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

Date of reserving: 06th May, 2026

Date of Decision: 29th May, 2026

IN THE MATTER OF:

\+ CRL.A. 335/2013

SANTOSH TIWARI .....Appellant

Through: Appellant-in-person with Mr. Manoj K.Mishra, Mr. M.T.Radeesh Kumar, Ms. Madhulika and Mr. Umesh Dubey, Advs.

versus

STATE NCT OF DELHI .....Respondent

Through: Ms. Satinder Singh Bawa, APP for the State.
Ms. Vrinda Bhandari, Adv. alongwith Ms. Pragya Barsaiyan, Adv. for the victim / prosecutrix (DHCLSC).

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Marxist view of religion that it is opium of masses surfaced in the instant case but the familial ties, outrage of chastity of the daughter and broken promises / dishonesty of the Appellant woke up the victim's family from the spell of the opium of Marxist influence. The matter, which was, in a way, swept under the carpet, by the family of victim, was raised in a kind of retributive anger and frustration which was probably simmering somewhere deep down in the heart and psyche of the family, more

particularly with the mother of the victim. It burst out for the Appellant broke his own voluntary promise of staying away from the temple and possibly the city too, when he resurfaced in the vicinity. He was probably waiting for the anger to die down and being oblivious of the repulsion in the heart and mind of the victim's mother, took the chance to possibly resume his priestly duties, hiding and forgetting his satanic and unholy deed. All hell broke loose when the Appellant was spotted in the vicinity by the brother of the victim who confronted him resulting to an altercation and fight bringing in police through DD No.24B.

2. While assailing the Impugned Judgment dated 30.01.2013 and order on sentence dated 31.01.2013, the counsel for the Appellant has put forth and laid down the foundation of his challenge on primarily on five counts:

i) That there is an inordinate and unexplainable delay in registration of FIR spanning for a period of 40 days.

ii) There is no corroboration to the testimony of the prosecutrix either medical or forensic.

iii) The case of the prosecution is highly improbable, as it has been put forth.

iv) The testimony of the prosecutrix is not credible, being full of doubtful circumstances and self-contradictory and finally.

v) The Investigating Officer himself is not clear and that he has not conducted a fair investigation.

3. As regards the delay of 40 days in lodging FIR (Ex. PW-6/A), it has been stated that alleged incident took place on 04.02.2010 and FIR came to be registered only on 15.03.2010, that too despite the fact that the prosecutrix had disclosed about the incident to her mother on that very day i.e. 04.02.2010. While countering the contention it has been submitted on

behalf of the Respondent/ prosecution that the delay has been explained by the witnesses especially the mother of the victim who has been examined as PW-4.

4. While appreciating rival contentions certain aspects are required to be kept in mind that India is a very religious society and religion is placed very high in the estimation of the individuals. Females are more religious than the males, coupled with the fact that the incident took place in a temple that too at the hands of the temple priest. The prosecutrix incidentally happens to be physically matured aged about 30 years but her mental age is far less than her physical age.

5. Disability certificate Ex.13/B according to which the IQ level of the prosecutrix was 60 (Mild Mental Retardation). The prosecutrix was referred to National Institute of Mentally Handicapped persons for IQ assessment in which the aforesaid IQ level was found. This was in consonance with the earlier certificate issued by Safdarjung Hospital and no significant change in her intellectual status was observed. The testimony of Dr. R. Rastogi examined as PW-13 is reproduced herein below:

> "*Meaning of Mild retardation is that IQ level is between 50-70 of the person. Patients of mild retardation have a lower level of comprehension as compared to normal people. They are simple, gullible and not manipulative by and large.*"

6. In these circumstances, when a temple priest is involved and the incident has taken place in a temple, coupled with the fact that the prosecutrix / victim has a lower IQ than her parents, as any parent of a female child, would be very cautious to take up the matter fearing social ostracization, fear of backlash, future prospects of the prosecutrix and the so-called family pride, all of which would be endangered in which the prosecutrix and her family would be at the receiving end. Thus, it is not

unexpected or unusual that the family may deliberate about taking any action.

