



2026:DHC:1544



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

%

Judgment Reserved on: 12.02.2026

Judgment pronounced on: 23.02.2026

+ **CRL.A. 1078/2018**

STATE (NCT OF DELHI)

.....Appellant

Through: Mr. Utkarsh, APP for the State with
SI Amit Bhardwaj, P.S. Najafgarh.

Versus

SWEETY

.....Respondent

Through: Ms. Inderjeet Sindhu, Advocate
(DHCLSC) with Ms. Devyani Singh,
Advocate.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. This appeal under Section 378(1) of the Code of Criminal Procedure, 1973 (the Cr.P.C.) has been filed by the respondent/State in Sessions Case No. 191/2013 on the file of Additional Session Judge (Special Fast Track Court), Dwarka Courts, New Delhi, assailing the judgment dated 19.05.2015 as per



2026:DHC:1544



which the sole accused has been acquitted of the offences under Sections 366, 376 read with Section 109, 506 and 323 of the Indian Penal Code, 1860 (the IPC), giving her the benefit of doubt.

2. The prosecution case is that on 31.08.2013, the accused conspiring with her brother Gullu (a Child in Conflict with law - CCL) lured PW3 on the false promise of providing employment and in furtherance of their common intention and conspiracy lured her to a secluded place near Aman Vihar Colony behind Neelkanth Dham, Najafgarh and after intimidating her, the CCL raped PW3. The accused herein abetted the commission of rape by her brother, the CCL. It is further alleged that the accused and the CCL criminally intimidated PW3 and voluntarily caused hurt to her. Hence, as per the final report/charge-sheet, the accused is alleged to have committed the offences punishable under Sections 376, 323, 506, 120-B, and 109 IPC.

3. On the basis of Ext. PW3/A FIS of PW3, given on 01.09.2013, Crime No. 279 of 2013, Najafgarh Police Station, that



2026:DHC:1544



is, Ext. PW1/A FIR was registered by PW12, Woman Sub-Inspector (WSI). PW12 conducted investigation into the crime and on completion of the same, filed the charge-sheet/final report alleging commission of the offences punishable under the aforesaid sections.

4. When the accused was produced before the trial court, all the copies of the prosecution records were furnished to her as contemplated under Section 207 Cr.P.C. After hearing both sides, the trial court as per order dated 20.12.2013, framed a Charge under Sections 366, 376 read with Section 109 IPC, 506 and 323 IPC, which was read over and explained to the accused, to which she pleaded not guilty.

5. On behalf of the prosecution, PWs. 1 to 14 were examined and Exts. PW1A-B, PW2/A, PW3/A-F, PW4/A-D, PW5/A-E, PW6/A-C, PW11/A, PW12A-D, PW13/A, PW14/A, PA, PB, Mark A, Mark B, Mark C, and Mark D.

6. After the close of the prosecution evidence, the accused



was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against her in the evidence of the prosecution. She denied all those circumstances and maintained her innocence. She submitted that she had been falsely implicated in the present case. She had never met PW3. She saw PW3 for the first time at the police station after her arrest in this case. No incident of rape had happened to PW3 in her presence. On the other hand, the accused had been raped by Sonu, Rakesh, Ramesh and Nepal on that day. She further stated that she and her brother Gullu are innocent.

7. After questioning the accused under Section 313(1)(b) Cr.P.C., compliance of Section 232 Cr.P.C. was mandatory. In the case on hand, no hearing as contemplated under Section 232 Cr.P.C. 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.**



2026:DHC:1544



versus State of Kerala, 2009 (3) KHC 89; 2009 SCC OnLine Ker 2888).

8. On behalf of the accused, she offered herself as a witness and hence was examined as DW1 and Exts. DW1/A-F, DW1/P1 and DW1/P2 were marked.

9. Upon consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 19.05.2015, acquitted the accused under Section 235(1) Cr.P.C. of the offences punishable under Sections 366, 376 read with 109 IPC, 506 and 323 IPC. Aggrieved, the respondent/State has come up in appeal.

10. It was submitted by the learned Additional Public Prosecutor that Ext. PW3/AFIS of PW3, Ext. PW3/C164 statement of PW3, as well as her testimony before the Court, have remained consistent throughout. The respondent/accused was erroneously granted the benefit of minor inconsistencies which are neither material nor fatal to the prosecution case. The trial court failed to



place due reliance on Ext. PW14/A MLC of PW3, despite the fact that she was admitted with a clear history of sexual assault. The MLC records multiple injury marks on her body, as well as the presence of mud on her clothes and body, thereby corroborating her version of events. The testimony of PW3 has been corroborated by PW4, PW5, PW6, PW7 and PW12. PW6 categorically stated that a loan amount of ₹15,000 was disbursed to PW3. From this amount, ₹5,000 was subsequently lent by PW3 to the respondent/accused. PW7, the owner of Femina Beauty Parlour, deposed that PW3 was employed at his establishment during the second half of August 2013 and that she worked there for approximately one week.

10.1. It was also submitted that the clothes and mobile phone seized by PW12 were found to be stained with mud. It was raining on the date of the incident, and PW3 was sexually assaulted at a secluded place inside bushes, which adequately explains the condition of the seized articles and further corroborates her



testimony. Merely due to the absence of an FSL report concerning the forensic examination of the liquor bottle and plastic glasses recovered from the place of occurrence, the otherwise cogent and consistent testimony of PW3 cannot be discarded, nor can it be held that a conviction cannot be sustained. He further submitted that PW12, who according to the accused was the main conspirator in falsely implicating the accused, was never cross-examined. The learned APP referred to Ext. PW4/C, the call record details, to submit that PW3 had called the police twice immediately after the incident, during which period she also received threatening calls from the accused. PW3 has categorically deposed that she received such threat calls after dialling 100.

10.2. He further submitted that it is a settled position of law that an accused can be convicted on the sole testimony of the prosecutrix, provided it inspires confidence and is trustworthy. In the present case, PW3's testimony satisfies this legal standard. Reliance was placed on the judgment of **State of Punjab vs.**



Gurmit Singh, (1996) SCC 2 384 and Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21.

11. It was submitted by the learned counsel for the respondent/accused that an order of acquittal may be interfered with only on limited grounds, namely: perversity in the impugned judgment, material evidence having been overlooked or non-appreciation of evidence by the trial court, or the existence of other compelling and substantial reasons. It was further contended that none of these grounds is made out in the present case. The primary defence of the accused is that she was not present at the place of occurrence at the relevant time.

11.1. It was submitted that the accused/DW-1 clearly disclosed a criminal conspiracy aimed at shielding the accused persons in FIR No. 88/13 and falsely implicating her and her brother in the present case. DW-1's testimony establishes that PW12, while acting as Investigating Officer in FIR No. 88/13, abused her official position by repeatedly pressurising DW-1 to



2026:DHC:1544



withdraw her gang rape complaint, offering ₹10 lakhs and threatening false implication of her family upon refusal. When DW-1 did not succumb to these pressures, PW12, in connivance with her brother, Sonu and other co-accused persons, executed a plan to sexually assault and ultimately frame DW-1 and her brother in a false rape case. The present case is a product of abuse of authority and criminal collusion, rather than a genuine prosecution. She further submitted that on 31.08.2013, the accused's mobile phone was forcibly snatched from her by PW12's brother and associates and that she was thereafter taken forcibly in a vehicle towards Najafgarh. According to DW-1, her phone remained with those persons, and therefore any calls or text messages purportedly originating from or received on her mobile number on that date cannot be attributed to her. DW1 has further maintained that she was forcibly taken in a vehicle, assaulted, and thereafter taken back to her house and subsequently to the police station. It was further contended that PW12 was able to locate the



accused at a very early stage of the investigation and that this could only be possible because PW12 already knew the accused and had a personal motive. Accordingly, PW-12 acted out of revenge and used her position to falsely implicate the accused.

