



2026:DHC:50



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

% ***Reserved on: 04th November, 2025***
Pronounced on: 06th January, 2026

+ **CRL. A.109/2025**

RAM KUBER

S/o Sh. (Late) Ram Surat
R/o Village & PO Fatehpur,
Distt. Ambedkar Nagar, PS Baskhari,
Uttar Pradesh

.....Petitioner

Through: Mr. Adit S. Pujari, Advocate
(DHCLSC), Mr. Bhavesh Seth,
Advocate, Mr. Siddharth Kaushal,
Advocate.

versus

STATE (NCT OF DELHI)

Through Chief Secretary
Delhi Secretariat, J.P. Estate,
New Delhi-110002

.....Respondent

Through: Ms. Manjeet Arya, APP for the State.
Ms. Vrinda Bhandari, Advocate
(DHCLSC) and Ms. Vanshita Gupta,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Criminal Appeal under Section 415 read with Section 528 of the
Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as*



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'BNSS') has been filed by the **Appellant Ram Kuber** challenging the Judgment and Order on Sentence dated 12.08.2024 and 23.10.2024 respectively, whereby he has been convicted and sentenced to undergo for 12 years RI and a fine of Rs.4,000/- under Section 376(2)/506(II) IPC and Section 5(1) punishable under Section 6 of POCSO Act, 2012.

2. The **brief facts** are that on 19.07.2018 on receipt of DD No.36B, Inspector Sushila reached Dr. BSA Hospital, where she met W/Ct. Anjali, HC Ram Bany, ASI Sandeep and Survivor 'A @ S' along with her Nani 'K'. The survivor stated that she along with her Nani, is residing at the given address for the previous 10 days. Her parents reside at Panipat and she had studied upto 5th class. She had five sisters and one brother. Her father used to work in a factory while her mother was a housewife. She knew the Accused as he used to reside in the *gali*, next to her house. On the last Wednesday, when her Nani had gone to the Hospital, he took her to his house on the pretext of eating meat, where he did wrong act with her. He removed her clothes and inserted his private part in her private part and scratched her chest. She raised an alarm on which Accused gagged her mouth and threatened that if she disclosed the incident to anyone, he would kill her with his truck, of which he was the driver. Because of the fear, she did not disclose about the incident to anyone. The Appellant had been doing wrong act with her for the last eight days.

3. On the day of alleged incident, her Nani came to the house of the Appellant and saved her from him. Thereafter, she called the PCR. On the basis of the statement of the Prosecutrix, the FIR was lodged. During the investigations, her statement under Section 164 Cr.P.C was recorded. The



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medical examination of the Prosecutrix and the Appellant was also got done. Upon completion of investigations, Chargesheet was filed in the Court.

4. The Charges were framed on 04.12.2017 under Section 363/366A/376(2)(i) IPC and Section 6 POCSO Act. The Appellant pleaded not guilty and claimed trial.

5. The Prosecution in support of its case examined eight witnesses.

6. **PW1 is the Prosecutrix** who has deposed about the entire incident. She has proved her Complaint as Ex.PW1/A. The Statement under Section 164 Cr.P.C is Ex.PW1/B. The Pointing Out Memo of the place of incident is Ex.PW1/C and the Seizure Memo is Ex.PW1/D.

7. **PW2 Satbir Singh Yadav** teacher from Nigam Pratibha Balika Vidyalaya, Delhi produced the school record of the Prosecutrix and the Admission and Withdrawal Register of the School as PW2/A. The Admission Form Ex.PW2/B and the copy of Birth Certificate is Ex.PW2/C and the Certificate regarding the Admission and Date of Birth of child is Ex.PW2/D. He deposed that as per the School record the Date of Birth of the child is mentioned as 23.10.2005.

8. **PW3 is the Mami** of the Prosecutrix who has corroborated about the incident.

9. **PW4 HC Naresh** is the MHC(M) who has proved the entries in the Malkhana Register. He has also proved the Road Certificate dated 24.07.2018 *vide* which the parcels were sent to FSL and the receiving of FSL given on return of Const. Virender which is Ex.PW4/D.

10. **PW5 Smt. K** is the Nani of the Prosecutrix who has deposed on similar lines as PW1 and PW3.



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11. **PW6 Kabir** is the neighbour who deposed that on 19.07.2018 at about midnight, the grandmother of the victim had come to his house and narrated about the wrong act by the Appellant on her granddaughter. He along with the Nani had gone to the house of the Appellant where he saw the victim and the maternal aunt also present along with the Appellant. He gave a slap to him and thereafter Nani and Mami of the victim started demanding money from the Appellant.

