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

Reserved on: 02.11.2026
Date of Decision: 27.11.2026
Uploaded on: 27.11.2026

\# **CNR No. DLHC013279202017**
\+ **CRL.A. 744/2017**

ROHIT @ MANOJ .....Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna, Mr. Ajay Kumar, Ms. Vani Singhal, Ms. Avantika Shankar, Mr. Pradeep Yadav, Mr. Mehul Gupta, Mr. Yash Arora, Mr. Naval Goel, Mr. Sarthak Gupta, Ms. Amrita Kumari, Ms. Nivedita Tiwari, Ms. Isha Singh, Ms. Disha, Advs.

versus

STATE .....Respondent

Through: Ms. Meenakshi Dahiya, APP
Mr. Gaurav Sharma, Adv. for victim (DHCLSC)
SI Daya Ram, Narela

CORAM:
HON'BLE MS. JUSTICE MADHU JAIN

JUDGMENT

MADHU JAIN, J.

1. The present criminal appeal has been filed under Sections 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as *"Cr.P.C.")* whereby the appellant is seeking setting aside of the judgment dated 03.02.2017 and the order on sentence dated 08.02.2017 passed by the learned ASJ -(01), North, Rohini Courts, New Delhi, in connection with ***FIR No. 08/2013,*** registered at P.S. Narela, Delhi under Sections 376, 342,

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506 of the Indian Penal Code, 1860 (hereinafter referred to as *'IPC')* whereby the appellant was convicted and sentenced for the offences under Section 06 of the Protection of Children from Sexual Offences Act, 2012, (hereinafter referred to as *'POCSO Act')* and under Section 376(2)(f) of IPC.

Brief Facts

2. In brief, the case of the prosecution is that on 01.01.2013, at about 3:00 p.m., the prosecutrix (PW-1), aged about 12 years, was washing clothes at her residence situated on the upper floor of a factory at A-299, DSIDC, Narela, Delhi, while her parents were away at work. At that time, when she went to the first floor to collect the dried clothes, the appellant, who was working in the factory, followed her into a room, pushed her inside and bolted the door from within. He thereafter forcibly removed her salwar and, when prosecutrix attempted to raise an alarm, the appellant gagged her mouth and threatened to kill her. The appellant thereafter committed penetrative sexual assault upon her. Upon someone knocking at the door from outside, the appellant left the room and fled from the spot. Thereafter, the prosecutrix came out of the room, informed her mother about the incident and started weeping.

3. On receipt of a PCR call *vide* DD No. 31-A, IO/SI Seema, accompanied by SI Mahavir Singh and Constable Samunder, reached the spot, where the prosecutrix was found along with her mother. Upon inquiry, the prosecutrix disclosed that a boy named Rohit, who was working in the factory, had committed rape upon her. Her medical examination was thereafter conducted at SRHC Hospital, Narela, *vide* MLC No. 02/13.

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Subsequently, her statement was recorded in the presence of Smt. Najma Khan of NGO Nav Srishti, which formed the basis of registration of the ***FIR No. 08/2013.***

4. On 19.07.2013, a formal charge for the commission of offences u/s 376 (2)(f) IPC and u/s 06 of the POCSO Act were framed against accused Rohit @ Manoj by learned trial court.

5. To prove its case against the accused and discharge its burden, the prosecution examined sixteen witnesses before the learned Trial Court, whose testimonies have been discussed in the impugned judgment as under:

PW	***Name of witness***	***Nature of witness***	***Documents proved***
1	*Victim*	*Victim*	*Supported prosecution case; proved her statement recorded by police as Ex. PW1/A, statement recorded u/s 164 Cr.P.C. as Ex. PW1/B, arrest of accused*
2	*Mother of the Victim*	*Mother*	*Supported version of prosecutrix*
3	*Father of the Victim*	*Father*	*Supported version of prosecutrix*
4	*Ashish Dabas*	*School Teacher*	*Proved date of birth of prosecutrix as 02.11.2001 per record as Ex. PW4/A-C.*
5	*HC Narender*	*Duty Officer*	*Proved DD No. 31A in respect of rape as Ex. PW5/A.*
6	*Brij Gopal*	*Victim's father*	*Supported version of prosecutrix.*
7	*RD Bansal*	*Factory owner*	*Deposed that victim was residing in his factory*

