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

% ***Judgment Reserved on: 10.02.2026***
Judgment pronounced on: 18.02.2026

\+ **<u>CRL.A. 1064/2018</u>**

SHAMBHU KUMAR RAI .....Appellant

Through: Mr. Ram Ekbal Roy with Mr. Aman Nihal, Mr. Jagdesh Parshad and Mr. Sunil Kumar Jha, Advocates.

Versus

STATE .....Respondent

Through: Mr. Pradeep Gahalot, APP for the State with SI Arpit Gill, PS Daryaganj.
Mr. Mohit Gupta, Advocate (Amicus Curiae).

CORAM:
HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the sole accused in SC No. 27987 of 2016 on the file of the Additional Sessions Judge,

Tis Hazari Courts, Delhi, assailing the judgment dated 10.08.2018 as per which he has been convicted and sentenced for the offences punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (PoCSO) and Section 376 (2) (i) of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that the accused on 19.11.2014, kidnapped PW3, a minor girl aged 16 years out of the keeping of her lawful guardianship and in the intervening night of 19.11.2014 and 20.11.2014, raped her at House number X-2173, Ground floor, Ragbirpura, Budhubazar, Gandhinagar, Delhi and thereby committed the offences punishable under Sections 363 and 376 IPC, as well as Section 4 of the PoCSO Act.

3. On the basis of Ext. PW1/A FIS of PW1, given on 20.11.2014, Crime No. 668/2014, Central Delhi Police Station, that is Ext. PW2/A FIR was registered by PW2, Sub-Inspector (SI). PW17, Sub-Inspector conducted investigation into the crime and upon completion of the same filed the charge-sheet/final report

alleging commission of the offences punishable under the above mentioned Sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to him as contemplated under 207 Cr.PC. After hearing both sides, the trial court, as per order dated 12.03.2015, framed a charge under the aforementioned sections, which was read over and explained to the accused, to which he pleaded not guilty.

5. On behalf of the prosecution, PWs.1 to 18 were examined and Exts. PW1/A-B, PW2/A-D, PW4/A-C, PW6/A, PW7/A-D, PW8/A-B, PW9/A-F, PW9/DA-DH, PW10/A-B, PW11/A-E, PW12/A, PW15/A-C, PW16/A-B, PW17/A-B, PW18/A, P-1, P-2, MARK A-D, MARK X and MARK X-1 were marked in support of the case.

6. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.PC regarding the incriminating circumstances appearing against him in the evidence

of the prosecution. The accused denied all those circumstances and maintained his innocence. He submitted that he had been falsely implicated in this case.

7. After questioning the accused under Section 313(1)(b) CrPC, compliance of Section 232 CrPC was mandatory. In the case on hand, no hearing as contemplated under Section 232 CrPC is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, the accused has no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to him. No oral or documentary evidence was adduced by the accused.

8. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 10.08.2018 held the accused guilty of

the offences punishable under Section 376 (2) (i) IPC and Section 4 of the PoCSO Act and hence sentenced him to undergo rigorous imprisonment for a period of 10 years and to a fine of ₹3,000/-, and in default of payment of fine, to undergo simple imprisonment for 03 months for the offence punishable under Section 376 (2) (i) IPC and to rigorous imprisonment for a period of 07 years and to a fine of ₹2,000/-, and in default of payment of fine, to undergo simple imprisonment for 02 months for the offence punishable under Section 4 of the PoCSO. Both sentences have been directed to run concurrently. Aggrieved, the accused has preferred this present appeal.

9. The learned counsel appearing on behalf of the appellant submitted that the latter has been falsely implicated in the present case. He further submitted that the appellant's conviction cannot be sustained as the same is solely premised on scientific evidence, without appreciating that the same has no corroboration with the statements of PW3 and PW1. He submitted that all scientific and

circumstantial materials are only corroborative in nature and cannot be read in isolation. Once the prosecutrix and her mother have not supported the case of the prosecution, the case loses its core evidentiary foundation. He submitted that the learned trial court erred in convicting the appellant/accused, solely on the basis of the positive DNA report, even though it is well-settled that scientific evidence, especially DNA reports, are not conclusive.

10. *Per contra,* it was submitted by the learned Additional Public Prosecutor that the FSL report conclusively shows that the appellant had sexual relations with the victim. He also submitted that the minority of the victim was never challenged during the course of the trial.

11. Heard both sides and perused the records.

12. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this Court.