12. **PW7 Dr. Neha Aggarwal** had proved the MLC Ex.PW7/A.

13. **PW8 Inspector Sushila** is the Investigating Officer, who has proved the investigations undertaken by her.

14. The Accused/Appellant in his **Statement under Section 294 Cr.P.C** dated 01.11.2022 had admitted the Statement of the Prosecutrix under Section 164 Cr.P.C Ex.PW1/B; DD No.36B dated 19.07.2018 as Ex.P1; MLC as Ex.P2; FIR as Ex.P3; the Potency Report prepared by Dr. Mukesh Kumar as Ex.P4; Disability Certificate of the victim as Ex.P5 and FSL Report dated 14.02.2019 as Ex.P6.

15. Thereafter, the Statement of the **Appellant was recorded under Section 313 Cr.P.C on 10.04.2024**, wherein he claimed that a false case has been registered with motivated intentions. He asserted that on account of pre-existing disputes between himself and the family of the Prosecutrix, this false FIR was registered against him, though the same was not recorded by the learned Trial Court.

16. **The learned ASJ after due consideration of the evidence convicted the Appellant under Section 376(2)/506(ii) IPC and Section POCSO Act and sentenced him to undergo RI for 12 years with fine of Rs.4,000/-.**



17. Aggrieved by the Conviction and Sentence, it has been challenged on the **ground** that the Prosecutrix/ PW1 was the only eye witness to the alleged incident. She being a child witness was susceptible to tutoring and her testimony require careful scrutiny. The learned ASJ had relied on Nivtutti Pandurang Korkte and Ors. vs. State of Maharashtra AIR 2008 SC 1460 to state that first it has to be ensured that the child witness is free from any kind of tutoring and influencing and only after the testimony finds adequate corroboration that the statement can be relied upon. In the present case, the child witness was under influence and her testimony was not properly corroborated.

18. It has not been appreciated that there were material discrepancies in the Prosecution evidence entitling the Appellant to a benefit of doubt. The case was not proved beyond reasonable doubt as there were various lacunae and gap in the Prosecution case. In the absence of any reliable eye witness, it becomes a case of circumstantial evidence. To convict an Accused on circumstantial evidence, there must be a complete chain so as to lead to the irresistible conclusion consistent with the guilt of the Accused and it must show that in all human probability the act was done by the Accused.

19. It is further submitted that the Prosecutrix was about 17 years old as per the School records and as a rule of prudence, her testimony should have been considered closely. Reliance is placed on Rameshwar vs. State of Rajasthan AIR 1952 SC 54 and State of M.P. vs. Ramesh (2011) 4 SCC 786.

20. It is further asserted that no biological sample of the Appellant was traced from the body or from the clothes of the Prosecutrix. No DNA of the Appellant could be matched with the samples collected from the victim on



which sexual assault was alleged to have been committed on the victim. The DNA profile does not support the case of the Prosecution. Instead of giving the benefit, the same has been read in favour of the Prosecutrix and no benefit has been given to the Appellant.

21. It is further contended that PW6 in his cross-examination had deposed that the maternal grandmother of the survivor demanded Rs.50,000/- from the Appellant to settle the matter. Moreover, in the cross-examination of PW1 and PW3, suggestions have been given that on account of a quarrel about monetary transactions between the Appellant and Respondent No.3, he has been implicated falsely in this case. The benefit of the same should have been extended to the Appellant as it clearly indicates that the Complaint was motivated.

22. It is further submitted that no public witness was joined in the investigations except PW6, but he also turned hostile. The testimony of PW6 was also brushed aside by observing that it is common knowledge that public persons do not get involved in the investigation despite request and generally do not want to waste their time in Police investigations. Reliance is placed on Dharmander Singh @ Saheb vs. State (Govt. of NCT of Delhi) (2020) 275 DLT 49 to assert that first Prosecution has to establish the facts which forms the basis of presumption and before a negative is to be proved by the Accused, but these principles have been overlooked by the learned ASJ.

23. The PW1, PW3 and PW5 were interested witnesses and their testimonies were full of contradictions which fully reflected that they were



not speaking the truth. During the investigations, various aspects of the Prosecution story were found to be false.