11.2. It was further submitted that the mobile phone had been given to her by PW12 two or three days earlier, and that PW-3's mobile number was provided to her as PW12's phone number. Acting on this belief, she continued to make calls to that number. She submitted that the CDRs further reveal that the accused allegedly made calls to PW3 at about 6:40 p.m. and 6:41 p.m., immediately after which PW-3 claims to have made a call to the police. Learned counsel argued that, as per the prosecution version, PW-3 was already in the company and under the control of the accused at that time. In such circumstances, the question arises as to why there was any occasion for the accused and PW-3 to exchange calls or messages with each other.

11.3. It was contended that the prosecution had failed to



reconcile the contradictions between the oral testimony of PW3 and the electronic evidence on record. PW3 received a call from a landline number between the two calls she made to the police on the night of the incident, which was never investigated by the prosecution. Although PW-3 stated in her testimony that she had no conversation whatsoever with the accused on the date of the incident, the Call Detail Records (CDRs) belie her version and indicate that two text messages were exchanged between PW-3 and the accused on the said date. It was also submitted that in her FIS, she did not mention the used condom, which she later mentioned in her 164 statement and testimony. Hence, PW3 has been improving her version at every step.

11.4. The conduct of PW-3 during the trial was also highlighted, as she failed to appear before the trial court to give her testimony, and due to this, the trial court issued non-bailable warrants against her on 28.05.2013. There is no infirmity in the impugned judgment calling for the interference of this Court,



argued the learned defence counsel.

12. Heard both sides and perused the materials on record.

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

14. I will first refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW3/A, the FIS of PW3 recorded on 01.09.2013 states: She is married and has been working at 'Femina Beauty Parlour' in Toda Mandi, Najafgarh, Delhi for the last one and half years. About 4–5 days back, when she was leaving the parlour, she met a girl named Sweety (the accused). The accused asked her if she was working in a parlour to which she answered in the affirmative. The accused asked her whether she wanted to earn more money. When she asked about the salary, the accused told her that it would be ₹10,000 per day. She then told the accused that such a high amount can only be earned through *galatkaam* and that she was not



2026:DHC:1544



interested in the same. The accused revealed her name as Sweety, resident of village Gobana, Haryana. On 28.08.2013, Sweety again met her outside the parlour in the evening and said that the former couldn't find her phone and asked to use her phone. Sweety called her own number from her phone, thereby getting her contact number. The accused then claimed she was there to get her brother's admission done, but was short of ₹5,000. The accused requested a loan from her, promising to return it. She gave the money to the accused. After that, the accused called her repeatedly. On 30.08.2013, the accused called saying that an acquaintance, who runs a parlour in Gurgaon, would give her a salary of ₹7,000–8,000/- per month. However, she refused the offer as she was having too much work. On 31.08.2013, the accused again called her asking her to come to the former's village, Gobana, to introduce her to the owner. As directed by the accused, she reached Gurgaon in the evening, where she met Sweety and her brother, Gullu. Around 7:30–8:00 PM, they



2026:DHC:1544



returned to Najafgarh. She told the accused that she wanted to go home, but the accused said that the parlour owner's house was nearby in Neelkanth Varna, near Sai Baba Temple. After walking some distance, the accused pointed to a house stating that the same belongs to the owner of the parlour. The accused suggested that they wait outside because the owner's wife would not like it in case they went inside. The place was dark and secluded, and she was feeling scared. Sweety and her brother started drinking liquor from a bottle they were carrying. She got scared and so she asked Sweety to return her money as she didn't want to meet the owner. Sweety threatened her with a knife and her brother, Gullu, tied her hands behind her back and tied a rope tightly around her neck and mouth. Sweety told her that they had brought her there for *galat kaam*, and that she would be paid ₹10,000, and the accused would get her commission. She refused and said that she was happy with her husband. Sweety then signalled her brother Gullu and told him to teach her a lesson as she was very arrogant. When she resisted,



they beat her. Gullu forcibly tore her clothes, bit her on her stomach, scratched her and raped her against her will. It was raining at the time, and her body and clothes were covered in mud. While Gullu was sexually assaulting her, Sweety stood guard nearby. Thereafter, they left her in that condition and fled. But they left behind a liquor bottle, a glass, and a white bag. PW3 further stated that while leaving, they threatened to kill her if she complained to the police. She managed to untie herself and called the police at number '100'. A PCR van arrived and took her to the station.

15. Ext. PW3/C 164 statement of PW3 is seen recorded on 02.09.2013, in which she has reiterated her case in the FIS. PW3 stated that the accused stood at a distance, keeping watch while her brother Gullu raped her. She further stated that Gullu used a condom while raping her. She also stated that the accused and her brother threatened her and said that if she informed the police they would kill her and her daughter.



2026:DHC:1544



16. PW3, when examined before the trial court, deposed that she had taken up a job in Famina Beauty Parlour in Tura Mandi, Najafgarh, New Delhi, w.e.f. 20.8.2013. On 24.08.2013 or 25.08.2013, while she was leaving for her house in the evening, the accused approached her and enquired whether she was working in a beauty parlour. On being asked about her income, she informed the accused that she was earning ₹2,000 per month. The accused told her that she could earn about ₹10,000 per day, but she declined, suspecting that such earnings would involve illegal work. The accused asked her to think over the proposal and stated that they would meet the next day. At that time, the accused did not disclose her name or any personal details. On the following day, the accused met her outside the beauty parlour in the evening and stated that she had misplaced her mobile phone. She requested the prosecutrix to give her mobile phone so that she could locate her own phone by making a call. After making the call and locating the phone in her purse, the accused returned her mobile phone. The



accused thereafter informed her that she could get a job at a beauty parlour in Gurgaon run by one of her relatives, where she could earn a salary of ₹7,000 to ₹8,000 per month. She then agreed to the proposal. The accused then requested her to lend her ₹5,000, stating that she required the amount for her brother's admission and assured her that she would return the money later on along with interest of ₹1,000. She replied that she did not have money at that time. On 29.08.2013, the accused again met her in the evening at the beauty parlour. She then handed over ₹5,000 to the accused.

16.1. On 30.08.2013, she received a phone call from the accused asking her to Village Gobana, Haryana, stating that the latter would return the money and introduce her to the owner of the beauty parlour. She expressed apprehension about going alone, whereupon the accused informed her that she could reach the village by taking a direct RTV bus from Dhansa Bus Stand. However, she did not go on that day, but she went to Village Gobana to meet the accused on 31.08.2013. She reached there at



2026:DHC:1544



about 6:00 p.m. The accused, along with a boy, whom the accused introduced as her brother (Gullu), met her at the bus stand. The accused stated that she had received a call from the beauty parlour owner to meet him at Najafgarh. Accordingly, she along with the accused and Gullu, boarded a bus and reached Dhansa Bus Stand, Najafgarh. From there, they took an auto-rickshaw upto Sai Baba Mandir. Before reaching the temple, they stopped the auto-rickshaw and took her into a *gali* where there was a signboard of Neel Kanth Dham. After walking through the *gali* for about 5 to 10 minutes, they reached an open area surrounded by bushes. By that time, it was completely dark and it was about to rain. The accused pointed towards a house at about 100 meters distance and claimed it to be the house of the beauty parlour owner. On reaching near the middle of the bushes, the accused and her brother stopped. She became frightened and told the accused that she did not want her money back and wanted to return home. The accused stated that she had consumed liquor and so could not go to the house of the



owner and that the owner would come to the place where they were waiting. Gullu took out a liquor bottle and two plastic glasses from a bag and he along with the accused, began consuming liquor. They asked her to join them, which she refused, during which time some liquor fell on her clothes. Gullu took out a knife and a rope from his bag, tied her hands behind her back with a rope, and gagged her mouth. The accused told her brother to teach her a lesson so that she would not disobey them. The accused stood aside while Gullu raped her. He also bite her thighs and abdomen below her breast. PW3 deposed that she was unable to resist as Gullu had threatened her with a knife. Her shirt got torn during the struggle. After the rape, the accused beat her mercilessly. It had started raining, and her clothes and body were drenched in mud. The accused and her brother threatened her that if she disclosed the incident to the police, they would kill her and her daughter. Thereafter, both the accused fled from the spot. Gullu had used a condom while committing rape. Out of fear, she



