay a fine of Rs.2000/- for the commission of the offence under Section 365 of the IPC and rigorous imprisonment for the period of 1 year and to pay a fine of Rs.1,000/- for the commission of the offence under Section 506 of the IPC. All of the above sentences were directed to run concurrently.

3. The FIR was registered on a complaint given by the victim. The victim, aged 13 years and the appellant lived in the same neighborhood. It is alleged that the appellant would repeatedly try to talk to the victim and invite her to his room. It is alleged that the appellant would profess his love to the victim and ask her to marry him, despite the victim refusing for the same. It is alleged that on 08.12.2020, around 11:30 pm,

when the victim went to use the washroom, the appellant came from behind the victim, gagged her mouth and took her to his room. It is alleged that the appellant forcefully established physical relations with the victim and held the mouth of the victim shut to the extent that she lost consciousness. It is alleged that when the victim regained consciousness, she had no clothes on and her body was paining. It is alleged that at that time, the parents of the victim were looking for her and upon hearing their voice, the appellant hid the victim in a closet. It is alleged that the appellant threatened the victim that if she disclosed the incident to anyone, he would kill her. It is alleged that thereafter, the appellant ran away from the spot. It is alleged that the victim's parents opened the said closet, got the victim out, took her to the hospital and called the police.

4. Charges were framed against the appellant for the offences under Sections 363/365/376AB/342/506 of the Indian Penal Code, 1860 ('**IPC**') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO**') to which the appellant pleaded not guilty and claimed Trial.

5. The learned ASJ convicted the appellant for the offences under Sections 342/363/365/376AB/506 of the IPC and Section 6 of the POCSO Act *vide* judgment dated 09.07.2025. The learned ASJ noted that the victim testified that on the day of the alleged incident, around 11pm she was going to use the washroom situated just outside her house, when the appellant came from behind and put a handkerchief on her

face, thereafter she became unconscious and the appellant took her to his room. It was noted that this version of the victim has been corroborated with her statement recorded under Section 164 of the CrPC, where a more or less similar statement was given by the victim, establishing how the appellant kidnapped the victim.

6. It was noted that the victim also testified in her deposition that her paternal aunts had rescued her from the closet of the appellant whereafter she was taken to the hospital. It was noted that this version of the victim was also corroborated with her statement recorded under Section 164 of the CrPC wherein similar facts were stated by the victim. It was noted that the aforesaid statements being more or less similar show how the appellant confined the victim in a closet and she was later on recovered from the house of the appellant in the presence of her paternal aunts.

7. It was noted that the victim deposed in her examination-in-chief that the appellant took her to his room where he established '*sharirik sambandh'* with her, during which he held her mouth shut due to which she lost consciousness. It was noted that the victim also elaborated that by '*sharirik sambandh'* she means that '*karan ne apna susu wala hissa mere susu wale hisse mein daala*'.

8. It was noted that the victim has categorically deposed in her examination-in-chief that '*Karan ne mujhe ek almirah me choopa rakha tha, aur mujhe dhamki diya tha ki kisi ko batayegi toh jaan se maar dunga*'. It was noted that at the time of commission of offence, the

victim was a young girl at the mercy of the appellant and there can be no doubt that the threat extended by the appellant had caused alarm to her.

9. It was noted that the defence raised by the appellant regarding false implication was completely vacuous, as the appellant did not examine any witnesses or produce any documentary evidence to substantiate the alleged quarrel between his family and the family of the victim.

10. It was noted that the victim remained quite consistent in her statements and categorically described the commission of the crime against her by the accused, additionally the victim also correctly identified the appellant before the court. It was noted that there are only minor embellishments in the statements of the victim, which do not go to the root of the present case and are not fatal to the case of the prosecution. It was further noted that the statements of the victim instilled the required confidence of the court in order to prove the guilt of the accused and her testimony could be considered as of sterling quality.