24. The Prosecutrix was not a minor. As per the School records she was 17 years of aged, but claimed herself to be 13 years old. Her mental capacity is also under a doubt as the Court observed her to be 'slow'. The Medical Expert PW7 was also unsure if the hymen of the Prosecutrix had ruptured. The presumption under Section 29 POCSO Act was invoked and the burden was placed on the Appellant which is against the tenets of law. It is for the Prosecution to prove the guilt of the Accused beyond reasonable doubt and the prosecution has to stand on its legs. It is not the duty of the Accused to show why he has been implicated falsely in this case. The totality of the circumstances points that the Appellant was not the perpetrator of crime but has been falsely implicated in this case. Reliance is placed on State of Haryana vs. Shamsher Singh 2006 (3) RCR (Criminal) 345; State vs. Rahul 2011 (2) JCC 701; Sunil Kumar vs. State 181 (2011) DLT 528; State of Uttar Pradesh vs. Ram Veer Singh & Ors. AIR 2007 SC 3075; Sharad Birdhi Chand Sarda vs. State of Maharashtra 1984 SCC (4) 116; Swaran Singh Ratan Singh vs. State of Punjab AIR 1957 SC 637.

25. In the end it is contended that the quantum of sentence is harsh and uncalled for. Leniency should have been shown to the Appellant in the given facts and circumstances. *A prayer is, therefore, made that the Conviction and Sentence be set aside.*

26. A **Status Report** has been filed on behalf of the State, wherein the entire investigations and the trial has been narrated.



27. The *written submissions have been filed on behalf of the Appellant* reiterating the grounds as taken in the Appeal.

28. The *written synopsis have also been filed on behalf of the Prosecutrix*, wherein it is stated Appellant was 56 years old at the time of commission of offence on 19.07.2018, while the Prosecutrix was barely 12 years 9 months old, who has an amputated left hand and suffers from epilepsy and history of seizure episodes.

29. It is submitted that the Appellant committed penetrated rape on the Prosecutrix for a period of 8 days between 11.07.2018 to 19.07.2018 at his *jhuggi* by luring and offering her food, specifically meat. The Prosecutrix's testimony is unblemished, consistent and impeccable apart from minor inconsistencies which do not go to the root of the matter. The Apex Court in the case of *Ganesan vs. State*, 2020 INSC 596, wherein it has been held that the sole testimony of the victim can be a basis of conviction provided she is reliable and trustworthy. Since, she is not an accomplice but a victim of another person's lust.

30. Furthermore, PW5 grandmother of the Prosecutrix (*Nani*) who was the sole eye witness to the incident has fully corroborated the Prosecution story. Her testimony also remains unshaken and consistent throughout the cross-examination. The Prosecutrix's MLC stated that there were fresh stains of blood, semen mud etc. found on her, pointing towards the act of repeated rape committed by the Appellant when he was caught by PW5.

31. Further, while FSL Report recorded that "*DNA profile generated from source of 2j1, 2j2 & 2j3 and 2k did not match the DNA profile generated from 1a1 (blood sample of convict)*", it is significant to note that the said



Report also confirmed detection of “Human semen was detected on 2j1 (vaginal swab), 2j2 & 2j3 (vaginal smear) and 2k (cervical swab)”. It raises a strong inference regarding the possibility of commission of sexual act involving penetration by the Appellant.

32. It is a settled principle of law that witness is not required to give all these minute details. The medical evidence completely improbabilises the ocular evidence, and the same cannot be discarded. Reliance is placed on Abdul Sayeed vs. State of Madhya Pradesh, 2010 (10) SCC 259, wherein it was held that where there is a contradiction between medical evidence and ocular evidence, then the principle can be crystallized that though ocular evidence of the witness has greater evidentiary value vis-a-vis the medical evidence, but where medical evidence makes ocular evidence improbable, then it becomes a relevant factor in the process of evaluation of evidence.

33. It is submitted on behalf of the Prosecutrix that even though the FSL Report did not support the Prosecution case fully, but the findings in the MLC and also presence of human semen in the vaginal swab, smear and cervical swab of the Prosecutrix is clearly indicative of commission of rape. The oral evidence of PW5 has been rightly given due weightage over the forensic evidence, i.e., the FSL Report.

34. It is thus, argued that even though PW6, the neighbour retracted from his earlier statement given to the Police under Section 161 Cr.P.C and turned hostile, but he stated that when Nani of the victim came to his house, she stated that Appellant used to do wrong act upon her granddaughter. He along with the Nani went in front of the house of the Appellant, where he saw the



Prosecutrix, maternal aunt (Mami of the victim) were already present along with the Appellant.