2026:DHC:1544



remained at the spot for some time and thereafter managed to untie her hands. PW3 deposed that she made a call to the police from her mobile phone. She wrapped her upper body with her chunni, and she walked to the main road. At the scene of occurrence, the accused and her brother had left behind a rope, two glasses, a liquor bottle, and a polythene bag containing a photograph of Gullu and his Class X marksheet. After some time, she noticed a police vehicle and approached it. PW3 also deposed that she was thereafter taken to the police station and then to RTRM Hospital, where she was examined at about 10:45 p.m. Her clothes were seized, and she was provided alternate clothing by a lady police official. After returning to the police station, her statement was recorded. Her husband and sister reached the police station, and she was taken home thereafter.

16.2. PW3, in her cross-examination, deposed that she does not know whether the accused Sweety had any dispute with one Inderjeet. She does not know any person by the name Inderjeet.



2026:DHC:1544



PW-3 deposed that she had informed PW12 that she had shifted from house no. RZ-37B to another address, though she could not recall the exact date when such information was given. PW-3 denied the suggestion that prior to registration of the crime, she had discussions with PW12 regarding the contents of her statement or that PW12 had tutored her. She met PW12 for the first time on 31.08.2013 at the scene of the incident, where PW12 arrived along with the SHO and two other police officials in a police gypsy. She took them to the place of occurrence. No site plan was prepared in her presence. PW3 deposed that it was raining heavily at the time of the incident and that the rape occurred at about 7:00–7:30 p.m., when it was completely dark. She denied the suggestion that darkness does not set in at that time in August. She stated that after about half an hour, she found her mobile phone lying in the grass, wiped off the rainwater on it, and made two calls to the police, that is, to no. 100 from her mobile no. 9899937931. PW3 admitted that she had obtained the said mobile number four to five days prior to



2026:DHC:1544



the incident and denied the suggestion that it was procured solely for the purpose of falsely implicating the accused. According to PW3, the mobile numbers earlier mentioned at the beauty parlour belonged to her brother and younger sister (9540290321 and 9212961541). She denied having used any mobile phone before obtaining the number 9899937931. She denied having made any calls to PW12 prior to the registration of the crime and denied receiving any calls from the latter. PW3 denied any collusion with PW12 in lodging the present complaint in order to pressurise the accused to settle the crime in FIR No. 88/13 PW3 admitted that she had met the accused just three or four times prior to the date of the incident and that she had given ₹5,000 to the accused during their second meeting. She admitted that she was not aware of the residential address or other particulars of the accused and that she did not know whether Sweety was the real name of the accused.

16.3. PW3, when asked about her source to lend money, deposed stated that she had taken a loan of ₹15,000 from M/s Jan



Laxmi Finance Company for the admission of her daughter. She admitted that the admission was not scheduled for the month of July, but she intended to keep the money for future use. She stated that she had taken membership of the said finance company, but did not recollect her membership number and that no passbook was issued to her. The loan amount was disbursed to her in cash. She denied the suggestion that she did not meet the accused on 28.08.2013 or that she did not pay ₹5,000 to the latter on that day. She admitted that on 31.08.2013 she worked at the Beauty Parlour only from 4:00 p.m. to 5:00 p.m. She made two or three calls to the accused on that day.

16.4. When she received the call from the accused at about 3:15 p.m., she was at Nangloi. She denied the suggestion that she was in village Hirankudana when she received the call from the accused on that day. She had gone to meet the Beauty Parlour owner to ask for an increase of salary and that she had not yet received any salary, as she had been working there for only 8–10



2026:DHC:1544



days. She denied the suggestion that she had left the job on 24.08.2013. She stated that her mobile number 9899937931 was activated on 28.08.2013 and that she used it to speak with her husband, brothers, and uncle between 28.08.2013 and 31.08.2013. She admitted that she used the said number only during that period and that the mobile phone along with the SIM card was taken by the Investigating Officer (IO) on 31.08.2013 when she was at the hospital. She could not recollect whether any document was prepared or whether her signatures were taken prior to the medical examination. She stated that she handed over only her mobile phone and clothes and denied the suggestion that her hair strands were not taken.

16.5. PW3 admitted that no condom was seized by the IO from the scene of occurrence. According to her, the IO seized one liquor bottle, two plastic glasses, one rope, and a plastic bag containing a certificate and a photograph of Gullu from the scene. She stated that no document was prepared at the scene and that she



2026:DHC:1544



signed the seizure memo in the hospital after going through the same. The seizure memo mentioned her clothes, hair strands, liquor bottle, plastic glasses, and plastic bag. She admitted that the copy of the seizure memo dated 31.08.2013 in the court file does not bear her signature. The IO seized her suit, salwar, dupatta, and undergarments in the hospital. She admitted that there was no mention of her undergarments in the seizure memo dated 01.09.2013. She denied the suggestion that the IO deliberately removed her undergarments and omitted to mention the same in the seizure memo. According to her, the seizure memos dated 31.08.2013 and 01.09.2013 in the court file were the same which had been prepared by the IO in her presence in the hospital. She admitted that the seizure memos did not bear her signature. She denied the suggestion that the said memos were not prepared in her presence or that the signed memos had been deliberately withheld by the IO. Her hands were tied with a rope and the same rope was also thrust into her mouth. Her hands were tied behind her back,



and she was made to lie on the ground on her back.

16.6. She made the first call to the police at no. 100 from the scene itself, and the second call after moving about 25 paces away. She denied the suggestion that the second call was made from village Kakrola. She admitted that she did not make any calls to any person, including her family members, after the incident. PW3 could not did not recollect whether she had received two text messages from the mobile phone of accused on 31.08.2013 or the contents thereof. She denied the suggestion that the mobile phone number 9899937931 was not with her on that day or that it was with the brother of PW12, namely, Sonu. PW3 denied that she was with PW12 at the latter's residence at Police Training College, Jharoda Kalan, or that her mobile phone remained with PW12 throughout the day. She further denied that between 6:00 p.m. and 6:30 p.m. on 31.08.2013, she was with PW12 at the police station or the latter's residence

17. PW4, the Nodal Officer, Vodafone Mobile Services



2026:DHC:1544



Private Limited, C- 45, Okhla Industrial Area. Area, Phase- II, New Delhi, deposed that as per records, mobile no. 9899937931 has been allotted in the name of PW3, who had furnished a photocopy of her Aadhar Card as proof of her residence and identity. He also brought the call detail records of the aforesaid mobile phone from 28.8.2013 to 01.09. 2013. PW4 his cross examination deposed that PW3 had applied for the mobile connection on 27.08.2013. The verification of the particulars of PW3 was done by the sales agent i.e. M/ s. Shiva Agencies. PW4 could not say whether any person had visited the address provided for the purpose of verification. He did not personally hand over the call detail records of the mobile phone. The records were probably sent by the Company to the police through email, though he could not say whether the email was sent by him or by some other person.