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			with her parents where renovation work was going on.
8	*Ct. Samundar Singh*	*Police*	*Arrest of accused, his disclosure statement & Pointing out memo as Ex. PW8/A & B*
9	*Dr. Avdesh*	*Doctor*	*MLC of victim Ex. PW9/A*
10	*Ct Satbir*	*Police*	*Deposited exhibits to FSL*
11	*Dr. Minal*	*Doctor*	*MLC of victim as Ex. PW11/A*
12	*HC Ved Singh*	*MHC(M)*	*Deposit if exhibits with Malkhana & FSL as per entries as Ex. PW12/A to C.*
13	*ASI Ishwar Singh*	*Duty Officer*	*FIR as Ex. PW13/A, his endorsement on Rukka as Ex. PW13/B and Certificate u/s 65(B) IE Act as Ex. PW13/C.*
14	*Insp. Mahabir Singh*	*Police*	*Arrest of accused, his disclosure statement & Pointing out memo as Ex. PW8/A & B.*
15	*SI Seema*	*Investigating Officer*	*Recorded statement of victim & prepared tehrir as Ex. PW15/A, collected exhibits of victim as per memo Ex. PW15/B, site plan as Ex. PW15/C, arrest of accused, seizure of blood sample of accused as Ex. PW15/D, obtained age proof of victim as Ex. PW15/E, FSL Result as Ex. F-1.*
16	*HC Santra*	*Police*	*Obtained exhibits of*

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			victim as per memo Ex. PW15/B.

6. On the completion of prosecution evidence, examination of accused U/s 313 Cr.P.C. was conducted on 04.01.2016, whereby the appellant denied the allegations and claimed false implication. He took the defence that the father of the prosecutrix had taken a sum of Rs.5,000/- from him and that, on the occasion of New Year, when he demanded repayment of the said amount, a quarrel ensued between them, during which the prosecutrix sustained injuries. He further stated that someone reported the matter to the police, pursuant to which he was falsely implicated in the present case.

7. The learned Trial Court, *vide* the impugned judgment dated 03rd February, 2017, convicted the appellant and held as under:

> *"33. Conclusion: From discussions, it emerges that:*
> *i) Prosecution has been able to establish that on the date of incident victim was a "child".*
> *ii) Accused committed penetrative sexual assault on her in a room.*
> *iii) Testimony of victim is found to be truthful and consistent in material particulars.*
> *iv) Parents and relative of victim corroborated version of victim.*
> *v) Incident was promptly reported to police.*
> *vi) Forensic evidence establishes sexual assault.*
> *vii) Accused failed to establish any defence.*
> *34. In the light of aforesaid discussions, accused stands convicted for the offence punishable under Section 6 POCSO Act and U/s 376 (2) (f) IPC."*

8. Consequent upon the judgment of conviction, the learned Trial Court, *vide* Order on Sentence dated 08th February, 2017, imposed the following

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sentence upon the appellant:

> *"4. I have given thoughtful consideration to the arguments advanced by Bar by both the sides and to the facts and circumstances of the case in totality.*
> *5. Nature of offence committed by the convict does not demand any leniency. Interest of justice would be met, if convict is sentenced to rigorous imprisonment for the period of 10 years and fine of Rs 5000/- U/s 6 POCSO Act in default of payment of fine SI for 30 days. Since, convict is awarded sentence U/s 6 POCSO Act, hence no separate sentence is awarded to him for offence punishable U/s 376 (2) (f) IPC. Benefit of section 428 Cr.P.C is extended to the convict.*
> ***6. Compensation**: Hon'ble Apex Court has time and again observed that that subordinate Courts trying the offences of sexual assault have the jurisdiction to award the compensation to the victims being an offence against the basic human right and violative of Article 21 of the Constitution of India.*
> *7. Concept of welfare and well being of children is basic for any civilized society and this has a direct bearing on the state of health and well being of the entire community, its growth and development. It has been time and again emphasized in legislation, international declarations as well as the judicial pronouncements that the Children are a "supremely important national asset" and the future well being of the nation depends on how its children grow and develop. Section 33(8) POCSO Act, also mandates that in addition to the punishment to the accused, the victim be granted compensation for physical and mental trauma caused to him and for the rehabilitation of the victim.*
> *8. Therefore, in order to provide Restorative and Compensatory Justice to the victim Rs.3,00,000/- (Rs. Three Lac only) is granted to the victim as*

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compensation. Learned Secretary, D.S.L.S.A, North District, New Delhi shall ensure that the said amount is given to the parents of the victim within one month on receipt of this order and shall further ensure that the said amount is disbursed in such a manner that the same be used for welfare and rehabilitation of the victim.

9. Copy of this order along with the particulars of the victim be sent to learned Secretary, D.L.S.A, North District., Rohini Courts, Delhi for necessary compliance. Copy of judgment and copy of order on sentence be supplied to convict."

9. Aggrieved by the aforesaid impugned judgment and order on sentence, the appellant has challenged both before this Court.

Submissions on Behalf of the Appellant

10. Learned counsel for the appellant submits that the impugned judgment of conviction is unsustainable, as the learned Trial Court failed to appreciate the material contradictions in the testimony of the prosecutrix, the deficiencies in the medical and forensic evidence, and the irregularities in the investigation. It is contended that the appellant has been falsely implicated on account of a monetary dispute with the father of the prosecutrix. The appellant was engaged in painting work at the factory where the family of the prosecutrix was residing and had developed cordial relations with her father. At his request, the appellant had advanced a sum of Rs. 5,000/- on the occasion of New Year. A dispute arose when the appellant demanded repayment of the said amount, during which the prosecutrix intervened, and the present case was subsequently instituted as a false implication arising out of the said dispute.