35. The core of this testimony without prejudice to the incorrect and wholly inaccurate allegations made by him *qua* PW3 Mami and PW5 Nani, remains that he was present at the site; he does not dispute that he saw the Prosecutrix's Mami and the Appellant at the site of the incident i.e. *jhuggi*. The testimony of PW3 and PW5, therefore, is un-impeached on these aspects. The testimony of PW6 about alleged demand of Rs.50,000/- by PW3 and PW5 from the Appellant; slap to Appellant by him when he reached the *jhuggi* and history of extortion by PW3 and PW5 is evidentially a concocted narrative and fails to inspire confidence or satisfy the rigours of criminal law. *A prayer is, therefore, made that the Appeal may be dismissed.*

Submissions heard and record perused.

36. The Appellant has been charged with repeated rape of a 13-year-old Prosecutrix over a period of seven days when he was caught by the maternal grandmother on the 8th day, who also was a witness to the incident.

37. The ***first aspect under challenge, is the age of the Prosecutrix.*** It is vehemently contended on behalf of the Appellant that the child was around 17 years but has falsely claimed to be 13-year-old at the time of incident.

38. In order to prove the age of the child, the Prosecution examined PW-2, Satbir Singh Yadav, teacher at Nigam Pratibha Balika Vidyalaya, Samaipur Old-1, Delhi-110042, who produced the admission and withdrawal register of the school, which is Ex.PW-2/A. The Admission Form of the Prosecutrix along with the copy of the Birth Certificate, were also proved as Ex.PW-2/B and PW-2/C respectively. In all these documents,



the Date of Birth of the Prosecutrix was recorded as 23.10.2005. There was not even a suggestion given to PW-2 that the school records were manipulated or that the child was 17 years old. In fact, no such suggestion was given to any of the Prosecution witnesses by the Appellant. It is only during the course of the arguments that the age of the child, has been claimed to be 17 years and not 13 years.

39. The record and the Prosecution, has proved beyond reasonable doubt that the age of the Prosecutrix, was 13 years at the time of incident. Even if for the sake of arguments, though without any evidence of the Appellant, is accepted that the child was 17 years old, then too she was below 18 years of age and the POCSO Act was attracted. **It is held that the learned ASJ rightly concluded the age of the child as 13 years.**

40. The *second material aspect is the proof of the incident*. The *first material witness* is PW-5, Smt. 'K', maternal grandmother of the victim, who discovered the incident in the night of 18/19.07.2018. She in her testimony deposed that her granddaughter, who was residing with her at the time of incident, was found missing from the house at about 03:00 a.m. She asked her son 'RO' about the victim, who informed her that he had seen her going towards the *gali* and that he had also seen the Appellant, who resides in the neighbourhood. She with her daughter-in-law 'R' (PW-3) and neighbour, Kabir started looking for the child. She on peeping through a gap from the door of the Appellant saw that the Prosecutrix was lying on the single bed inside the house of the Appellant. Her lower clothes had been removed. They also saw that the Appellant was lying over the victim. They took the victim to their house and asked her about the incident. She told



them about how she was being sexually exploited repeatedly for last one week. While they brought the victim to the house, the Appellant/Accused fled away from his house. In the morning, she along with her daughter-in-law, 'R' (PW-3) made a call to the Police. The Police came and she along with the Prosecutrix, went to the Police Station from where she was taken for medical examination and thereafter, the Statement of the victim, was recorded. Even though, the witness was cross-examined at length on behalf of the Appellant but nothing material emerged except that the left hand of the child, was amputated when she was five-year-old.

41. The *next material witness* is PW-1, the Prosecutrix, who corroborated the testimony of PW-5. She deposed that she had studied till Class Vth and was residing with her maternal grandmother. Though, she did not remember the date but it was a winter month. The Appellant on the pretext of serving her with meat, took her and did "*galat kaam*" with her. She explained that he removed her clothes and thereafter "*apna Susu mere Susu main daal diya aur ussne meri Chhati bhi dabaayi, aur jab mein chillayi toh ussne mera mooh daba diya aur mujhe dhamki di ki agar kisi ko iss baare main bataya toh tere ooper truck chalwa doonga. Usske baad main ghar wapis aa gayi.*" She further deposed that on that day, her Nani had gone to the Hospital and because of the fear, she did not inform her about the incident. The Appellant continued to do *galat harkaten* for eight days. She further deposed that the Appellant forcibly made her drink beer. In the similar manner, he was doing '*galat kaam*' with her and she out of pain was screaming and on hearing her sound, her Nani reached the *Jhuggi* of the Appellant and saved her. Her Mami had also come to the *Jhuggi* of the Appellant.