***Submissions on behalf of the appellant***

11. The learned counsel for the appellant submitted that the impugned judgement is contrary to the facts as well as law involved in the present case and is therefore liable to be set aside.

12. He submitted that the allegations made by the victim against the appellant are vague, general and sweeping in nature. He submitted that

it is a settled legal proposition that conviction in sexual assault cases can be sustained solely on the basis of the testimony of the victim only if it inspires confidence and when the same is of sterling quality and unblemished in nature.

13. He submitted that in the present case, the victim's testimony is full of inconsistencies, contradictions and improvements on material aspects of the present case.

14. He submitted that the MLC dated 09.12.2020 records that the victim was unable to recall the incident and that the victim was unconscious at the time of the alleged incident. He submitted that the appellant was not named in the MLC and no allegation of penetrative sexual assault was made by the victim in the MLC. He submitted that despite the MLC recording that the victim was unconscious at the time of the alleged incident and did not remember anything, the victim has alleged that the appellant established "*sharirik sambandh*" with her in her complaint to the police. He submitted that the victim, in her statement recorded under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**'), once again stated that she became unconscious after her mouth was pressed by the appellant and has specifically disclosed that she did not remember what happened after she became unconscious. He submitted that the victim in her examination in chief also made no allegations of penetrative sexual assault upon the appellant.

15. He submitted that the victim made material improvements upon the MLC in her complaint by alleging that when she regained consciousness post the alleged incident, she had no clothes on, while the same was never deposed by the victim in her MLC. He submitted that thereafter, the victim again made no allegations of waking up without clothes after the alleged incident in her statement under Section 164 of the CrPC.

16. He submitted that the victim alleged that she felt sharp pain in her body after the alleged incident in her complaint to the police, however, the victim failed to depose the same at the time of her MLC, moreover, the MLC records that no injuries were found upon the victim.

17. He submitted that the testimony of the victim has been inconsistent regarding the factum of who rescued her from the appellant's closet. He submitted that in the MLC, the victim has attributed her rescue to her paternal aunts, however, in her complaint to the police she attributed her rescue to her parents. He submitted that the victim once again diverted from her earlier statements and attributed her rescue to her paternal aunts and not her parents in her statement under Section 164 of the CrPC. He submitted that the aforesaid statement of the victim has been contradicted by the statements of her mother (PW-2) and father (PW-3), who have deposed that they had rescued the victim from the appellant's closet.

18. He submitted that the victim introduced material improvements in her complaint to the police dated 09.12.2020. He submitted that the

victim made allegations against the accused of "*chedkhani*" and forceful marriage proposals for the first time in her complaint. He submitted that thereafter, the victim in her statement under Section 164 of the CrPC, made no allegations of any "*chedkani*" or marriage proposal against the appellant.

19. He submitted that the Emergency Response System ('**ERS**') record notes that the first emergency call was received on 09.12.2020 at 1:12 am, pursuant to which HC Krishan reached the spot at 1:28 am. He submitted that HC Krishan, who was the first responder to the place of the alleged incident has not been examined. He submitted that it has been merely noted in the ERS that the victim and appellant were neighbors and friends, and that the victim had gone to the house of the appellant where the parents of the victim arrived and took the victim in an ambulance while the appellant was taken to the Police Station. He submitted that no allegation of sexual assault, nudity or unconsciousness has been made in the ERS.

20. He submitted that though the ERS document forms part of the charge sheet, the same was never exhibited during the trial without any explanation, attracting an adverse inference under Section 114(g) of the Indian Evidence Act, 1872.

21. He submitted that though the victim has deposed that the appellant ran away after the incident, the ERS record shows that the appellant was present at the spot and was taken to the police station.

22. He submitted that the arrest memo records that the appellant was arrested at 10:50 am, on 09.12.2020, the ERS record shows that the appellant was taken to the police station at 1:28 am. He submitted that such contradictory timelines expose serious manipulation and unfairness in the investigation.