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11. Learned counsel for the appellant submits that the testimony of the prosecutrix does not inspire confidence, as material inconsistencies have emerged in her different statements regarding the circumstances in which the appellant allegedly left the room. In the FIR, she stated that somebody knocked on the door, following which the appellant ran away, leaving her inside the room, whereafter she raised an alarm and her mother came upstairs. In her statement under Section 164 Cr.P.C., however, she stated that her younger brother came to the room after the appellant had left and called her mother. During her examination-in-chief, she again stated that somebody knocked on the door, following which the appellant left the room and she herself went outside to call her mother. It is further submitted that the prosecutrix had stated that the appellant's hands bore paint marks, which also stained her clothes; however, when the clothes allegedly worn by her at the time of the incident were produced before the learned Trial Court, she admitted that no paint was visible on them.

12. Learned counsel for the appellant further submits that the possibility of the prosecutrix being a tutored witness could not have been ruled out. It is contended that the learned Trial Court failed to properly appreciate her answers during the preliminary examination conducted to assess her ability and intellect to give rational answers. According to the appellant, the prosecutrix was unable to distinguish between truth and falsehood during the said examination, yet her testimony was relied upon to sustain the conviction.

13. Learned counsel for the appellant submits that the alleged incident took place in a factory where several labourers were working and which

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was situated in a crowded area. Despite the availability of independent witnesses, the prosecution failed to examine any person who could have corroborated the presence of the appellant with the prosecutrix or the alleged occurrence. It is pointed out that the prosecutrix had specifically stated that somebody knocked on the door, causing the appellant to leave the room, yet the person who allegedly knocked on the door was not examined. Reliance is placed upon the testimony of PW-14 (Inspector Mahabir Singh), who stated that approximately three to four public persons were present at the spot. It is further submitted that the mother of the prosecutrix admitted in her cross-examination that neighbours and other public persons had come to know about the alleged incident, yet none of the neighbours was examined. Learned counsel also relies upon the testimony of PW-6, who stated that, upon inquiry, he was informed that the boys engaged in whitewashing work at the factory had committed a wrongful act with the prosecutrix. It is contended that three boys were engaged in the painting work, but the investigation proceeded against the appellant alone without properly examining the other persons. The employer/contractor of the appellant, who was allegedly present at the relevant place and could have thrown light on the circumstances of the case, was also not cited as a prosecution witness. It is, therefore, contended that the non-examination of independent witnesses, despite their availability, warrants an adverse inference against the prosecution under Section 114(g) of the Indian Evidence Act.

14. Learned counsel for the appellant further challenges the circumstances surrounding his arrest on 02.01.2013 at approximately 4:30

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p.m. It is submitted that, according to PW-8 (Constable Samunder Singh), the police party, along with the prosecutrix and her parents, proceeded towards the area near SRHC Hospital pursuant to secret information, where the appellant was apprehended at the instance of the prosecutrix. However, reliance is placed upon the testimony of PW-6, who stated during his cross-examination that the police had apprehended the contractor of the appellant, taken him to the police station and brought him back to the spot after approximately half an hour. He further stated that only the appellant and his contractor were present there, while the other persons, including himself, had left. It is contended that this version contradicts the prosecution's account of the arrest and indicates that the appellant was, in fact, called to the police station through his employer at the instance of the police and subsequently falsely implicated in the present case.

15. Learned counsel for the appellant submits that the medical evidence does not corroborate the allegations of penetrative sexual assault and that the learned Trial Court failed to properly appreciate the MLCs of the prosecutrix, Ex. PW11/A and Ex. PW9/A. It is pointed out that no external injury was found on her body; there was no injury or bruise on the labia majora or labia minora; the fourchette and hymen were intact; no vaginal bleeding was observed at the time of examination; and there was no tear or tenderness over the anus. Reliance is placed upon the testimony of PW-9 (Dr. Avdhesh), who stated that no external injury was seen on the body of the prosecutrix. It is further submitted that PW-11 (Dr. Minal), who deposed regarding the MLC prepared by Dr. Pooja, admitted in her cross-examination that she had not prepared the MLC herself and was unable to

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comment upon what had transpired with the patient at the time of the alleged assault. Learned counsel places reliance upon ***Pappu v. State of Delhi*, 2009 Cri LJ 3342**; ***Abhay Singh v. State*, Criminal Appeal No. 968/2015**, and ***Chosa Ban Singh v. State*, 2004 Cri LJ 569 (Jhar)**, to contend that the absence of injuries on the private parts, particularly in a case alleging forcible penetration, is a relevant circumstance while assessing the prosecution's version and the possibility of false implication.