7. It seems that the aforesaid factors mentioned in preceding paragraph persuaded or compelled the mother of the prosecutrix, examined as PW-4, to initially forgive and forget the Appellant if he would have had left the city / temple in which he was the priest. And as the Appellant, after the incident had left for his native place and was not present in the vicinity and the temple for some time, therefore, PW-4 had every reason to believe that he has acted upon his promise and left the temple for all times to come.

8. The relevant part of the testimony of PW-4 can be looked into:

> *"On the date of incident, I had gone to the temple at about 06:30 pm after I came to know about the incident from my daughter. I did not talk to any other Pujari except the accused in the temple. I did not have any quarrel with accused Santosh on that day. I did not tell my husband on 20.02.2010 that Santosh had told me on 04.02.2010 that he would leave the temple permanently and go away."*

9. However, when the Appellant again appeared on the scene, then the issue got out of hand as by that time the brother of the victim had also come to know about the incident and out of anger, he accosted the Appellant and a kind of altercation and scuffle took place which led to reporting of the matter to the police through DD No. 24B and DD No. 25B (Ex.PW-2/A) dated 14.03.2026:

10. Testimony of PW-4, mother of the victim has deposed about it on following words:

> *"On 14.03.2010, my son Ashutosh saw Santosh Tiwari in the area and he made a call to my husband and called him there in the area. Santosh Tiwari was apprehended. Police was called. Santosh Tiwari was handed over to the police."*

11. Delay in lodging the FIR is further explained in the testimony of

PW-4, as given below:

> *"I myself went to mandir in the evening, I met Santosh Tiwari inquired from him about the incident, accused Santosh Tiwari apologies to me and requested that he would go from the mandir. My husband was not well during those days. I did not disclose the incident to him or anyone till 20.02.2010. During these days, I remains very tensed.*
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> *On 20.02.2010, I narrated the incident to my husband and my son Asuthosh. They both went to mandir and inquired about Santosh Tiwari but found that Santosh Tiwari was missing from that very day and they came back"*

12. The aforesaid evidence on record, which remains unshaken, clearly points out that the father of the prosecutrix being ill, and all the aforesaid factors has led to the delay in reporting the matter to the police. Learned counsel for the Appellant has relied upon the judgment in this context titled as ***Thulia Kali vs State of Tamil Nadu,*** (1972) 3 SCC 393.

13. However, he is unable to point out any prejudice or manipulation against Appellant rather delay has taken away evidence in the shape of medical examination of victim. As such, the judgment does not further the cause of the Appellant.

14. The situation got flared up when the Appellant was spotted in the area and that is how the FIR came into being. Evidently, the delay has not caused any prejudice to the Appellant rather it had, in a way, impaired the evidentiary foundation of the case of the prosecution as immediate reporting would have had better evidence in medical and forensic aspects.

15. It has come in the evidence that the prosecutrix was examined medically after the registration of the FIR. The MLC (Ex. PW-18/B) dated 14.03.2010 records the following details of the medical examination where the doctor found no external injuries, no genital injuries and only a small healed hymen tear of (0.5cm) was there.

16. While relying upon the judgment in ***Radhu vs. State of Madhya Pradesh,*** (2007) 12 SCC 57, it is contended on the strength of the MLC that in the absence of any evidence suggestive of sexual intercourse / rape, the requisite corroboration is not there and therefore, the Appellant cannot be held responsible. Similar arguments with regard to the forensic evidence have been put forward inasmuch as no clothes of the prosecutrix were seized, the vaginal swab taken was inconclusive and does not indicate anything, at least on the prosecutrix being raped by the Appellant. The only observation which the prosecution has relied upon in the forensic examination is the towel and the bed sheet of the Appellant where traces of semen were found. Strangely, after 40 days of the incident finding traces of semen is very unusual, as if neither the towel nor the bed sheet was washed. In any case this forensic evidence is not going to help the prosecution and the contention on behalf of the Appellant is correct in this context.