13. I shall briefly refer to the evidence on record relied on by

the prosecution in support of the case. The law was set in motion by PW1, the mother reporting the missing of her two minor daughters including PW3 by way of Ext. PW1/A FIS.

13.1. PW1 when examined before the trial court deposed that she had lodged a missing report as her daughters failed to return home from Budh Bazar. However, they returned on the next date. She took her daughters to the police station. The police made enquiries to her daughter at which time she was sent outside the police station. So, she does not know the proceedings that took place. The police officials obtained her thumb impression in some papers. Her daughter was examined by the doctor at LNJP Hospital, Delhi.

13.2. PW1 in her cross examination deposed that despite her best efforts, PW3 her daughter never told her anything. PW1 deposed that she does not know the accused and anything about the incident as she leaves for work every morning at 8:00 AM and comes back by 5:00 PM.

14. The 164 statement of PW3, that is, Mark D, is seen recorded on 24.11.2014. In the said statement PW3 states thus:- *"...I usually go to school alone in the morning. However, on the way back, I come along with some of my friends, till the bus stand; from there, they board the bus, and I walk the rest of the way home alone. While going to and coming from school, I met a boy named Shambhu. He works in the cycle market of Chandni Chowk. He tried to talk to me several times. He had once written down his phone number on a piece of paper and given it to me, which I tore and threw away. Then he spoke to my friend and, by giving his number, sent a message that I should talk to him once. Then we started talking and we began to like each other. In between, Shambhu went to his village. When he returned, I had also gone to my village and stayed there for three months. Shambhu used to come near my house to see me. When I returned from the village, we took each other's numbers and started talking. I had also gone to Shambhu's house 2-3 times; he lives in Gandhi Nagar. Last*

Wednesday, I and my niece, Afsana, had gone to the Budh Bazar (Wednesday Market). When Shambhu called, I told him we were at the Budh Bazar. Shambhu was already standing there. We met, and then Shambhu said, "Let's go to the room." Then Shambhu took me and Afsana to his room. We stayed there, ate food, and kept talking. Afsana was sleeping, so Shambhu told me to go back in the morning because Afsana is a small girl and there could be some trouble. He told me to go back after dropping her off. He said, "When I take a separate room, I will tell you; then you come to live with me. Marriage will happen however you want—court marriage or at home." I wanted to inform my people. But the phone call did not go through. Later I found out that my mother had filed a police report. One day Shambhu had come to my house, drank tea, and then left. No one was at my house. I told him to ask my mother for marriage. But he asked me to ask I did not try to ask mummy because she would get angry. I also told Shambhu that mummy would not agree to the marriage. Shambhu said that if her

mother did not agree, they would get married and then tell her mother. I want to stay with Shambhu."

14.1 PW3 when examined before the trial court deposed that she does not know the accused/appellant. She denied the entire prosecution case.

15. PW18, Senior Scientific Assistant (Biology), conducted the FSL examination deposed that DNA profiling (STR analysis) performed on the exhibits provided was sufficient to conclude that the DNA profiles from the source of exhibit '2' (blood sample of accused) were found in exhibits '3h13i (vaginal & cervical swabs)', '3h2(vaginal secretion on slides) & '3p (salwar) of the prosecutrix.

16. As can be seen from the evidence above referred to, PW3, the victim had turned completely hostile and does not support the case of the prosecution, either in her 164 statement or in her testimony before the court. The trial court, in paragraph 45 says thus –

"<u>The investigating agency also relied upon statement of the victim under Section 161 CrPC dated 21.11.2014 and in the said statement, she allegedly stated before the 10 that on the evening of 19.11.2014, she left her house along with her niece</u> 'A' without informing anyone. When she reached near Shamshan Ghat, Gandhi Nagar, she called the accused there and accused told her to accompany him to his house and on his asking, she along with her niece went to the house of accused. After sometime, accused took her to another room belonging to one of his friends. The niece of the victim fell asleep and the accused and the prosecutrix established physical relations in the said room. On the next day, victim along with her niece returned to her house and her mother took her to the PS."