18. PW5, Nodal Officer, Idea Cellular Limited, A-26/5, Mohan Cooperative, Mathura Road, New Delhi- 110044, deposed



that phone number 8221083709 was allotted to one Babli, wife of Shri Prakash, (the mother of the accused), resident of Village Gobana, Bahadurgarh.

19. PW6, the branch head of M/s. Laxmi Finance Company Pvt. Ltd., deposed before the court that the loan account no.30298140096704 pertains to PW3. A sum of ₹15,000/- was disbursed as a loan to PW3 on 17.08.2013.

20. PW7, owner of Femina Beauty Parlour, Najafgarh, deposed that PW3 was working as a helper in his beauty parlour from the second half of August 2013. She worked in the beauty parlour for about one week. However he was unable to recall exact dates of her joining or leaving. The Prosecutor sought the permission of the Court to “cross-examine” the witness, which was granted. On further examination by the Prosecutor, PW7 denied having stated to the police that PW3 started work in his parlour on 20.08.2013 and left on 31.08.2013. He denied the suggestion that he had deliberately withheld dates in order to shield the accused. In



2026:DHC:1544



the cross examination, PW7 denied the suggestion that no beauty parlour was being run by him. He admitted that no record of the girls working in the parlour was maintained and that their mobile numbers were also not preserved. He denied the suggestion that PW3 had never worked in his parlour.

21. PW12, the IO, deposed that on 31.07.2013, she was posted as Sub-Inspector, Najafgarh Police Station. At about 9:00 p.m., while she was at the police station, the Duty Officer informed her that a call regarding rape had been received and handed over a copy of DD No. 27A to her. Pursuant thereto, she, along with Constable Anita, reached Neelkanth Dham near Sai Baba Mandir, Main Najafgarh Road, New Delhi, where a PCR van had already reached. The SHO, along with team, also arrived at the spot. She noticed a girl standing near the PCR vehicle whose clothes were wet and covered in mud and who appeared to be in a terrified condition. On inquiry, the girl disclosed that she had been raped by Sweety's brother, Gullu. PW3 was carrying a polythene



2026:DHC:1544



bag and stated that the same had been left at the spot by Sweety and Gullu after the commission of the offence. Upon opening the polythene bag, it was found to contain the original X-class certificate of Ashish s/o Prakash, resident of Gobana, Jhajjar, Haryana, along with his postcard-size photograph. PW3 identified the person in the photograph as Gullu. Thereafter, PW3 showed them the place of occurrence, situated at a distance of about half a kilometre from the main road. The spot was an open area surrounded by bushes. It had rained earlier, and there was a slight drizzle at that time. From the spot, she recovered one glass liquor bottle bearing the words 'Flip Bonded Liquor' with a yellow lid. There was a liquid of about one-fourth of the bottle, two disposable plastic glasses, and one light brown/purple coloured rope measuring about 6.5 metres. PW3 also handed over a bunch of hair strands, stating that the same belonged to Sweety and that it had come into her hands during the scuffle. PW3 was feeling unwell and vomited twice, and therefore, she was immediately



2026:DHC:1544



taken to RTRM Hospital, Jafarpur. The clothes of PW3 were completely wet, and so alternate clothes were arranged for PW3. She took photographs of PW3 in the toilet of the hospital using her mobile phone in the presence of Lady Constable Anita. Thereafter, the medical examination of PW3 was conducted. The clothes worn by PW3 were taken by the doctor. She then recorded the information given by PW3 in the hospital and sent it to the police station. Thereafter, they returned to the police station, and the case property was deposited in the malkhana. The husband and sister of PW3 by that time had already reached the police station. They were sent home. On 01.09.2013 at about 5:30 a.m., she, along with her team, reached village Gobana, Jhajjar, Haryana. After making inquiries from various persons in the village, they located the house of the accused Sweety. The accused, her brother Gullu, and their parents were present in the house. Both of them were apprehended and brought to the police station along with their parents. At the police station, PW3 identified the accused.



2026:DHC:1544



22. The accused offered herself as a witness and so was examined as DW-1. She deposed that on 10.04.2013, she was gang raped by one Virender, Neetu, and Inderjeet. On her complaint, FIR No. 88/13 was registered at Najafgarh Police Station. Initially, the investigation in the said case was conducted by Sub Inspector Sunita, which was later entrusted to Sub Inspector Anita. A few days after the registration of the FIR, PW12 visited her house and told her and her mother that the accused persons in FIR No. 88/13, namely, Virender, Neetu, and Inderjeet, were the friends of her brother Sonu and they were also related to her. PW12 wanted the accused to withdraw her complaint. When she refused, PW12 continued visiting her house and pressurising her to withdraw the complaint by offering her ₹10 lakhs for settling the matter. On her refusal to enter into any settlement, PW12 threatened her that she would falsely implicate the brother and father of the accused in a rape case. PW12 told her that she had done so in several other cases and would show her how girls could also be implicated in



2026:DHC:1544



rape cases. In order to save the accused persons in FIR No. 88/13, PW12 took over the investigation of that case. Thereafter, PW12 started calling her from different mobile numbers and used to call her to the police station and threaten her. PW12's brother Sonu also used to meet her in the police station and used to bring PW12 there in his Wagon-R car bearing registration no. DL-9CY-6596. They used mobile number 8059815782 to contact her. She used to make calls to that number from her mobile phone no. 8221083709 to enquire about her case, and Sonu used to tell her that he had strengthened her case by speaking to PW12. In August 2013, PW12 called her to the police station and informed her that her evidence was to be recorded in the court on 05.09.2013. On that occasion also, PW12 offered her ₹10 lakhs to enter into a settlement with Inderjeet and others, and further told her that even if she did not settle, the former would ensure their acquittal as she was the IO in the said case. When she again refused, PW12 threatened her and asked her to call on 29.08.2013, on which day



2026:DHC:1544



the latter would tell her how to depose in court. As directed she called PW12 on mobile number 8059815782 on 29.08.2013 and again made several calls on 30.08.2013, the last call being at about 11:45 a.m. PW12 informed her that there was some problem with her mobile phone and asked her to call on another number, i.e., 9899937931. She made a call on that number. She was thereafter told to call again later. On 31.08.2013, she made several calls which were not answered, and therefore sent two text messages. At about 3:00 p.m., her call was answered by PW12's brother Sonu, who told her that he would pick her up and take her to the police station for recording her statement. DW-1 further deposed that at about 5:45 p.m. on 31.08.2013, Sonu, Rakesh, Ramesh, and some unknown persons forcibly entered her house, snatched her mobile phone, abused and misbehaved with her and her mother, forcibly took photographs and marksheets of her brother Gullu, and threatened her family with dire consequences. She and her brother Gullu were forcibly taken in separate vehicles, while four persons



2026:DHC:1544



stayed in her house. The gang took them towards Najafgarh, where PW12 and a person named Nepal met them. PW12 then directed Sonu to show her what “actual rape” was and then left the spot. Thereafter, Nepal boarded the vehicle. Sonu, Rakesh, Ramesh, and others threatened her with weapons and raped her inside the vehicle. Sonu videographed the rape on his mobile phone. He beat her when she resisted, and forced her to consume liquor. Thereafter they were taken to Village Gobana and later brought back to her house, where her family members were kept confined till about 4:00 a.m. PW12 then reached her house, after which she and her brother were taken to the police station. At the police station, PW12 told her that a rape case had been registered against her and her brother and that she would languish in jail. She saw a lady at the police station, whose name she later came to know as Rita (PW3). She was told that the said Rita (PW3) had lodged a rape case against her and her brother. PW12 took her to the room of SHO. She informed the SHO that she had been raped by Sonu,