16. Learned counsel for the appellant further challenges the reliance placed by the learned Trial Court upon the FSL report dated 14.10.2013, exhibited as Ex. F-1 through PW-15 (SI Seema). It is contended that the report was not proved in accordance with Section 293(4) Cr.P.C., as neither its author nor an appropriate responsible officer was examined to establish its contents. It is further submitted that the clothes of the prosecutrix were allegedly seized on 01.01.2013 and deposited in the Malkhana on 02.01.2013. Similarly, the sealed parcels containing the appellant's outer clothing, pubic hair and blood samples, along with the sample seal, were deposited in the Malkhana on 02.01.2013. However, the sealed parcels were forwarded to the FSL only on 14.10.2013, after a delay of approximately 285 days. According to learned counsel, the unexplained delay raises serious doubts regarding the preservation and integrity of the samples and the possibility of tampering with the forensic evidence.

17. Learned counsel for the appellant further challenges the determination of the age of the prosecutrix, submitting that the prosecution failed to establish that she was approximately 12 years of age at the time of the alleged incident. It is pointed out that PW-4 (Ashish Dabas), examined

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to prove the school record, admitted that the parents of the prosecutrix had not furnished any birth certificate issued by a competent authority at the time of her admission to the school. It is contended that the date of birth recorded in the school register was based merely on an affidavit furnished by the parents and was not supported by any authentic or independent documentary evidence. Consequently, the school entry, by itself, could not have been treated as conclusive proof of age, particularly in the absence of a birth certificate issued by a competent authority or an ossification test. Learned counsel further submits that the age ought to have been determined in accordance with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, read with the applicable Rules. It is also contended that the presumption under Section 29 of the POCSO Act cannot be extended to the question of age and that the prosecution was required to independently establish this foundational fact before the statutory presumption could be invoked. The determination of age, according to learned counsel, assumes further significance as it has a bearing on the applicability of the relevant penal provision and the minimum sentence prescribed thereunder.

18. Learned counsel for the appellant also questions the delay in registration of the FIR. It is submitted that the alleged incident took place at approximately 3:00/4:00 p.m., whereas the initial statement/rukka was recorded at approximately 11:15 p.m., resulting in a delay of about eight hours. It is contended that the delay has not been satisfactorily explained, particularly when the mother and uncle of the prosecutrix were stated to be available. It is further submitted that the site plan does not identify the

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precise place within the factory premises where the alleged incident occurred and merely indicates a general location marked as Point A, without identifying the particular room or exact spot of occurrence. According to learned counsel, these omissions, when considered alongside the other infirmities in the prosecution case, further weaken its credibility and warrant interference with the impugned judgment of conviction.

Submissions On Behalf Of The Respondents:

19. Learned APP for the State submits that the learned Trial Court had rightly appreciated the evidence on record and that the prosecution had successfully established the guilt of the appellant beyond reasonable doubt. It is contended that no ground for interference with the impugned judgment of conviction or the order on sentence is made out.

20. Learned counsel for the victim submits that the testimony of the prosecutrix was consistent on all material particulars and that the defence had failed to elicit any material contradiction during her cross-examination which could discredit her version. It is further submitted that the prosecutrix had specifically identified the appellant as the person who committed the alleged offence and her testimony stood corroborated by the other prosecution witnesses as well as the forensic evidence.

21. Learned counsel for the victim further submits that the FSL report, Ex. F-1, provided material corroboration to the testimony of the prosecutrix, as it established the presence of the appellant's biological material on the underwear of the prosecutrix. It is also pointed out that PW-11 (Dr. Minal) had deposed regarding the presence of blood stains on the undergarment of the prosecutrix and the FSL report connected the said

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forensic evidence with the appellant. It is, therefore, contended that the medical and forensic evidence lends support to the prosecution's case.

22. With regard to the age of the prosecutrix, learned counsel for the victim submits that the learned Trial Court had rightly relied upon the school admission register and correctly concluded that she was approximately 12 years of age at the time of the incident. It is contended that the school record, in particular Ex. PW-4/A, was duly proved by PW-4 (Ashish Dabas), and the appellant had not specifically disputed the date of birth recorded therein during his cross-examination. No suggestion was put to the witness challenging the correctness of the date of birth or suggesting that the prosecutrix was a major at the relevant time. Learned APP for the State also submits that, in the absence of any contrary material, the age of the prosecutrix stood duly established from the proved school record.

23. Learned counsel for the victim further submits that the incident was promptly reported to the police and there was no unexplained or unnecessary delay in registration of the FIR. It is contended that the prompt reporting of the occurrence lends assurance to the prosecution's version and rules out the possibility of subsequent deliberation or fabrication of allegations against the appellant.

24. Learned counsel for the victim submits that the absence of rupture of the hymen or visible injuries is not, by itself, sufficient to disbelieve an allegation of rape. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Aman Kumar and Another v. State of Haryana*** **(2004) 4 SCC 379** wherein it was held that rupture of the hymen is not a necessary

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ingredient of the offence of rape and that even slight penetration is sufficient to constitute the offence. It is further submitted that penetration may take place without causing any injury or rupture of the hymen, having regard to its anatomical variations, including its shape, texture and elasticity. Complete penetration or emission of semen is also not necessary, as even partial penetration within the labia majora of the vulva, with or without emission of semen, would satisfy the requisite legal requirement. Accordingly, the medical observations relied upon by the appellant do not, by themselves, negate the possibility of the alleged sexual assault or discredit the testimony of the prosecutrix.