17. However, the medical evidence as reflected in the MLC (Ex. PW-18/B) has something in the shape of small healed hymen tear which indicates that there was sexual intercourse involving the prosecutrix. It was healed also and the normal healing period is the gap between the date of incident and the medical examination, therefore, it starts indicating towards the complicity of the accused and corroborates the testimony of prosecutrix if the oral testimony is found to be trustworthy. This brings further weightage to the evidence of the victim as she is the only witness with regard to her ordeal at the hands of the Appellant. The cousin sister of the prosecutrix examined as PW-7, had accompanied the prosecutrix to the temple on 04.02.2010 and was sitting inside the temple when all this happened, is unable to throw any light on the incident. PW-7 has

categorically stated that she had accompanied her cousin sister, the prosecutrix, to the temple and both of them were sitting there. She however, did not notice as to when the prosecutrix was either called or was forcibly dragged by the Appellant towards the residential portion of the temple nor did she, obviously, note anything of the nature which may indicate that the prosecutrix was being raped. Her explanation to the situation has also come which is to the effect that she was deeply involved in meditative prayer for about 25-30 minutes and she was oblivious of her surroundings and this was seemingly the period when the incident of rape took place.

18. However, she established one fact, that the prosecutrix at the relevant date and time was there at the temple when the incident took place. This brings the testimony of the victim into contention who has narrated about the incident which is to the effect she was asked by the temple priest i.e. Appellant to make *'sabji'* for him, which subsequently led to the entire sequence of events.

19. The prosecutrix had categorically stated about her being there in the temple along with her cousin Priyanka. She had stated that there were two priests in the temple and both of them were peeling peas, one of them i.e. Appellant asked the prosecutrix to cook Curry (*Sabji*) for him which was refused by the prosecutrix, but, as has been deposed by her, she was dragged by the Appellant and taken to the residential portion of the temple in a room where there were three beds, two windows and one door.

20. The prosecutrix has clearly narrated as to what exactly happened with her.

> *"He made me lie on the bed in the room, he removed my salwar and underwear and he also took off his Dhoti and committed rape with me forcibly despite my refusal. Santosh had removed stains of*

my discharge from a towel."

21. There may be certain contradictions in her testimony regarding prior visits to the temples or familiarity with the accused or other priests/pandits of the temple or the circumstances immediately before the so-called incident but then these are not material contradictions which may dislodge the case of the prosecution. The variation in the deposition is bound to be there because of the limitation of the human memory and mind. In the instant case the limitation is far more greater than a normal human being inasmuch as the prosecutrix was mentally retarded having an IQ of 60 and anything below an IQ level of 70 is indicative of mild mental retardation.

22. In this context, relevant para of the testimony of doctor PW-13:

> *"Meaning of Mild retardation is that IQ level is between 50-70 of the person. Patients of mild retardation have a lower level of comprehension as compared to normal people. They are simple, gullible and not manipulative by and large."*

23. In view of the aforesaid facts and circumstances it is evident that the prosecutrix is truthful, unaware of what manipulation is, simple and innocent like a child. Therefore, in these circumstances, if certain contradictions were found which are not on the material aspects then her testimony cannot be discarded or disbelieved, rather it is trustworthy.

24. It is contended on behalf of the Appellant that the story put forth by the prosecution is highly improbable, as can be inferred from the fact that the temple is not a place which is isolated, as at any given point of time, a lot of people would be visiting the temple. Thus, it is unbelievable that such an offence would take place in a temple that too at around 11:00 AM.

25. However, this is contrary to the reality inasmuch as most of the temples are frequented and visited by people early in the morning and in

the evening. Afternoon or early afternoons are invariably the time when people are not there and even the priests do their normal chores. Learned counsel for the Appellant has placed reliance on the testimony of the PW-19 Keshav, the co-occupant of the room where the alleged incident took place and the Assistant Pujari who deposed that he was the person who could have noticed the developments as has been deposed by the prosecutrix, had it been there. There was no question that it could have escaped from his knowledge and attention. Thus, PW-19 does not support the case of the prosecution, which only means that nothing of the sort as alleged and for which the Appellant has been held responsible, had taken place. His testimony is to be appreciated while keeping in mind that he was the colleague and occupant of room in the temple. And this puts a question mark on the deposition. The way PW-7 could not notice, the activities and the ordeal of the victim, so could be the case with PW-19 Keshav too.