42. Her Mami called the Police, who came and took them to the hospital. Thereafter, the Police recorded her Statement, Ex.PW-1/A, which bears her signatures and also the thumb impression of the Nani.

43. This witness i.e. prosecutrix further explained that she had led the Police to the place of incident from where one *dari* and one *kapda* with which, the Appellant used to wipe himself after the incident, which was seized by the Police *vide* Memo Ex.PW-1/D. The Prosecutrix clarified in her cross-examination that whenever she accompanied the Appellant, she did not meet any known person on her way. The Appellant used to take her to his house at about 03:00 and leave her in the evening at about 06:00 pm. She further clarified that she was never sexually assaulted by the Appellant in the truck and she volunteered that he always did the '*galat kaam*' in his *Jhuggi*.

44. The testimony of PW-5 and PW-1, finds further corroboration from the testimony of **PW-3, Ms. 'R', the mami of the Prosecutrix**, who explained that earlier, the mother of the Prosecutrix along with her husband and children, used to live in the neighbourhood, however, a few days before the incident, she along with her husband and children, shifted to Panipat while the Prosecutrix was left with the maternal aunt. She corroborated that on 18/19.07.2018 her mother-in-law/Nani of the child, came to her while searching for the Prosecutrix and informed her that she was not at home. Thereafter, they all started looking for her. While searching for the Prosecutrix, they reached the *Jhuggi* of the Appellant and saw that the Prosecutrix was present inside his *Jhuggi* and the Appellant "*uske saath galat kaam kar raha tha. Phir meri saas ne mujhe bulaya. Wahan par maine*



dekha ki accused bina kapdo ke khada tha. Victim ke sharir par bhi koi kapda nahi tha, lekin who apne sharir par kapda lapetkar wahan se nikal gayi. Qadir naam ka vyakti bhi wahan aa gaya tha". Thereafter, she called the Police at No.100, who came and they all went to the Police Station while the Appellant ran away. In her cross-examination, there was no material contradiction, which emerged except that a suggestion was given that the Applicant was implicated falsely on account of some money transactions between him and the grandmother.

45. From the testimony of the aforesaid three witnesses, it emerges that they all have been consistent about the incident. They have coherently and consistently deposed that the child was being raped by the Appellant since last eight days, but was caught red handed in the night of 18/19.07.2018.

46. It is significant to note that the entire testimony of the three witnesses, was consistent to the incidents as first recorded in the Complaint, Ex.1/A *vide* which the Statement of the child/ Prosecutrix, was recorded wherein she had stated the incident as deposed by her in the testimony.

47. The one aspect, which emerges, is that while the incident had happened at about 03:00 am in the night of 18/19.07.2018. PW-3, 'R' has deposed that she had then in the morning, made the call to the Police after which, the Police arrived and the investigations were undertaken. PW-8, Inspector Sushila has deposed that on receiving DD No. 36B, she had reached at Dr. BSA Hospital, Rohini, Delhi where ASI Sandeep, Head Constable Ram Babu and W. Ct. Anjali, along with the Prosecutrix and her grandmother 'K', were present. The medical examination of the child was conducted *vide* MLC Ex.P2. She corroborates that she recorded the



Statement of the child/ Prosecutrix, Ex.PW-1/A, which has the signatures of the Prosecutrix and the FIR, Ex.P3, got registered.

48. At the instance of the Prosecutrix thereafter, she along with the grandmother, Prosecutrix and the Head Constable, Pawan, went to Sanjay Colony where maternal grandmother Smt. 'R' also joined the investigations. The Prosecutrix took them to the place of occurrence and she prepared the Site Plan, Ex.PW-1/C. At her instance, a bed was lying in the *Jhuggi* and a 'dari' like cloth was lying on that bed. A small piece of cloth was also found lying on the bed. At the pointing out of the victim, the Prosecutrix the *dari* and the piece of white cloth, were seized *vide* Memo Ex.PW-1/D. All the seized articles were sent to FSL.