25. Learned APP for the State submits that, in view of Section 29 of the POCSO Act, 2012, the statutory presumption operates against the appellant in respect of the offences under the Act. It is contended that the prosecution had established the foundational facts through the testimony of the prosecutrix and the other material witnesses, thereby attracting the presumption under the said provision. It is further submitted that the appellant had failed to rebut the statutory presumption or raise any probable defence to displace the prosecution's case. No material dent was made in the prosecution evidence during cross-examination, nor was any circumstance established which could discredit the testimony of the prosecution witnesses.

26. Learned counsel for the victim submits that the appellant had merely put a suggestion during the cross-examination of the prosecution witnesses regarding the existence of such a dispute. However, no witness was examined, nor was any independent material placed on record to

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substantiate the alleged monetary transaction or establish that the present case was instituted as a consequence thereof. It is, therefore, contended that the plea of false implication remained unsubstantiated and did not displace the otherwise reliable prosecution evidence.

27. Learned APP for the State further submits that the learned Trial Court had dealt with the material evidence in detail, particularly in paragraphs 21, 31 and 32 of the impugned judgment, and had correctly appreciated the testimony of the prosecutrix, the corroborative testimonies of the other material witnesses and the forensic evidence. It is also contended that the defence had failed to put its material suggestions to the concerned prosecution witnesses during their cross-examination and could not subsequently rely upon factual assertions which had not been put to them for their explanation or rebuttal.

28. Learned APP for the State submits that the prosecution had successfully established the guilt of the appellant beyond reasonable doubt and that the learned Trial Court had rightly recorded the conviction. Accordingly, they pray that the appeal be dismissed and the impugned judgment of conviction and order on sentence be upheld.

Findings and Analysis

29. This Court has heard learned counsel for both the parties and perused the material on record.

Age of the prosecutrix

30. The first question which arises for consideration is whether the prosecutrix was a child (below the age of 18 years) on the date of the alleged incident, *i.e.*, 01.01.2013. The prosecution relied upon the school records

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of the prosecutrix, which were proved through PW-4, who had been deputed by the Principal of the school to produce the relevant record. He proved the admission register as Ex. PW4/A, the admission form as Ex. PW4/B and the affidavit furnished by the father of the prosecutrix regarding her date of birth as Ex. PW4/C.

31. PW-4 deposed that the prosecutrix had been admitted to Class I on 16.09.2008 *vide* Entry No. 3142. He deposed as under:

> *"I have been deputed by the Principal of the school to appear with the school record of student [redacted] d/o [redacted]. The said student was admitted in our school in first class on 16.09.2008 vide Entry No.3142. The copy of admission register in this regard is ExPW4/A. Her name was deducted from school on 10.09.10 as she remained continued absent. At the time of admission of student admission form ExPW4/B was filled by her father and her father also gave affidavit regarding the date of birth of his daughter which is ExPW4/C. Original of all these documents seen and returned*."

32. PW-3, father of the prosecutrix, stated that his daughter was born in the year 2001 and that he had furnished the same date of birth in the school record, whereby he deposed as under:

> *"My daughter is around 12 years of age.* [redacted] *is studying in a MCD School situated at Sector-9, Rohini in second class. My daughter was born in the year 2001 but exact date and month I do not remember. I have mentioned the same date of birth in the school record"*

33. In ***Birad Mal Singhvi v. Anand Purohit,* 1988 AIR 1796**, the Supreme Court held that the mere production of an entry in a school register

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is not sufficient; the Hon'ble Supreme Court has held as under:

> *"**The date of birth mentioned in the scholars' 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.**"*

34. The father of the prosecutrix, who furnished the admission particulars and the affidavit, entered the witness box and stated that he had supplied the date of birth reflected in the school record. His testimony lends assurance to the entry proved by PW-4.

35. The absence of a municipal birth certificate is, therefore, a circumstance to be noticed, but it does not render the school record wholly unreliable when the parent who supplied the particulars has also testified. The school record reflects the date of birth of the prosecutrix as 02.11.2001. Accordingly, on 01.01.2013, she was below eighteen years of age. The finding of the learned Trial Court regarding her minority is, therefore, affirmed.

Testimony of the prosecutrix

36. The principal question is whether the testimony of the prosecutrix,

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read as a whole and tested against the surrounding circumstances, establishes the involvement of the appellant and the commission of the offence. The prosecutrix (PW- 1) was examined and before recording her testimony, the learned Trial Court put preliminary questions to ascertain whether she was capable of giving rational answers. Upon being satisfied that she understood the questions and was competent to depose, her statement was recorded without oath, having regard to her tender age.