26. As such, the contention raised on behalf of the Appellant that the case is full of improbabilities and inconsistencies, is not correct.

27. Learned counsel for the Appellant has tried to derive undue mileage by targeting the contents of DD No. 24/B- and DD No. 25/B (Ex.PW-2/A) and has argued that there was not a reference regarding any sexual offence rather the matter was reported to the police about a brawl involving the brother of the prosecutrix of the Appellant.

28. It is further submitted that it was on account of the fact that the brother of the prosecutrix had already taken some money from a client of the Appellant which he was not returning and the insistence on the part of the Appellant had led to the altercation and thereafter a physical fight. However, there is no trace of the client of the Appellant as to who it was, what was the amount borrowed by prosecutrix's brother. And in any case,

the said client could have been examined as defence if it was so. It was this matter which was reported but subsequently it is asserted that an altogether different picture has been painted by the prosecutrix's family by levelling a false allegation through the prosecutrix that the Appellant had committed rape upon her. The fact of the matter according to the counsel for the Appellant is that nothing of that sort had happened and in fact the whole issue was confined to the aspect of the fight between the brother of the prosecutrix and the Appellant.

29. This does not seem to be the correct explanation inasmuch as if the testimonies of witnesses are looked in to comprehensively, collectively and juxtaposing them with each other and the facts and contentions raised on behalf of the Appellant, then it would emerge that the family of the prosecutrix, primarily the mother of the prosecutrix had, in a way, decided to sweep the issue under the carpet in the belief and maybe some sort of assurance that the Appellant would leave the temple and go away from this temple, if not from the city which was seemingly complied with by the Appellant and he vanished from the scene after the incident for about a month, only to resurface on 14.03.2010.

30. It is this thing which has acted as a catalyst as by that time the brother of the prosecutrix had also come to know about the ordeal undergone by his sister at the hands of the Appellant. As any brother would have, the brother of the prosecutrix too acted in the befitting manner, by confronting the Appellant who has been examined as PW-3. When the Appellant was confronted, a fight took place and it seemingly led to the family to report the issue to the police. This not only explains delay but also make the so-called improbable prosecution's story probable and plausible.

31. Investigation has been also put under the scanner by the Appellant to argue that it was defective and only one thing is sufficient to prove this i.e. site plan. According to the counsel for the Appellant the site plan prepared by the Investigating Officer which is Ex. PW-14/G reflects that it was a shared room containing three beds, therefore, there was no secluded or isolated space available within the temple precinct where such an offence could have been committed by anybody.

32. The door of the room where the incident took place was not locked as nothing to this effect has been deposed by the prosecutrix and therefore, the accessibility and visibility was free for all even during the commission of the alleged incident.

33. Incidentally, nothing of this sort has taken place, in such circumstances, as can be inferred from the testimony of PW-19 Keshav. There was no possibility that the Appellant could have forcibly removed or taken the prosecutrix from the main temple to the residential portion of the temple that too when the Assistant Pujari and the cousin sister of the prosecutrix both were present in the temple. The prosecutrix could have raised alarm if some sort of force was being used by the Appellant. Absence and existence of the aforesaid aspects only strikes at the root of the prosecution's case and makes the entire incident highly improbable, if not impossible.