2026:DHC:1544



Rakesh, and Ramesh and that a false rape case had been registered against her. PW12 threatened her not to disclose the incident of rape to the doctor, or else the video of the rape recorded would be uploaded on the internet and her brother would be killed. Despite the threat, she informed the doctor that she had been raped and consented for medical examination. The doctor spoke to PW12. Thereafter, she was told by the doctor that PW12 had told the doctor that she was mentally disturbed and that she is an accused in the rape case. Ext. DW1/A is the MLC prepared. The police officials compelled her to write in the MLC that she did want any gynaecological examination. She was then produced before the magistrate and sent to judicial custody. She told the doctor at the Tihar Jail also that she had been raped. The doctor gave her medicine and assured her that information would be sent to Najafgarh Police Station. Her mother also submitted various complaints in this regard. After being released on bail on 28.05.2014, she submitted complaints dated 06.06.2014,



2026:DHC:1544



09.07.2014, and 03.11.2014, that is, Ext. DW1/B, DW1/C and DW1/D. She also obtained copy of Form-I, Delhi Police Control Room (PCR) dated 31.08.2013 regarding the call made by PW3 and the same is Ext. DW1/E. Ext. DW1/F (Colly) is the reply by M/s Vodafone Mobile Services Limited to the notice under Section 91 Cr.P.C served upon them by PW12 and the call detail records of Mobile No. 989993731 (of PW3)

22.1. In her cross-examination, DW1 admitted that she was aware that Inderjeet, Virender, and Nitin had been acquitted in FIR No. 88/13, in which she was the prosecutrix. DW1 admitted that she had not stated before the court in the said case that PW12 had visited her house and told her and her mother that the said accused persons were friends or relatives of her brother Sonu and that she had been asked to withdraw the complaint. However, she stated in her deposition that PW12, Sonu, and Ramesh had been harassing and pressurising her to withdraw the case. She admitted that she had not testified in her case, the facts narrated by her in the



2026:DHC:1544



examination-in-chief in the present case. According to DW1, after her arrest in the present case, she was not produced before any Magistrate. Though she was brought to the court by the IO, she was made to stand outside the court room and was not taken in. She admitted that after about two weeks, she was produced before the Magistrate, though she could not recollect the date or the number of times she was produced thereafter till the filing of the charge-sheet. She admitted that she was being produced before the Magistrate at regular intervals and stated that on the first such occasion, she had informed the Magistrate that she had been falsely implicated and that she herself had been raped.

22.2 DW1 admitted having seen Ext. DW1/P1 application filed by her counsel. She also admitted having seen Ext. DW1/P2 complaint dated 27.03.2014, bearing the signature of her mother. She was not sure whether the signature appearing on Mark A complaint dated 28.03.2014 was that of her mother. She had approached the SHO, Najafgarh, Police Station and had made an



oral complaint against PW12, followed by a written complaint after about 10–12 days. She admitted that she had not retained a copy of the said complaint. She had met the SHO of Najafgarh, Police Station who told her that he had spoken to PW12 and that the latter would not harass her any further. The SHO also instructed her that as PW12 was the IO in the case in which she was prosecutrix, she should co-operate with PW12. She does not know the name of the said SHO, but can identify him on sight. DW1 admitted that she did not approach senior police officers such as ACP or DCP, with the complaint.

22.3 According to DW1, Sonu, Rakesh, Ramesh and other unknown persons who had come to her house on 31.08.2013 remained at her house for about 15 minutes. There are other residential homes near her house. But they could not raise any alarm as the gang was armed with weapons and knives. The gang took her and brother from their house at about 6:00 p.m. and dropped them back at about 7:30–8:00 p.m. No complaint was



2026:DHC:1544



lodged at that time as four persons remained in her house, armed with weapons, and confined them till about 4:00 a.m. DW1 admitted that she is an accused in FIR No. 372/14, Mundka Police Station, under Sections 342, 376D, 506, 323, 34, 203 IPC and Section 6 of the POCSO Act. She does not know whether FIR No. 584/14, Dwarka, Police Station, South, had been registered against her for commission of offences punishable under Section 354, 509, 506, 34 IPC.

23. The trial court found the aforesaid evidence insufficient to prove the prosecution case and hence acquitted the accused giving her the benefit of doubt.

24. Section 386(1) Cr.P.C which deals with the power of the Appellate Court says that the Court may in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused may be re-tried or committed for trial, as the case may be, or find the accused guilty and pass sentence on him according to law. The general principles regarding the powers



of the appellate court while dealing with an appeal against acquittal are:- firstly, the appellate court has the power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded. Secondly, the Code puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it, may reach its own conclusion, both on questions of fact and of law. Thirdly, various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail the extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with an acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion. Fourthly, an appellate court, however, must bear in mind that in the case of acquittal, there is a double presumption in favour of the accused, that is, (i)



2026:DHC:1544



the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law, (ii) the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. Lastly, if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court (See **Babu Sahebogouda Rudragoudar and others v. State of Karnataka (2024) 8 SCC 149**, **Rajesh Prasad v. State of Bihar (2022) 3 SCC 471**, **Chandrappa vs. State of Karnataka, (2007) 4 SCC 415**)

24.1. In **H.D. Sundara v. State of Karnataka (2023) 9 SCC 581**, it was held that the appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on



record. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles: (i) the judgment of acquittal suffers from patent perversity; (ii) the same is based on a misreading/omission to consider material evidence on record; and (iii) No two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

25. Having thus reminded myself on the point, I will now



consider whether the only view consistent with the materials on record is the guilt of the accused.

26. I will first examine the reasons given by the trial court to disbelieve the prosecution case and whether the trial court was justified in arriving at such conclusions or whether they are in any way perverse. The discussion of evidence starts from paragraph 16 of the impugned judgement. The first reason which prompted the trial court to disbelieve PW3 is regarding her case that she had lend an amount of ₹5000/- to the accused herein. According to the trial court, PW3 admitted that she had met the accused for the first time just 2-3 days before she had lent the money to her. PW3 in her examination also admitted that she had never lent money to strangers. Therefore, the trial court concluded that in such circumstances, it was highly improbable for her to have lent money to the accused, a complete stranger or a near stranger.

27. PW3 in Exhibit PW3/A FIS; Exhibit PW3/C 164 statement as well as in her testimony before the trial court stands



by her case of lending ₹5,000/- to the accused. PW3 is seen extensively cross examined for several days. Her capacity to lent money is also seen questioned. According to PW3, she had borrowed money, from which amount she had advanced the amount to the accused. In order to corroborate the case of PW3 on this aspect, the prosecution relies on the testimony of PW6, to which testimony also I have already referred to. The testimony of PW6 on this aspect has also not been discredited. It has not been shown as to why PW6 should be disbelieved. In such circumstances, the prosecution has proved that PW3 did have funds with her from which she had lent the money to the accused. It is true that PW3 had met the accused only a few days before the money was lent. Therefore, it does not seem strange a conduct on the part of PW3 to lend money for the admission of the brother of the accused. Was the money given to the accused in advance as she had promised PW3 with chances of getting better remuneration? Whatever be the reason for advancing the money,



the testimony of PW3, which has not been discredited in any way substantiate the said case of the prosecution. In such circumstances the trial court does not seem to have been justified in rejecting the prosecution version on this aspect.