23. He submitted that the PW-2/ mother of the victim, deposed that the victim regained consciousness in the hospital, which is contradictory to the ERS record and the MLC, both of which record that the victim was conscious throughout. He submitted that PW-2 made no allegation of the victim being found without clothes after the alleged incident.

24. He submitted that the FSL report, admittedly favors the accused and the same has been recorded by the learned Trial Court itself. He submitted that in the absence of any medical corroboration, conviction based on the inconsistent testimony of the victim is unsustainable.

25. He submitted that the paternal aunts of the victim, who are the alleged rescuers of the victim have not been examined by the prosecution.

26. He submitted that the alleged incident took place in a crowded and densely populated area, yet no alarm was raised by the victim when the appellant allegedly grabbed her.

27. He submitted that PW-3/ father of the prosecutrix has admitted that there was acrimony between the families of the victim and the appellant just before the incident. He submitted that this admission

strongly supports the defence plea of false implication due to prior acrimony taken by the appellant before the learned Trial Court.

28. He submitted that PW-3 deposed that many persons from the neighbourhood had joined PW-2 & 3 while they were searching for the victim, however, no independent witness has been examined by the prosecution to prove the rescue of the victim from the closet of the appellant.

29. He submitted that the learned Public Prosecutor was permitted to put leading questions to the victim beyond the scope of Section 142 of the Indian Evidence Act, 1872, thereby filling the lacunae in the case of the prosecution. He submitted that this approach vitiates the concept of a fair trial.

30. He submitted that the offence under Section 506 is not proved against the appellant in the present case as the allegation against the appellant of threatening the victim arose for the first time in the complaint to the police and the same is conspicuously absent from the victim's statement under Section 164 of the CrPC. Moreover, the MLC records that the victim was unconscious at the time of the alleged incident and hence, the question of the appellant threatening her does not arise.

***Submissions on behalf of the Respondents***

31. The learned Public Prosecutor for the State and the learned *amicus curiae* appointed to address arguments on behalf of the victim submitted that the impugned judgment is reasoned and warrants no interference.

32. They submitted that there is a reverse presumption under Section 29 of the POCSO Act against the appellant. They submitted that the appellant has failed to rebut the said presumption and the learned Trial Court has rightly convicted the appellant.

33. They submitted that the appellant failed to cite any defence witnesses during the course of trial and merely raised the defence that he was falsely implicated in the present case due to prior enmity with the family of the victim.

***Analysis***

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

> *"9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent*

*evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in Majjal v State of Haryaya [(2013) 6 SCC 799] , where the Court held:*

> *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.*
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> *7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "*
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> *(emphasis supplied)*

35. Criminal jurisprudence rests on the foundational principle that a conviction cannot be founded upon mere surmises or conjectures. The prosecution, therefore, bears the onerous burden of proving, through

cogent, reliable, and admissible evidence, every essential ingredient of the alleged offence beyond reasonable doubt. This standard of proof is not an empty formality; rather, it functions as a vital safeguard against the possibility of wrongful conviction. Accordingly, where the prosecution's case is vitiated by material inconsistencies, contradictions, or evidentiary deficiencies, the accused is entitled to the benefit of doubt.

36. Accordingly, a meticulous examination of the impugned judgment as well as the material on record reveals that several material aspects of the case were either summarily disregarded or addressed in sweeping generalisations. The reasoning is general, not granular; broad, but not precise. Notably, the same raises the most fundamental question that lies at the heart of every criminal trial: Does the prosecution's evidence prove the case beyond reasonable doubt?

37. Before delving into the analysis of the material on record threadbare, it is pertinent to mention that this Court is conscious of the fact that the victim is a child and minor contradictions would not adversely impact the matter. It is trite law that the accused can be convicted solely on the basis of evidence of the victim as long as same inspires confidence and corroboration is not necessary for the same. However, when a victim's testimony is marked by identified flaws or gaps or provides an insufficient account of the incident, a conviction cannot be sustained. [Ref: ***Nirmal Premkumar v. State*** **: 2024 SCC OnLine SC 260**].