(Emphasis Supplied)

17. Apart from the 161 statement of the victim, there is nothing to support the prosecution case. The statements made under Section 161 are statements made to the police during the course of investigation and the same cannot be used except for the purpose stated in the proviso to Section 162 (1) Cr.P.C. Under the proviso to Section 162 (1) Cr.P.C., such statements can be used only for the purpose of contradicting a prosecution witness in the manner indicated in Section 145 of

the Evidence Act and for no other purpose. They cannot be used for the purpose of seeking corroboration or assurance for the testimony of the witness in Court. (See **Tahsildar Singh v. State of U.P., AIR 1959 SC 1012; Satpal v. Delhi Administration, 1976 (1) SCC 727 and Delhi Administration. v. Lakshman Kumar 1985 KHC 741: (1985) 4 SCC 476**).

18. The only piece of evidence supporting the prosecution case is the scientific evidence, namely, the FSL report to which I have already referred to. The learned prosecutor submitted that even if the victim has turned hostile, if the scientific evidence supports the prosecution case, the conviction of the accused can be based on the same. The trial court has relied on the scientific evidence, which has not been discredited in any way, and therefore, there is no infirmity calling for an interference by the court. I cannot agree to the aforesaid argument of the learned prosecutor. It

would be apposite to refer to Section 45 of the Evidence Act, which reads thus –

> *"**45. Opinions of experts.***
>
> *When the Court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger-impressions are relevant facts.*
> *Such persons are called experts*."

19. In this context, I refer to the following dictums of the Apex Court –

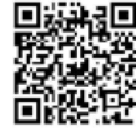
19.1. In **Ishwari Prasad Misra v. Mohammad Isa, 1963 (3) SCR 722**, it was observed; "*Evidence given by expert can never be conclusive, because after all it is opinion evidence*", *a statement which carries us nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so provided by the Evidence Act and, on the contrary, S. 46 expressly makes opinion evidence challengeable by facts,*

otherwise irrelevant. And as Lord President Cooper observed in Davis v. Edinburgh Magistrate: "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert".

19.2. In **Magan Bihari Lal v. State of Punjab, AIR 1977 SC 1091**it has been held thus-"... *It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law.*

19.3. **Murari Lal v. State of M.P. 1980 (1) SCC 704**, the Apex Court while laying down the principles with regard to the extent to which reliance can be placed on the evidence of an expert witness and when corroboration of such evidence may be sought, opined thus-

"*4. We will first consider the argument, a stale argument often heard, particularly in Criminal Courts, that the opinion - evidence of a handwriting expert should not be acted upon without substantial corroboration. We shall presently point out how the argument cannot be justified on principle or precedent. We begin with the observation that the expert is no accomplice. There is no justification for condemning his opinion - evidence to the same class of evidence as that of an accomplice and insist upon corroboration. True, it has occasionally been said on very high authority that it would be hazardous to base a conviction solely on the opinion of a handwriting expert. <u>But, the hazard in accepting the opinion of any expert, handwriting expert or **any other kind of expert**, is not because experts, in general, are unreliable witnesses - the quality of credibility or incredibility being one which an expert shares with all other witnesses - **but because all human judgment is fallible and an expert may go wrong because of some defect of observation, some error of premises or honest mistake of conclusion.**</u> The more developed and the more perfect a science, the less the chance of an incorrect opinion and the converse if the science is less developed and imperfect. The science of identification of finger - prints has attained near perfection and the risk of an incorrect opinion is practically non - existent. On the other hand, the science of identification of handwriting is not nearly so perfect and the risk is, therefore, higher. But that is a far cry from doubting*



> *the opinion of a handwriting expert as an invariable rule and insisting upon substantial corroboration in every case, howsoever the opinion may be backed by the soundest of reasons. It is hardly fair to an expert to view his opinion with an initial suspicion and to treat him as an inferiorsort of witness. His opinion has to be tested by the acceptability of the reasons given by him. An expert deposes and not decides……"*

(Emphasis Supplied)

20. Hence, when the prosecution witnesses have completely turned hostile and there is nothing to support the prosecution case, it may not be safe to conclude regarding the guilt of the accused based on the scientific evidence alone.

21. In the light of the aforesaid discussion, I find that the trial court went wrong in relying solely on the scientific evidence to arrive at a conclusion regarding, the guilt of the accused. I find that the appellant/accused is entitled to the benefit of doubt.

22. In the result, the appeal is allowed and the impugned judgment is set aside. The accused is acquitted under section

235(1) Cr.P.C. of all the offences charged against him. He shall be set at liberty and his bail bond shall stand cancelled.

23. Applications, if any, pending, shall stand closed.

CHANDRASEKHARAN SUDHA
(JUDGE)

FEBRUARY 18, 2026
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