34. There is however, no defect in the investigation as the site plan prepared by the Investigating Officer is in consonance with what has been described by the prosecutrix about three beds, two windows and one door. In any case even if it is presumed that some defect was there in the investigation the same is not going to help the Appellant inasmuch it has been held in various pronouncements that defects and faulty investigations

does not in itself create sufficient grounds to prove that the case is false. A reference in this context can be made to the judgements :

The Hon'ble Supreme Court in ***Edakkandi Dineshan v. State of Kerala,*** **(2025) 3 SCC 273,** had laid down guiding principles on how defects in the investigative process should be treated in cases such as the one in hand. The relevant paragraph of the same has been reproduced hereunder:

> ***"27.*** *Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4 had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry."*

Similarly in ***C. Muniappan v. State of T.N., (2010)*** 9 SCC 567**,** the Hon'ble Supreme Court has held as under**:**

> *"**55.** There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence dehors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation."*

Further reference can also be made in this context in ***Dayal Singh v. State of Uttaranchal*****, (2012) 8 SCC 263:**

> ***"27.** Now, we may advert to the duty of the court in such cases. In Sathi Prasad v. State of U.P. [(1972) 3 SCC 613 : 1972 SCC (Cri) 659] this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses igsnored. Noticing the possibility of investigation being designedly defective, this Court in Dhanaj Singh v. State of Punjab [(2004) 3 SCC 654 : 2004 SCC (Cri) 851] , held: (SCC p. 657, para 5)*
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> *"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.*

35. Learned counsel for the Appellant has placed a reliance on the judgment rendered in ***Narender Kumar vs. State (NCT of Delhi)***, (2012) 7 SCC 171 which reiterates the legal proposition where the prosecution is to

prove its case beyond reasonable doubt and that the sole testimony of the prosecutrix can form the basis of the conviction provided it is of impeccable integrity free from any blemish and can be termed as of sterling quality. The testimony of the prosecutrix in the instant case is free from any stains of improbability or contradiction, therefore, can be termed to be of sterling quality. And in any case corroboration of the testimony is also there in the shape of medical evidence. As such, this judgment cannot help the Appellant in any manner.

36. Similarly, another judgment relied upon by the counsel for the Appellant in ***Kali ram vs. State of Himachal Pradesh***, (1973) 2 SCC 808, which also reiterates a legal proposition where two views are possible in a case, the one favoring the accused should be adopted. However in the instant case no two views are there in view of the clinching evidence against the Appellant. As such, this judgment is also not going to rescue the Appellant.

Similarly, in ***Rahul vs. State of Delhi***, 2022 INSC 1176, the legal proposition has been reiterated, qua which there cannot be any quarrel but this again is not going to help the cause of the Appellant.

37. The story of the prosecution may appear to be a bit unusual and improbable but then if it is not so in the evidence and after analysis of the same, placing it contextually and keeping in view the peculiar circumstances and the mental status of the prosecutrix then all shades and shadows of improbability vanish. The deposition of the prosecutrix is free from any blemish. She is clear and categorical about what was done to her, who did it and where and how it took place. The unequivocal conclusion is that she was raped by the Appellant in residential part / room in the Temple premises. Her testimony has found corroboration in the MLC, which

reflects that hymen tear was healed. The contentions and the judgments relied by the Appellant do not come to the rescue of the Appellant.

38. As a result, what emerges on record is that the finding by the learned Trial Court is in consonance with the evidence on record and relevant also on the subject.

39. In view thereof, there appears no ground to interfere in the verdict and findings recorded by the learned Trial Court.

40. As a result, judgment dated 30.01.2013 is upheld and as nothing has been argued on the aspect of sentence on behalf of the Appellant and even otherwise there appears no reason to modify the sentence in any manner inasmuch as no mitigating circumstances have been put forth. The sentence is otherwise commensurate in the given set of facts and circumstances.

41. On a separate note, it is something egregiously wrong where the acts of the Appellant in this case have quintessentially shattered the sanctity of a temple, religious beliefs and the priesthood and the trust of the people.

42. As a result, the appeal stands dismissed, Appellant to surrender forthwith to serve the remaining sentence. He shall be entitled to the benefit of Set off under Section 428 Cr.P.C.

43. The copy of the judgement be transmitted to the Trial Court and the prison authorities for information and necessary compliance.

44. Appeal stands disposed of accordingly.

VIMAL KUMAR YADAV, J

MAY 29, 2026/*hk*