37. During her examination by the learned Trial Court PW-1 gave a specific account of the incident and identified the appellant in Court. She stated:

> *"On 01.01.2013 at about 3/4 pm I was washing clothes on the tap which is situate in the factory and my mother and father were not in the house and had gone for work. At that time, white washing was going on, in the factory and some clothes were drying on the first floor of the factory of my parents. I felt that clothes may have getting stained due to white wash, so I had gone on the first floor for removing the cloths, which was lying on the first floor for drying. The boy who was doing white washing had followed me on the first floor of the factory, who is present in the court today (correctly identified by the witness by pointing towards accused Rohit @ Manoj) and he pushed me inside the room situated at the first floor of the factory and I fell down on the cot and he bolted the door of the said room from inside and he removed my cloths and also removed his cloths and thereafter he put his urinal part into my urinal part and thus raped me. When I tried to raise alarm, accused gagged my mouth and threatened me that, in case if I will raise alarm, he would have killed me."*

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38. She further described how the appellant left the room when someone knocked at the door and how she thereafter went outside and called her mother. Her account of the immediate disclosure was as follows:

> *"I went outside of the said room and called my mother by shouting in a loud voice, as my mother was working there. My mother came there and I narrated the entire incident to her and my mother started weeping. Thereafter, many people have also gathered there including my Fufa and reported the matter to the police."*

39. The prosecutrix was cross-examined at length. She maintained that the appellant had followed her upstairs and had entered the room when she was putting the clothes inside. She also explained that the appellant had pushed her onto the bed and removed her salwar by force. She stated that she had tried to raise an alarm, but her mouth was gagged. She further stated that the appellant left when someone knocked at the door.

40. The prompt disclosure of the incident is also supported by PW-2, who is the mother of the prosecutrix. She stated that she was working at a factory opposite the premises where the family was residing and that her son Deepak came to inform her that the prosecutrix was weeping. She then went to the prosecutrix and asked her what had happened. PW-2 deposed:

> *"At about 3 pm my son Deepak came to the factory in which I was working and stated that* [redacted] *was weeping and I came outside the factory and saw that* [redacted] *was weeping. I came from the factory where I was working and talk to* [redacted]*. She stated to me that the boy Rohit who was doing paint work in the factory has committed rape with her. On listening this I also started weeping. Large number of persons*

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gathered there. I called my husband and I also made call to police."

41. PW-2 was not an eyewitness. Her evidence is relevant to the prosecutrix's immediate conduct and disclosure. Although PW-1 stated that she called her mother, whereas PW-2 stated that her son Deepak first informed her that [redacted] was weeping, both accounts establish that the prosecutrix was found weeping and disclosed the allegation to her mother soon after the occurrence.

42. PW-6, the uncle of the prosecutrix, also deposed that when he reached the premises, the mother and daughter were weeping and informed him that the boy engaged in whitewashing had committed a wrong act with the prosecutrix. He stated:

"After seeing the plot, I had gone to the factory number F-2/99, DSIIDC at about 4pm, where my brother in law was working as chowkidar. There the wife of my brother in law and his daughter were weeping and on inquiry they stated that, the boys who were doing white washing in the factory had committed wrong act with [redacted] *(daughter of my brother in law)."*

43. PW-6 stated that he called the prosecutrix's father. PW-3, in turn, deposed that he received a call from his brother-in-law and returned to the premises, where the prosecutrix informed him that the painter, Rohit, had raped her. The witnesses differ on some details concerning the sequence and timing of their arrival; their evidence, read together, nevertheless supports the fact of an immediate disclosure within the family.

44. The contemporaneous police record shows that an allegation of rape

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was reported on the same afternoon. PW-5 proved DD No. 31A and stated that at about 3:30 PM, he received a wireless message regarding the rape of a girl in the Narela Industrial Area. PW-14 confirmed receipt of the said DD entry at about 3:38 PM. PW-15 deposed that upon receiving the information, she took the prosecutrix first to SRHC Hospital and, upon her referral, to BSA Hospital. Thereafter, in the presence of the NGO representative, she recorded the statement of the prosecutrix, prepared the rukka and sent it for registration of the FIR. PW-13, the Duty Officer, proved that the formal FIR was registered at 11:35 PM on 01.01.2013, upon receipt of the rukka sent by WSI Seema through Ct. Samunder Singh. The FIR and the endorsement on the rukka were proved as Ex. PW-13/A and Ex. PW-13/B, respectively. Thus, the testimony of PW-15 explains the sequence of steps undertaken before the rukka was dispatched and the formal FIR came to be registered. The time taken in taking the prosecutrix to the hospitals, recording her statement in the presence of the NGO representative and preparing the rukka accounts for the interval between the initial police information and the formal registration of the FIR. No adverse inference can, therefore, be drawn merely on account of the time taken in formally registering the FIR.

45. The prosecutrix identified the appellant in Court and stated that she had also identified him when he was apprehended near SRHC Hospital on the following day. PW-8, PW-14 and PW-15 supported the prosecution version regarding his apprehension on 02.01.2013 at her instance.