38. In the present case, a perusal of the material on record indicates that the case of the prosecution is marred with blemishes and fails to establish the case against the appellant beyond reasonable doubt.

39. The learned ASJ convicted the appellant essentially solely on the basis of the testimony of the victim noting that the testimony of the victim apart from minor embellishments and inconsistencies was consistent throughout, meeting the standards of a 'sterling witness'.

40. One of the major grounds taken by the appellant to challenge the impugned judgment is that the learned ASJ erred in concluding that the testimony of the victim in the present case is of sterling quality. The learned Trial Court brushed off various discrepancies in the testimony of the victim in regard to the manner in which the alleged incident occurred and the events that transpired post the commission of the alleged offence as minor embellishments. Upon a scrupulous analysis of the evidence in the present case, in the opinion of this Court, the same has the effect of casting a serious doubt on the veracity of the case of the prosecution. The same is summarized as follows:

41. *First*, in relation to the allegation of sexual assault against the appellant, which goes to the very root of the matter. The victim/PW-1, in her Examination in Chief, deposed that at the night of the alleged incident, around 11:00 pm, when she went to use the washroom situated just outside her house, the appellant came from behind and put a handkerchief on her face, whereafter she turned unconscious and the appellant took her to his room. She deposed that when she gained

consciousness, her whole body was hurting and she had scratches on her hands and feet. Upon being asked a court question, the victim elaborated that "*mujhe aisa lag raha tha, ki Karan ne mere saath jabardasti galat kaam kiya hai aur mere shareer ke neechle hisse mein kaafi dard ho raha tha*".

42. The learned Additional Public Prosecutor for the state was allowed to ask leading questions to the victim, whereupon she affirmed that the appellant took her to his room and forcefully established "*sharirik sambandh*" with her. Thereupon, answering to a court question, the victim clarified that by "sharirik sambandh", she means that "*Karan ne apna susu-wala hissa mere susu-wale hisse mein daala*". It is pertinent to atleast examine the testimony of the victim regarding sexual assault committed upon her by the appellant with her earlier statements, so as to determine whether they corroborate the same.

43. The MLC in the present case was recorded on 09.12.2020, at 3:30 am, which is just a few hours after the alleged incident. The victim in her MLC stated that when she went to use the washroom on 09.12.2020 at approximately 12:00 am, someone came from behind, closed her mouth and took her to his room. She further stated that she lost her consciousness and did not remember anything. It is pertinent to note that in the MLC, the victim did not name the accused and made no allegation of sexual assault, instead claiming that she did not remember anything. Importantly, no mention of any pain in her body or scratches on her arms or legs have been noted in the MLC of the victim.

44. The victim in her complaint to the police improved upon her version in the MLC and alleged that around 11:30 pm, when she went to use the washroom, the appellant came from behind, took her to his room and established physical relations with her, whereafter she lost consciousness. It is relevant to note, that the victim made allegations of sexual assault upon the appellant for the first time in this complaint.

45. The victim in her statement recorded under Section 164 of the CrPC stated that at the night of the alleged incident, when she went to use the washroom, someone kept a handkerchief on her mouth and took her to his room and when she tried to scream, pressed her mouth so tightly that she lost consciousness. She further stated that "*mere saath kya hua us wakt mujhe kuch nahi pata*". It is pertinent to note that the victim once again deviated from her allegation of sexual assault at this stage stating that she does not know what happened as she was unconscious. The victim at different stages has differed from her earlier statements regarding the commission of sexual assault upon her by the appellant, at some stages stating that she was unconscious and did not remember anything and completely deviating at other stages alleging sexual assault. The victim in her deposition introduces new facts regarding pain and scratches on her body which led her to believe she had been sexually assaulted, while in her MLC just a few hours after the incident makes no mention of any pain or injuries. Furthermore, the victim in her deposition has upon a court question explained what she means by "*sharirik sambandh*", which she alleges upon the appellant, it

is important to note that if the victim had turned unconscious as she had stated in her earlier statements, she could not have known the same.