49. The **next significant piece of evidence was the MLC of the child**, which is Ex.PW-7/A. The internal examination of the child was done. According to the MLC of the child, the body fluid collection, clipping of pubic hair, oral swab... of the child, were taken and sealed and handed over to the Investigating Officer.

50. Learned counsel for the Appellant, had vehemently contended that the Statement of the child under Section 164 of the Code of Criminal Procedure, 1973, Ex.PW-1/B was totally contrary to her Statement, Ex.PW-1/A and her testimony in the Court rendering her testimony, completely unbelievable. The Prosecutrix in her Statement under Section 164 Cr.PC stated that the Appellant made her drink beer. There were two other girls present and did oil massage on his body while he was naked. Thereafter, he got on top of her and slept. ***He used the condom and ...*** He made her spread the legs and did the '*galat kaam*'. He also threatened that if she did not agree, he would



run his truck over her. She screamed on which, her *Nani*, *Mami* and Kadir, reached the spot.

51. Pertinently, the entire incident of how she was sexually assaulted is by large on the same lines except that she claimed that the incident happened in the truck. However, she also deposed that the Appellant had done the '*galat kaam*' and she had suffered pain. Her Statement also stated about her *Nani*, *Mami* and Kadir, reaching the spot. Pertinently, the Prosecutrix in her testimony had denied that any incident had happened while they were in the truck. It is evident that the entire incident is consistent though, there may have been slight evasion in the Statement under Section 164 Cr.PC but as has been rightly observed by the learned ASJ, such minor deviations have to be considered in the light of the fact that the Prosecutrix was a child of 14 years and she may not have been able to narrate the incident in the exact words and there may be a likelihood of adding some sentences, which had not been stated earlier.

52. However, considering the consistent testimony of the child in her own Complaint and her testimony in the Court, which is fully corroborated by the testimony of PW-3 and PW-5 and also by PW-8, SI Sushila, who had conducted the incident, such were deviations in her Statement under Section 164Cr.PC, which was recorded after her Complaint, Ex.PW-1/A, cannot be given over exaggerated emphasis.

53. Another important witness examined by ***the Prosecution was PW-6, Mr. Kabir, who was a neighbour and an independent witness.*** He also corroborated that on the date of incident i.e. 19.07.2018 at about 12:00 midnight, while he was sleeping in his house, maternal grandmother of the



victim, came to his house and stated that the Appellant has done a wrong act with her granddaughter. He along with *Nani*, went to the house of the Appellant where he saw the victim and maternal aunt of the victim also present along with the Appellant. He gave a slap to the Appellant as he had been informed by the maternal grandmother that he had done wrong act with the granddaughter.

54. This witness, **PW-6, Mr. Kabir** however, was cross-examined by the Additional PP wherein he denied that he had taken out the victim 'S' from the *Jhuggi* of the Appellant or that the victim had told her *Nani* that the Appellant used to do the wrong acts upon her or that he had been committing rape since last seven days. The witness was cross-examined by the Appellant but again, nothing emerged in the cross-examination. He further denied that when he confronted the Appellant with the allegations made against him by the victim as he confessed and thereafter, fled from the spot. However, in his cross-examination, he reaffirmed that he had slapped the Appellant, on the night of the incident. This witness is an independent neighbour, who also has reaffirmed about he being approached by the *Nani* in the middle of the night, who informed her about the child being raped by the Appellant.

55. The testimony of **PW-6, Mr. Kabir** assumes significance in the light of the principle of *res gestae* provided in Section 6 of the Indian Evidence Act. Immediately after the incident, *Nani* had admittedly gone to the house of PW-6 and narrated the incident. The spontaneity and the natural conduct of the Appellant of *Nani* in approaching the neighbour, reflects the genuineness of the testimony. The witness may have denied being told about



the incident, but admitted having that he had accompanied the *Nani* to the *Jhuggi* of the Appellant where he had found the Appellant, the Prosecutrix and the *Mami* present and he had also slapped the Appellant. His presence and the narration of the incident by PW-1, PW-3 and PW-5, fully stands corroborated by PW-6, the independent witness.

56. It was argued on behalf of the Appellant that in fact, no such incident had taken place, but there was a money transaction between the Appellant and the maternal aunt grandmother on account of which, he has been falsely implicated.

57. Firstly, aside from taking a vague plea of there being a monetary transaction, no specific details of the nature of transaction, the amount involved or any other particular, has been suggested by the Appellant, in the cross-examination of any of the Prosecution witnesses; so much so that he had not even stated about it in his Statement under Section 313 Cr.P.C. where he had merely asserted that he was implicated falsely.