46. In ***State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384**, the Supreme Court held that the testimony of a prosecutrix, if reliable and trustworthy,

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can sustain a conviction without independent corroboration as a rule of law. The evidence of a child victim must likewise be assessed with due regard to her age and capacity to understand and narrate the occurrence.

47. In the present case, PW-1 gave a specific account of the appellant following her into the room, bolting the door, removing her clothes and committing the alleged act. The variations elicited in cross-examination concerning the precise timing and the sequence in which family members were informed do not, on the material presently recorded, displace the central allegation. Her disclosure to her mother and the contemporaneous DD entry provide circumstantial assurance.

48. The prosecutrix, while narrating the incident, consistently identified the appellant as the person who was engaged in whitewashing and painting work at the factory and who followed her to the first floor. She specifically stated in her cross-examination that the appellant's hands had paint spots and that, when he touched her, her clothes also became stained with paint. Her testimony in this regard reads:

> *"Accused hand were having paints spots as a result my clothes were also stained with paint."*

49. She, however, accepted that no paint was visible on the clothes when they were produced before the learned Trial Court. Her complete testimony in this regard reads:

> *"It is correct that no paint is visible on the cloths. It is wrong to suggest that since no paint stained on my clothes produced today, therefore, accused had not removed my salwar forcefully. I cannot say, why now stain of paint is not available in my clothes."*

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50. The absence of visible paint marks is a circumstance to be noticed. PW-3 stated that the appellant was painting the iron main gate, and PW-7 also confirmed that painting work was being carried out at the factory. It is, therefore, possible that the appellant had been engaged in painting the iron gate prior to the alleged incident and that, by the time he followed the prosecutrix to the first floor and committed the alleged act, the paint stains on his hands may have dried in the intervening period. Consequently, the possibility that no visible paint stains were transferred onto the clothes of the prosecutrix cannot be ruled out. This, however, remains a possible explanation and not a proved fact. The absence of visible paint marks on the clothes, by itself, does not discredit the testimony of the prosecutrix.

Medical evidence and FSL report

51. The medical evidence is next required to be considered. PW-9, Dr. Avdhesh, examined the prosecutrix at SRHC Hospital on 01.01.2013 at about 5:50 PM and found no external injury on her person. He referred her for gynaecological examination *vide* MLC Ex. PW9/A. Thereafter, she was taken to BSA Hospital, where her medical examination was conducted. The MLC prepared by Dr. Pooja was proved through PW-11, Dr. Minal, who was acquainted with her handwriting and signatures.

52. PW-11 stated that the prosecutrix was brought to BSA Hospital at about 11:30 PM with the alleged history of assault by a worker of the factory. She further deposed

> *"After examination, her cloths were sealed and her undergarments were found stained with blood. The MLC of [redacted] is Ex.PW11/A, which bears the signatures of Dr. Pooja at point A."*

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53. PW-11 clarified that she had not prepared the MLC herself and that her testimony was based on the hospital record. The medical record notes that the hymen was intact. PW-9 found no external injury. Both circumstances must be considered in assessing the prosecution evidence.

54. In this regard, reliance has been placed on ***Sunil Kumar v. State,* 2019 SCC OnLine Del 12300**, wherein this Court, while considering the medical evidence and the anatomical features of a small child, observed as under:

> *"After examining the testimony of Dr Deepshikha and the MLC of the prosecutrix (Ext. PW 10/A) it is observed that the hymen of the victim was torn and there was redness around her hymen. Further there were two abrasions on her palm and one on the forehead. Herein it is relevant to highlight that as per the Modi's Textbook of Medical Jurisprudence and Toxicology extracted hereinabove records that* ***an adult penis cannot penetrate the vagina of a small child and in rare cases of great violence the organs may be forcibly introduced. As in small children partial penetration may generally cause redness and inflammation around the hymen. This aforesaid position has also been noted in Parikhs's textbook of Medical Jurisprudence, Forensic Medicine and Toxicology.****"*

55. The decision in ***Sunil Kumar (supra)*** has to be considered in the context of its facts, where the hymen was torn and redness was noticed around it. In the present case, the hymen was intact. However, as held in ***Ranjit Hazarika v. State of Assam,* (1998) 8 SCC 635**, non-rupture of the hymen or absence of injuries on the private parts does not, by itself, belie the prosecutrix's testimony; penetration, however slight, is sufficient to

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constitute rape. In ***Gurmit Singh (supra)***, the Supreme Court reiterated that reliable testimony of the prosecutrix can form the basis of conviction without independent corroboration. Medical evidence must nevertheless be assessed along with the entire evidence.

56. In the present case, the absence of external injury and the finding of an intact hymen do not, by themselves, render the prosecutrix's account of forcible penetration improbable. Her testimony and the circumstances of her prompt disclosure must be assessed cumulatively. The medical evidence does not furnish, in the circumstances, a sufficient ground by itself to reject her otherwise credible account.