46. *Second*, in relation to the statement of the victim that when she gained consciousness post the alleged incident, she had no clothes on. The victim in her Examination in Chief deposed that when she regained consciousness after the alleged act, she found herself in the room of the appellant, completely nude. It is pertinent to note that the victim failed to mention the said fact in her MLC and her statement under Section 164 of the CrPC. Additionally, the mother (PW-2) and father (PW-3) of the victim deposed that they found the victim in the closet of the appellant, however, failed to make any mention of the victim being nude at the time of her rescue.

47. *Third*, in relation to the rescue of the victim from the room of the appellant. Pertinently, the statement of the victim has been inconsistent throughout pertaining to who rescued her from the appellant's closet. The victim in her examination in chief and her statement under Section 164 of the CrPC deposed that her paternal aunts rescued her from the closet in the appellant's room, where he had hidden her. However, the victim in her complaint to the police attributed her rescue to her parents. Additionally, the parents of the victim made no mention of her paternal aunts rescuing her, instead stating that they had themselves found the victim. It is pertinent to note that the paternal aunts of the victim have not been made witnesses by the prosecution, further raising doubt upon the rescue of the victim from the closet in the appellant's room. It is also

pertinent to note that the victim has deposed that the appellant hid her in his closet after she had gained consciousness, however, both her parents have deposed that the victim was found in the closet in an unconscious state. Further, the victim deposed that the appellant ran away from the spot after hiding her in the closet in his room, however, the Emergency Response System Call, records that pursuant to the police reaching the spot, the appellant was taken to the police station.

48. Considering that the conviction of the appellant was sustained on the basis of the testimony of the victim, discrepancies in the same thus go to the root of the present case and raises serious doubts on the veracity of the case of the prosecution.

49. Pertinently, in order for an accused to be convicted solely on the basis of the evidence of the victim, the testimony of the victim ought to be one of sterling quality. A scrupulous analysis of the testimony of the victim at various stages as shown above, illustrates various inconsistencies, improvements and embellishments. The Hon'ble Apex Court in ***Rai Sandeep v. State (NCT of Delhi)* : (2012) 8 SCC 21** has laid down the threshold required to be met in order for a witness to be considered a 'sterling witness'. The same has been reproduced hereunder:

> *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 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.*

50. In the opinion of this Court, in view of the above stated facts, the testimony of the victim in the present case, cannot be said to be one of sterling quality so as to not require independent corroboration. The learned Trial Court erred in holding the victim's testimony to be one of sterling quality and convicting the appellant solely on the strength of the same.

51. The learned counsel for the appellant further drew the attention of this Court to the Emergency Response System ('**ERS**') Call, which forms part of the charge sheet in the present case. The ERS record shows

that the first emergency call was received at 1:12 am and HC Krishan reached the spot at 1:28 am. The ERS record merely records that the appellant and the victim were friends and the victim went to the appellant's house, where the victim's parents arrived and took her to the hospital. It is pertinent to note that the ERS record forms part of the charge sheet, however, the same was never exhibited during the Trial, thereby further undermining the credibility of the prosecution's case and casting a serious doubt upon its veracity.

52. It is relevant to note that the ERS record indicates that the appellant was taken to Police Station Mundka at 1:28 am, on the night of the alleged incident, completely contrary to the same, the Arrest Memo records the arrest of the appellant at 10:50 am in the morning. Such a blatant inconsistency in the police records raises serious doubt upon the investigation in the present case. Additionally, the ERS record shows that HC Krishan was the first responder at the scene of the alleged crime, however, HC Krishan has not been made a witness in the present case, which further erodes the probative value of the prosecution's case.