28. The second reason for disbelieving the prosecution case is discussed in paragraphs 18 to 22 of the impugned judgement. According to the trial court, the case of rape cannot be believed because the testimony of PW4 and PW5 coupled with Ext. PW4/C shows that PW3 had made several calls to the accused during the time at which the rape is alleged to have occurred. In such circumstances, the trial court concluded that the case of PW3 that she was raped by the brother of the accused, namely, Gullu (the CCL) cannot be believed.

29. Admittedly the mobile number of the accused is 8221083709 and that of PW3, 9899937931. As per the Charge framed by the trial court, the incident of rape occurred around 8.30 p.m. On 31.08.2013, two text messages were sent by the accused



to PW3 at 01:51 p.m. and 2:26 p.m. However, the contents of the text messages are not available from the materials on record. I refer to Exhibit PW4/C, relied on by the trial court to disbelieve PW3, which refers to the calls that have been made from the aforesaid mobile numbers,

Serial No.	Call by	Call received by	Time	Duration
1.	Accused	PW3	03:11 p.m.	06 min
2.	PW3	Accused	06:00 p.m.	53 seconds
3.	PW3	Accused	06:14 p.m.	02 seconds
4.	Accused	PW3	06:15 p.m.	01:48 seconds
5.	PW3	Accused	06:25 p.m.	91 seconds
6.	PW3	Accused	06:36 p.m.	17 seconds
7.	Accused	PW3	06:41 p.m.	10 seconds
8.	Accused	PW3	06:44 p.m.	10 seconds
No calls from or to the phone of PW3 after 06:44 p.m. till 08:53 p.m.				
9.	PW3	100	20:53:10	71 Seconds
10.	01123861102	PW3	20:58:42	10 Seconds
11.	Accused	PW3	20:59:15	77 Seconds
12.	Accused	PW1	21:01:21	25 Seconds
13.	Accused	PW1	21:02:37	31 Seconds
14.	Accused	PW1	21:04:15	32 Seconds
15.	PW3	01123881102	21:05:30	11 Seconds



16.	PW3	100	21:06:05	62 Seconds
-----	-----	-----	----------	------------

30. As noticed earlier, as per the Court charge, the rape occurred on 31.08.2013 around 8:30 p.m. There is a time gap of about 2 hours between the last call that was made by the accused to PW3 at 06.44 pm and the first call that was made by PW3 after the incident, to the police at number 100 at 08:53 p.m. Therefore, between 06.44 pm and 08.53 PM, there was a time gap of nearly two hours, during which period, no calls were made from the mobile number of PW3. Therefore, even if calls were made immediately before and after, the same does not rule out the incident of rape because there was ample time for the commission of offence. Further, PW3 only deposed that she had reached village Gobana to meet the accused on 31.08.2013 at 06:00 p.m. She did not say that she met the accused at 06:00 p.m. According to her, she travelled to the said place by bus and reached village Gobana at 06:00 p.m. Thereafter, she met the accused and her brother at



2026:DHC:1544



the bus stand. Further, it is not only the testimony of PW3 that is available on record, there are other pieces of evidence including that of the accused also which corroborates her version. It is true that Ext. PW13/A MLC does not say that rape had occurred. However, it is not for the doctor to say whether rape has occurred or not. The same will have to be decided by the court on the basis of the materials on record.

31. PW3 is seen to have been examined by the doctor on 31.08.2013 at 10.51 pm. Ext. PW13/A records an alleged history of assault. In the MLC it is stated that PW3 complained of pain over the throat and she had a history of vomiting. The fact that PW3 was found vomiting after the incident is spoken by PW12, the IO, who deposed that when she reached the scene of occurrence, she found PW3 in a terrified condition with her clothes wet and covered in mud. PW3 was feeling unwell and she vomited twice and, therefore, PW3 was immediately taken to the hospital. Therefore, the history of vomiting that is recorded in the medical



certificate is corroborated by the testimony of PW12.

32. Following are the injuries noted in Ext. PW13/A MLC; (i) multiple abrasions over the left side near the clavical; (ii) bite mark over the abdomen below the right breast region; (iii) abrasion mark on the right wrist and left ankle region width 2 cm. (iv) multiple scratch marks over the thighs; (v) abrasion mark around the neck, width 2 cm; (vi) mud over the whole body and clothes.

33. According to PW3 it was raining while she was being raped. She was wet and covered with mud after the incident. This testimony is corroborated by PW12 as well as the notings of the doctor in Exhibit PW13/A. Exhibit PW13/A MLC has been proved by examining PW13, who deposed that on 31.08.2013, she was posted as senior resident of Obstetric (Obs. and Gynecology) in RTRM hospital, on which day she had examined PW3. PW13 was never cross-examined by the accused. Therefore, the testimony of PW13 coupled with Exhibit PW13/A, MLC prepared contemporaneously, corroborates the testimony of PW3.



34. Paragraph No. 23 of the impugned judgment reads:

“The prosecutrix has deposed in her cross examination that she did not make any call either to her family member or to any other person from her mobile phone after the incident of rape and after making calls at telephone no.100. The call detail records of her mobile phone, as noted herein-above, demonstrate that she has deposed falsely in this regard as she had received four consecutive calls from the accused and had made a call at landline no. 23861102 after making the first call at telephone no. 100. She has deposed that she has made first call at telephone no. 100 from the spot of incident itself i.e. near Neelkanth Dham, Sai Baba Mandir, Najafgarh and second call at a distance of about 25 paces from that spot. However, the call detail records Ex.PW4/C show that the first call was made by her at telephone no.100 from Roshan Garden, Najafgarh, and the second call from Patel Garden, Dwarka. These two places are nowhere near the spot of Incident as mentioned by the prosecutrix and are very distant from each other. This also falsifies the version of the prosecutrix.”

(Emphasis supplied)

35. Neither the learned prosecutor, nor the learned counsel for the accused was able to show the Court the document from which the learned trial judge concluded that the first call was made by PW3 to number 100 from Roshan Garden, Najafgarh and the second call from Patel Garden, Dwarka.

36. According to the trial court, this is evidenced by Exhibit



PW4/C. This court specifically asked both the learned prosecutor as well as the learned counsel for the defence to point out the column(s) or the portion of Ext. PW4/C from which this conclusion was arrived at by the learned trial judge. However, both of them were unable to point out the same. On a perusal of the same, I have also been unable to find out as to how the trial court arrived at such a conclusion from Exhibit PW4/C. Therefore, it is not clear from which record the trial court arrived at such a conclusion.

37. In paragraph 24 of the impugned judgement, the trial court refers to yet another reason for disbelieving PW3. PW3 deposed that while she was being raped by the brother of the accused, it was raining heavily and that all her clothes had become wet. According to PW3 her mobile phone kept inside her undergarment, namely, brassiere fell on the ground during the course of the incident and it became wet. After the incident of rape, she found her mobile phone lying amongst the bushes



adjacent to the place of occurrence. She picked up her mobile and called 100. This version of PW3 was disbelieved by the trial court saying thus:

“..... Hence, as per the testimony of the prosecutrix, the mobile phone had remained on the wet soil for a considerable period, during which she was being raped by the accused’s brother and it was raining heavily during that time. This raises a doubt in the mind of the court as to how the mobile phone could work even after being exposed to heavy rain and wet soil for a long time and how the prosecutrix was able to make and receive calls on it after the rape incident. The fact that the mobile phone of the prosecutrix was in order and could be used without any difficulty indicates that it had not been exposed to rain or wet soil as stated by the prosecutrix, which in turn leads to the conclusion that no such incident as mentioned by the prosecutrix had occurred.”