58. Secondly, much argument has been sought to be built on the testimony of PW-6 wherein he deposed that *Nani* and *Mami* of the victim, started demanding money from the Appellant out of which, he reached the spot. In his cross-examination, he further deposed that when *Nani* and *Mami* of the victim, came to his house again in the next morning, they told him that they were demanding Rs.50,000/- from the Appellant but he was not giving the money. He refused to mediate between them for money transaction. *Nani* of the victim then told him that if he did not give Rs.50,000/- then he will go to jail after which, they all left. This testimony of PW-6, further reinforces that after the incident happened, the *Nani* and



Mami wanted the money to not report the incident to the Police but when he did not agree to give them the money, the matter got reported in the morning. It is pertinent to note that this has not established that there were any money transactions; rather it reflects that after the happening of the incident, the *Nani* and *Mami* wanted the money for not reporting the incident. It, in no way, supports the defence of the Appellant that there was money transaction rather it reinforces that the incident did happen in the middle of the night and in order to not report, a money demand was made on behalf of the Prosecutrix.

59. The other important and pertinent piece of evidence was the FSL wherein the DNA of the Appellant, did not match that of the Prosecutrix. It is significant to note that the Prosecutrix in her Statement under Section 164 Cr.P.C. had stated that the Appellant had used the condom, which becomes a significant aspect to explain the non-presence of semen or matching of DNA of the Appellant, with that of the Prosecutrix.

60. Additionally, the alleged act happened before 03:00 AM in the night of 18/19.07.2018, when the Complainant found the victim missing. The *Nani* and the family members of the victim called the Police at 14:09 PM and the Victim was taken to the Hospital at about 11:00 AM and MLC was made at 13:59 PM on 19.07.2018. Considering the time gap between the alleged incident and the time when the medical examination was conducted, the not matching of DNA and the inconclusive FSL Report is quite comprehensible and does not discredit the case of the Prosecution.

61. The overwhelming evidence led by the Prosecution, establishes the act of rape of the Prosecutrix, who was not only 13 years old but was also



suffering from amputation of arm by the Appellant. The minor discrepancy in the Statement under Section 164 of Cr.P.C of the Prosecutrix cannot be the ground to discredit the entire evidence of the Prosecutrix. The testimony of the Prosecutrix was consistent and they corroborated by other witnesses.

62. In the case of Appabhai vs. State of Gujarat, 1988 Supp SCC 241, the Apex Court had observed that the Court while appreciating the evidence must not attach undue importance to minor discrepancies. Those discrepancies which do not shake the basic version of the Prosecution Case must be discarded. The discrepancies may be due to normal errors of perception or observation, which should not be given importance. The errors may also be due to lapse of memory for which due allowance must be given. The Court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the Court. The Courts, however, should not disbelieve the evidence of such witness's altogether if they are otherwise trustworthy.

63. Similarly, in the case of State of Punjab vs Gurmit Singh (1996) 2 SCC 384, the Apex Court reaffirmed that the testimony of a victim of rape, must be dealt with utmost sensitivity. The Court must examine the broader probabilities of the Case and not be swayed by w minor contradictions or insignificant discrepancies in the Statement of the Prosecutrix, which is not



of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her Statement in material particulars.

64. Similar observations were been made by the Hon'ble Supreme Court of India in State of H.P. vs. Sanjay Kumar (2017) 2 SCC 51. It was observed that unless there is compelling reason which necessitate looking for corroboration of a statement, the Courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused, to seek corroboration to the Statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury.

65. The testimony of the Prosecutrix thus, has to be taken as a whole. In the present Case, the testimony of the Prosecutrix not only has been consistent but she has withstood the test of cross-examination despite being a young child of the 13 years.

66. Not only this, her testimony stands fully corroborated by that of PW-3, the *Mami*, PW-5, the *Nani* and PW-6, who is an independent neighbour.

Conclusion:

67. Learned ASJ has rightly held that there was overwhelming evidence to convict the Appellant and there was nothing on record, to suggest false implication of the Appellant.

68. The Appellant has been rightly convicted and Sentenced by the learned ASJ.

69. There is no merit in the present **Appeal**, which is hereby **dismissed**.



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70. The Appeal is disposed of accordingly, along with pending Application(s), if any.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 06, 2026/ VA/RS