53. This Court now turns its gaze towards the medical and scientific evidence in the present case. Pertinently, no incriminating material against the appellant has been found in the FSL report in the present case. Further, the MLC of the victim clearly records that neither abnormalities were detected in the local examination of genital parts of the victim nor external injury marks were detected. While absence of incriminating evidence in the FSL report and MLC does not *ipso facto*

absolve the appellant of the charged offences, it does raise serious doubt upon the case of the prosecution considering the testimony of the victim is smeared with manifest discrepancies.

54. Another aspect of the present case that requires some consideration is that the appellant and the victim were neighbours, living in a densely populated area, however, no alarm was raised by the victim when the appellant allegedly forcefully took her to his room. Moreover, the father of the victim (PW-3) deposed that while he was searching for the victim at the time of her rescue, their other neighbours had also been aiding him in his search and had knocked on the door of the appellant while searching for the victim. It is pertinent to note that none of these neighbours have been made witnesses by the prosecution to corroborate the rescue of the victim from the appellant's house. In the facts of the present case, absence of any independent witnesses' casts further doubt upon the veracity of the case of the prosecution.

55. Much emphasis has been laid by the State on the presumption of commission of offence raised against the appellant in accordance with Section 29 of the POCSO Act. The same, in the opinion of this Court, does not aid the case of the prosecution. It is pertinent to note that while Section 29 of the POCSO Act provides for a presumption as to the commission of certain offences, the said presumption is not absolute in nature and only comes into play once the prosecution establishes the foundational facts [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi)*** **: 2020 SCC OnLine Del 1938**]. For this reason, in order to trigger the

presumption, it is incumbent on the prosecution to lead evidence to prove the foundational facts. If the prosecution fails to do so, in the opinion of this Court, a negative burden cannot be thrust upon the shoulders of the accused to prove otherwise.

56. As far as the allegations of the appellant committing offences under Section 342/363/365/of the IPC are concerned, it is pertinent to note that though the victim, her mother and father have deposed that the victim was recovered from the room of the appellant, no independent witnesses have been examined to corroborate the same. The victim's father, as noted above, categorically deposed that he was aided by various neighbours who helped him find the victim in the appellant's room, however, none of the said neighbours have been named or been made witnesses to corroborate the same.

57. This Court now turns its gaze towards the allegations of criminal intimidation against the appellant, the victim deposed that when the appellant heard the victim's parents searching for her, he hid her in his closet and threatened her that if she told anyone about the incident, he would kill her. It is relevant to note that the said allegation is absent in the statement of the victim under Section 164 of the CrPC, though this Court is cognizant of the fact that a witness at different stages of the investigation may elaborate upon different aspects of the incident, however, in the present case, the testimony of parents of the victim cast further doubt upon the case of the prosecution. It is pertinent to note that both parents of the victim have deposed that the victim was found in an

unconscious state in the closet of the appellant. This material contradiction casts serious doubt upon the case of the prosecution, since, if the victim was in an unconscious state in the appellant's closet, the appellant could not have threatened her and caused criminal intimidation.

58. It is also relevant to note that the victim's father (PW-3) during his cross-examination admitted that "*Iss ghatna se pehle hamara Muljim Karan ke pariwar ke saath tu-tu-main-main hui thi.*", the same, in isolation, may not warrant an inference of false implication, when viewed in light of the peculiar facts and circumstances of the present case, it nonetheless gives rise to a degree of suspicion regarding the possibility of the accused having been falsely implicated.

***Conclusion***

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

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

61. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned Trial Court is unsustainable. The

evidence led by the prosecution does not meet the standard of proof required in a case of this nature. The benefit of doubt must and does go to the appellant.

62. Accordingly, the impugned judgment and impugned order on sentence are set aside.

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

64. The appeal is allowed and disposed of in the aforesaid terms. Pending applications also stand disposed of.

65. This Court also appreciates the effort put in by the learned *Amicus* Ms. Supriya Juneja in assisting the Court.

66. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

**AMIT MAHAJAN, J**

**FEBRUARY 17, 2026**
***"SK"***