(Emphasis supplied)

38. This conclusion is contrary to the conclusion in paragraph 23, where the trial court refers to the location of the mobile phone of PW3 and concluded that her case could not be believed because the CDR shows her location to be in some other place(s) than what was claimed by her. The testimony of PW3 that it was raining heavily has not been discredited in her cross-



2026:DHC:1544



examination. This is spoken to by PW12 also. PW12 deposed that when she saw PW3 on that day, the latter was completely wet and covered in mud. PW12 also deposed that when she reached the place, it was drizzling and that it had rained earlier. When PW13, the doctor examined PW3 the latter was found covered in mud. This again substantiates the version of PW3 that it was in fact raining at that time, which explains her wet clothes and the mud on her body and clothes. It should be noted that the contents of Ext. PW13/A MLC has not been disputed/challenged or discredited as PW13 was never cross-examined on behalf of the accused. PW12 was also not cross examined. Further, it is always not necessary that a mobile phone becomes non-functional on being wet. Not even a suggestion is seen put to PW3 that her phone was not in working condition or that there was no rains. On the other hand, the materials on record show that the phone of PW3 infact was working as is clear from PW4/C CDR. Before and after the incident, PW3 is seen to have made calls from her mobile number.



Neither the prosecution nor the accused has a case that the SIM was put in another mobile by PW3 and the calls made. There are no materials to substantiate the same also. Therefore, the conclusion of the trial court on this aspect in paragraph 24 also does not appear sound.

39. In paragraph 25 of the impugned judgement, the trial judge refers to the improvements made by PW3 in her statement. It is true that in Ext. PW3/A FIS PW3 does not have a case that the brother of the accused had used a condom while raping her. However, PW3 in Ext. PW3/C 164 statement as well as in her testimony before the court deposed that the brother of the accused had used a condom while raping her. This condom was not recovered by the IO. According to the learned defence counsel, this is a material omission amounting to a contradiction. Such a contradiction has not been proved in compliance of the procedure contemplated under Section 145 of the Evidence Act. Neither the Officer who recorded Ext. PW3/A FIS was asked nor the



2026:DHC:1544



Magistrate who recorded Ext. PW3/C 164 statement asked about it.

40. It is true that the FIS and 164 statement can be used for corroborating or contradicting the testimony of the maker. As pointed out by the defence counsel, there is no mention of the condom in the FIS, but there is a mention of condom in her 164 statement as well as in her testimony before the Court. Therefore, it can certainly be taken as an improvement made by PW3 in her testimony. But merely because the condom was not recovered or that the IO did not send the material objects for examination, that is, the liquor bottle, the piece of rope, two plastic glasses etc., that were seized from the scene of the occurrence, alone cannot be a ground to throw out or discard the entire prosecution case as defects in the investigation conducted by the IO cannot always go to the benefit of the accused unless serious prejudice has been caused to him. In the case on hand, there are other pieces of evidence, which also needs to be considered by this court and,



2026:DHC:1544



therefore, merely because the condom was not recovered from the scene of occurrence or that the rope and the other materials that were seized from the scene of occurrence were not sent for fingerprint examination or for FSL cannot be a ground to discard the prosecution case.

41. Further, according to PW3, after the incident while the accused and her brother fled from the scene after the incident, in addition to the rope used to tie her, the two plastic glasses, and a liquor bottle, they left behind a polythene bag at the spot. When she opened the polythene bag, she found the mark sheet and photograph of the CCL, that is, the brother of the accused. The trial court has pointed out that it is very difficult to believe that the brother of the accused would be carrying his mark sheet and photograph along with him to the crime spot and would leave it behind while fleeing from the spot. The trial court is certainly justified in saying so. Initially, this court also found it quite strange because it cannot be believed that any person who goes to commit



2026:DHC:1544



a crime, would leave some document at the site which would identify him. However, in the case on hand, the accused herself comes up with an explanation for the presence of the mark list of her brother at the scene. It was absolutely unnecessary for the accused to explain the same because the burden was on the prosecution to prove the prosecution case as well as to explain the presence of the mark list there. However, for reason(s) best known to the accused, she has taken up the burden of explaining the presence of the mark list.

42. I have already referred to the testimony of the accused, who was examined before the trial court as DW1. According to DW1, on 31.08.2013, when Sonu, the brother of PW12 and his gang came to her house and forcibly took her and her brother in a car, they had also taken the mark list and the photograph of her brother. In Ext. DW1/P1, the application filed by the accused under Section 91 Cr.P.C. seeking summoning of some documents, DW1 has a case that on 31.08.2013 she had received several calls



from Sonu, the brother of PW12 promising her brother a job and asking her to go and meet the latter with the mark list and photograph of her brother. However, she did not accede to the said demand by Sonu. DW1 has a case that on 31.08.2013 Sonu “along with one muscle man raided” her home. Both Sonu and his muscle man were armed with pistols. They threatened her and locked her, her father, and her brother in a room. They snatched the mobile phones and Sonu took away the photos of her brother and his original X standard mark list. Sonu left his accomplice at her house and took her away and drugged her. When she regained consciousness, she found herself in a locked room where Sonu forcibly made her drink alcohol. Sonu forcibly took her nude photos and also made a video of the abuse. At about 04:30 a.m. on 01.09.2013 Sonu brought her back to her house and thereafter Sonu and his accomplice left. DW1 and her family composed themselves at which time PW12 came to her residence and took her and her brother to Najafgarh, Police Station on the pretext of



2026:DHC:1544



discussing Crime No. 88/2013. Thereafter she and her brother were arrested in the case on hand. This version is completely different from the version given by DW1 in box to which I have already referred to in detail.

43. It does not make sense as to why the photograph and the mark list of her brother were taken away by Sonu and team. DW1 never has a case that the mark list and the photograph of her brother were kept along with some valuables in her house and that when Sonu and his gang of goons came to her house and abducted them, they had taken away the valuables and that the photograph and the mark list happened to be along with the valuables. DW1 never has a case that any valuable(s) had been taken away by Sonu and his team. Therefore, in such circumstances it does not appear sensible or probable that Sonu and team would take away just a photograph and mark list of the accused. The prosecution version regarding the mark list is that after the rape, the accused and her brother had left behind a plastic bag which contained the mark list



and photo. The defence gives a version that it was forcibly taken away from the residence of the accused. Now, the question is which of these two versions is probable? I will answer this shortly when I discuss the defence version of the accused.

44. In paragraph 27 of the impugned judgement, the trial court expresses its surprise as to how PW12, the Investigating Officer was able to trace the accused and her brother within such short span of time after the incident because PW3 had conceded that she never knew the address of the accused. This was taken as another aspect to disbelieve the prosecution case.

45. PW12 in her cross-examination deposed that she had discussed the case with senior police officers and raiding party was formed to nab the culprits. Accordingly, she and her team reached village Gobana, Jhajjar, Haryana in search of the accused. After making enquiries with various persons in the village, they located the house of the accused. The accused, her brother and parents were present in the house. The accused and her brother tried to



escape on seeing the police. The police apprehended them and brought them to the police station. There is nothing to disbelieve the version of PW12. Another important aspect that needs to be noticed is that PW12 was never cross-examined by the accused though opportunity was granted. Therefore, the testimony of PW12, the IO also stands unchallenged.