57. The FSL report, Ex. F-1, is another circumstance relied upon by the prosecution. It records that a male DNA profile was generated from the prosecutrix's underwear, marked as exhibit 2a, as well as from the appellant's blood sample, marked as exhibit 4. The report further records that the alleles from the appellant's blood sample were accounted for in the profile generated from the underwear. The conclusion reads:

> *"The DNA profiling STR Analysis performed on the source of exhibit '2a' (underwear of victim) & exhibit '4' (Blood sample of accused) provided is sufficient to conclude that the DNA profile on the source of exhibit '4' (Blood sample of accused) is similar with the DNA profile on the source of exhibit '2a' (underwear of victim)."*

58. The defence has questioned the integrity of the chain of custody on account of the discrepancy in the testimony of PW-10 and PW-12. PW-12, HC Ved Singh, the then MHC(M), stated that the sealed parcels were deposited on 02.01.2013 and that two parcels bearing the seal of BSA

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Hospital were sent to the FSL on 09.01.2013 through Ct. Satyaveer *vide* RC No. 05/21/13. He proved the relevant malkhana entry and road certificate. PW-10, Ct. Satyaveer, however, stated:

> *"On 01.07.2012, as per the instruction of WSI Seema, I took two sealed pullanda, one sealed with the seal of BSA Hospital and other sealed with the seal of SRHC Hospital alongwith two sample seal and deposited the same to FSL Rohini, vide RC No.05/21/12."*

59. PW-10's stated date, 01.07.2012, precedes the incident, and the road-certificate number also differs from the particulars proved by PW-12. This discrepancy cannot be overlooked. The malkhana entry and road certificate proved by PW-12 record dispatch of the two BSA parcels on 09.01.2013 *vide* RC No. 05/21/13. The inconsistency affects the weight of PW-10's oral account; it does not, without more, establish that the parcels were tampered with.

60. In ***Hardip Singh v. State of Punjab*, (2008) 8 SCC 557**, and ***State of Rajasthan v. Daud Khan*, (2016) 2 SCC 607**, the Supreme Court held that delay in dispatch of sealed samples is not fatal by itself where the integrity of the samples is established and tampering is excluded. The FSL result may therefore be considered only as a corroborative circumstance, alongside the documentary record and the remaining evidence, and not as the sole basis for conviction. The report records similarity between the DNA profiles generated from the appellant's blood sample and the prosecutrix's underwear; in view of the dispatch discrepancy, that result must be approached with caution.

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False Implication

61. The appellant has also sought that he was falsely implicated because of a monetary dispute involving the father of the prosecutrix and an alleged payment of ₹5,000. The defence put this suggestion to the family members and the investigating officer, contending that the initial information to the police concerned a quarrel or monetary dispute and that the allegation of sexual assault was subsequently introduced to implicate the appellant.

62. The suggestion of a monetary dispute was denied by PW-3. PW-6 stated that his brother-in-law had never disclosed any money transaction to him. The investigating witnesses also denied that the initial call concerned a quarrel; PW-5 and PW-14 stated that DD No. 31A recorded information that a girl had been raped.

63. No documentary material or independent evidence has been brought on record to substantiate the alleged payment of ₹5,000 or to establish any monetary transaction which could furnish a reason for the family to falsely implicate the appellant in a serious offence. The mere suggestion put to the witnesses in cross-examination cannot take the place of proof. The defence of false implication on account of the alleged monetary transaction, therefore, remains unsubstantiated.

Conclusion

64. On an overall consideration of the evidence, the prosecutrix was below eighteen years of age on the date of the incident. Her testimony is specific as to the identity of the appellant, the place of occurrence and the act alleged to have been committed. She has remained consistent on the material particulars despite a detailed cross-examination. Her prompt

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disclosure to her mother is supported by PW-2 and is followed by the contemporaneous DD entry recorded in the afternoon of 01.01.2013. The formal registration of the FIR later that night does not efface the earlier report to the police.

65. The age of the prosecutrix stands established through the testimony of PW- 3 and PW- 4. Her testimony is consistent with regard to the act of sexual assault committed by the appellant and his identity. The FSL report further records that the DNA profile generated from the appellant's blood sample is similar to that found on the prosecutrix's underwear. No evidence has been led to substantiate the alleged monetary transaction of ₹5,000. The material on record, therefore, does not disclose any ground warranting interference with the conviction recorded by the learned Trial Court.

66. Since the sentence of the appellant was suspended *vide* order dated 08.09.2022, the appellant is directed to surrender before the learned Trial Court within four weeks from today to undergo the remaining sentence.

67. Accordingly, the present appeal is dismissed, and pending applications, if any, also stand disposed of.

68. A copy of this order be sent to the concerned Jail Superintendent as well as to the learned Trial Court for information and necessary compliance.

MADHU JAIN
(JUDGE)

NOVEMBER 27, 2026/RT/YT

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