46. Now, coming to the defence version, which the trial court was more inclined to believe. I have already referred to in detail the testimony of the accused, that is, DW1. There are few reasons, as to why I find it difficult to believe her version. I hasten to add that the accused had no burden to disprove the prosecution case. She had every right to keep silent. However, the accused for reason(s) best known to her took upon the burden of trying to disprove the prosecution case by examining herself as DW1. According to DW1, it is PW12 who is behind this false case. DW1 is admittedly the prosecutrix in Crime 88/2030, Najafgarh Police Station. It is the case of the accused that she was gang raped



by few persons, who are supposed to be the friends and relatives of PW12 and her brother. PW12 is alleged to have pressurized the accused to withdraw the said case. PW12 is also alleged to have promised her about ten lakhs rupees to withdraw the case. According to DW1, she was not ready to accede to the demand of PW12 and, therefore, to teach her a lesson and pressurize her to withdraw her case, PW12 has foisted this false case against her. If DW1 is to be believed, there are several persons who must have helped PW-12 in this conspiracy. According to DW1, after she was arrested in the case on hand, she was produced before the magistrate/court concerned. However, she was not taken inside the courtroom but she was made to stand outside the courtroom and it was only the police who went inside and got the order of remand. Therefore, her case seems to be that on the first remand she was never taken or produced before the magistrate/court concerned. This seems highly improbable because during the first remand, the accused will invariably be produced before the magistrate/court



concerned. Though in her chief examination she has a case that she was made to stand outside the courtroom, in the cross-examination, she deposed that she had complained to the magistrate regarding the gang rape by Sonu and team when they abducted her on 31.08.2013 in the evening. In the chief examination, DW1 says that she was not able to inform the magistrate concerned because she was never taken inside the courtroom. But in the cross-examination, she says that she had in fact informed the magistrate concerned. However, the same is not supported by any materials on record. Now, even assuming for a moment that her version that she was not produced before the magistrate for the first remand and hence she was unable to inform the magistrate of the gang rape is taken as true, no explanation is forthcoming as to why the magistrate/the court was not informed thereafter.

47. DW1 admits that during the subsequent remands, she had been produced before the magistrate/court concerned. She has no



explanation as to why she did not bring it to the notice of the court when produced for extension of remand, that she had been gang raped by Sonu and team. Exhibit DW1/A is the MLC of the accused in this case. She is seen to have been examined by the doctor on 01.09.2013 at 10:50 AM which is after her arrest in this case. In Ext. DW1/A MLC it is seen recorded that the accused was brought with a history of sexual assault. But it is also recorded in the said certificate that the patient refused all examination local and internal. According to DW 1, she was forced to make such entries in the certificate by the police. Again, there is no reason why this fact was not brought to the notice of the authorities concerned or before the court when she was produced before the court on subsequent several occasions. Exhibits DW1/B to DW1/D are the several complaints that are seen given by the accused to the various police authorities. If none of the authorities were ready to take any action on the basis of her complaints, nothing prevented her from filing a complaint before the court. If DW1, is to be



2026:DHC:1544



believed, she was gang raped on 31.08.2013 by Sonu, the brother of PW12 and his gang of goons. Though she has raised such a serious allegation against Sonu and team, apart from giving a few complaints to the police authorities, no complaint is seen filed before the court and she does not bring this aspect to the notice of the magistrate/court concerned when she was produced before the court on several occasions after her first remand for which also no explanation is forthcoming. Further DW1's testimony and the story recorded in Ext. DW1/P1 do not tally. In such circumstances, it is difficult to believe her version.

48. It is true as stated earlier that the accused had no burden to disprove the prosecution case. The burden was always on the prosecution to prove the case. However, when the accused has set up a specific defence, the burden would be then on the accused to establish the same. But the burden to prove the defence version, would also be only to the extent of showing a preponderance of probabilities and it is not necessary to prove the case beyond



reasonable doubt. However, such preponderance of probabilities has also not been shown by the accused. The accused has also a case that when she was arrested by PW12 in this case and produced before the SHO concerned, she had informed the latter also about the gang rape. However, the SHO is stated to have advised her to cooperate with PW12 as the latter was the IO in the case in which the accused was the prosecutrix. Yet again, DW1 has a case that she had informed the doctor in the jail that she had been gang raped. The said doctor is also alleged to have assured her that necessary action would be taken. But the said doctor also failed to do. Therefore, going by the version of the accused, there are different authorities who failed to take action despite the bringing the fact of the gang rape to their notice. This version is also quite difficult to believe.

49. The prosecution case, on the other hand, is proved through the testimony of PW3, whose version is amply corroborated by the other prosecution witnesses, whose testimony



also I have referred to in detail.

50. As held by the Apex Court in **Gurmeet Singh ((Supra)**, the trial court seems to have just concentrated on the minor inconsistencies or discrepancies in the version of the prosecution to disbelieve the version of PW3. It has not been shown as to why PW3, a complete stranger to the accused, should join hands with PW12 and cook up or fabricate such a false case against her. The accused has not been able to explain or show materials as to how and on what ground PW12 chose PW3 for fabricating such a false case. It cannot be believed that PW3, a complete stranger, who does not have any criminal background or history, would come forward with a fabricated and false case of rape against the accused merely to help PW12. As noticed earlier, PW3 was extensively cross examined and the cross examination went on for several days. However, she stood by her version throughout her testimony. It is true that minor discrepancies did come up in her testimony. However, no prosecution case can be proved beyond reasonable



doubt with mathematical precision. What the Court needs to look into is whether the case of the prosecution has been proved beyond reasonable doubt. In the case at hand with the available materials on record, I find that the prosecution has succeeded in establishing the prosecution case beyond the reasonable doubt, whereas the defence setup has turned out to be highly improbable. That being the position, I find that the trial court went wrong in disbelieving the prosecution version.

51. The accused has been charged for having committed the offences punishable under sections 366, 376, read with Section 109 IPC, as well as Section 506 and 323 IPC.

52. The essential condition for the application of Section 366 I.P.C. is that there is kidnapping or abduction of a woman by deceitful means with the intention to compel her, or knowing it to be likely that she will be compelled to marry any person against her will or will be forced or seduced to illicit intercourse. The offence under Section 366 IPC is complete once such inducement



and taking away is proved, irrespective of whether the sexual assault was committed by the accused herself or by another person acting in furtherance of the same intention. In the present case, the evidence on record shows that the accused, by making false promises of employment and monetary benefit, the accused induced the PW3 to leave her place and accompany her to an unfamiliar and secluded location. The inducement was clearly deceitful, and the subsequent conduct of the accused establishes that such inducement was with the knowledge and intention that the prosecutrix would be subjected to illicit sexual intercourse.

53. Now moving towards the offence under Section 376 IPC along with Section 109 IPC. In the case on hand, Ext. PW13/A MLC of the victim notes an alleged history of sexual assault along with multiple injuries as well as mud. Although the physical act of rape was committed by the accused's brother, the evidence establishes that the accused intentionally aided and facilitated the commission of the offence. She induced PW3 by deceitful



2026:DHC:1544



promises, brought her to a secluded place, remained present during the assault, prevented resistance, and guarded the area. Such acts clearly amount to abetment, as they were done with prior knowledge and intention that PW3 would be subjected to sexual assault. Therefore, the accused is liable to be punished for the offence of rape under Section 376 IPC read with Section 109 IPC, even though she did not herself commit the physical act. PW3 was beaten by the accused and her brother during and after the incident. Ext. PW13/A also records injuries consistent with physical assault. PW3 has consistently stated that after the sexual assault, the accused threatened her with death and harm to her family if she disclosed the incident to the police. These amount to criminal intimidation and voluntary hurt, punishable under Section 506 Part II and 323 IPC.

54. Hence, the appeal is allowed and the impugned judgment is set aside. The respondent/accused is held guilty of the offences punishable under Sections 366, 376 read with Section 109 IPC,



2026:DHC:1544



Sections 506 Part II and 323 IPC. The respondent/accused is directed under Section 235(2) Cr.P.C. to appear before this Court for hearing on the quantum of sentence on 09.03.2026.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

FEBRUARY 23, 2026

p'ma