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

Date of Decision: 17th March, 2026.

Uploaded on: 20th March, 2026.

+ **CRL.A. 1434/2012**

STATE

.....Appellant

Through: Mr. Aashneet Singh, APP with Insp.
Naveen Rathi & SI Manisha, PS
Mandawali.

versus

MOHD SHAMSHER

.....Respondent

Through: Mr. Jitendra Kumar Singh, Amicus
Curiae with Ms. Shivpriya, Ms.
Harshita Singh and Ms. Anjali
Kumari, Advocates (M: 9205114924).

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.
2. This appeal has been filed by the State challenging the impugned judgment dated 19th December, 2009 passed by the Id. ASJ-III, (East), Karkardooma Courts, in *Sessions Case No. 38/2009* arising out of FIR No. 90/2009. *Vide* the impugned judgement the Respondent has been acquitted of offences punishable under Section 376 read with Section 511 of the Indian Penal Code, 1860.



Factual Background

3. The case of the prosecution was that on 21st February, 2009, at about 9:00 AM, the Respondent-Accused had attempted to commit rape upon the three and a half year old victim in his *jhuggi* at Ravi Das Camp, near Mother Dairy, Mandawali, Delhi. The mother of the victim, upon hearing the cries of the victim, reached the Respondent's *jhuggi* and knocked on the door, which was opened by the Respondent. The mother found the victim naked with her undergarments down to her knees. It was stated by the victim's mother that on asking the victim as to who had removed her clothes, she pointed towards the Respondent. In the meantime, the Respondent had fled the scene.

4. A case was registered on the complaint of the victim's mother and after arresting the Respondent, charges were framed under Section 376/511 of IPC on 14th July, 2009. The Respondent had pleaded not guilty and the trial was conducted. A total of 12 witnesses were examined by the prosecution, and the defence had examined one witness.

5. After considering the submissions of the parties as also the record, the Id. Trial Court came to the following conclusions:-

- i) There was contradiction in the testimony of PW1 and PW2, *i.e.* the father and mother of the victim, respectively, especially in respect of the versions which they gave as to how they discovered the victim on the date of incident.
- ii) Another contradiction in the testimonies of PW-1 and PW-2 was the allegation made by PW-2 that the accused had pointed a knife at the victim while undressing her. However, the same was not disclosed by PW-1.
- iii) The Trial Court also doubted the ability of the victim who was three



and half years old to narrate the alleged facts in the manner as deposed by PW-2. In case the victim was capable of the same, the Trial Court questioned, as to why her statement was not recorded under Section 164 of Code of Criminal Procedure, 1973.

- iv) The only independent public witness examined by the prosecution *i.e.*, PW-6, who was the neighbour, had also turned hostile. The Trial Court held that as per the testimonies of other witnesses there were several persons from the public who were present, however, none except PW-6 have been examined.
- v) The concerned doctor, PW-10, who had led the medical evidence, had stated clearly that there was no external injury on the body of the victim.

6. Accordingly, the Trial Court acquitted the accused.

Submissions

7. Mr. Aashneet Singh, Id. APP appearing for the State has submitted that the FSL report does show that there was presence of some blood on the victim's clothes and semen was also found. The same would show that the offence was proved and, therefore, the Id. Trial Court was incorrect in acquitting the Respondent.

8. He further relied on the fact that the victim is only a three and a half year old girl, and hence, the version of either of the parents who have spoken to the victim, even if there was some inconsistency, should have been accepted and benefit of doubt ought to have been given to them.

9. On the other hand, Mr. Jitendra Kumar Singh, Id. *Amicus Curiae* appearing for the Respondent submits that the medical evidence does not suggest any assault on the victim. There is no injury on her private parts.



Further, the statement of the DW-1, resident of a nearby *jhuggi*, would also show that there was some acrimony between the two families in respect of fetching water from the Government tap which was in front of the *jhuggi*.

10. It is due to this acrimony that led to a completely incorrect and imaginary case being filed against the Respondent. He further submits that the testimony of PW-10 leaves no doubt that there was no offence which was committed by the accused and hence the Id. Trial Court's judgement deserves to be upheld.

Analysis

11. The Court has considered the matter. A perusal of the testimony of the PW-1 - the father of the victim, would show that as per him, at the relevant time *i.e.*, around 9:00 A.M., he was sleeping and had woken up from the cries of his daughter who had walked to the door of their house. He found the victim without her undergarments. The victim is, thereafter, supposed to have pointed out to the house of the accused which is an adjacent *jhuggi* and, thereafter, the PCR was called by PW-1.

12. On the other hand, PW-2, the mother of the victim, states that she heard the cries of her daughter, however, she was unable to locate her daughter. She then went to the adjacent *jhuggi* of the Respondent and upon knocking the door, she found her daughter and the Respondent together and her undergarments were down to her knees. It was then that her husband reached the *jhuggi* of the Respondent.

13. PW-1, the father of the victim, in his cross-examination, stated that no person from the neighbourhood had gathered upon hearing the cries of his daughter. In contrast, PW-2 in her cross-examination stated that approximately 50 to 60 persons had assembled at the spot upon hearing the



cries of the victim.

14. As is evident, these two descriptions of the incident, itself, are completely at variance with each other. These contradictions are not minor discrepancies or normal variations in testimony but are material in nature.

15. It is also noted that PW-1 on the one hand is stated to have first heard the cries of the victim and thereafter informed PW-2, whereas the PW-2 states exactly the opposite.

16. There is, therefore, no clarity as to how the victim even complained about the Respondent and how the alleged incident actually occurred.

17. PW-6 - Munni, who is the neighbour, had stated that she had seen the victim crying outside the *jhuggi* but she was not aware of the reasons for the same.

18. Further, PW-10 - Dr. Anjali's testimony is relevant and is, therefore, extracted below:

“ On 21.2.2009 I was posted as above. On that day, at about 2.50 PM one patient XXXX D/o XXXX Aged about 3 1/2 years, female was brought by her father XXXX with alleged history of sexual assault by a boy after keeping her in a room and she was forced to take her clothes off and he made an attempt.

On her examination, I found no external injuries over her entire body. Her secondary sexual characters were not developed. On local examination, her hymen was not found intact but no external injury was found. Her per vagina examination was not conducted as the patient was not cooperative. She was referred to forensic department for age determination.

I collected following samples i.e. two vaginal slides and Vaginal swab and also seized her clothes i.e.



one navy blue Pyzama and one navy blue with white colour stripes on lower side, half sleeves sweater and handed over the same to the IO. I prepared her MLC which is Ex. PW10/A which bears my signature at Point A.

XXXXX By Sh. VK Singh Advocate for accused

In case the incident was of the same day, there would have been some injury on her vaginal part which were not observed by me and as such it cannot be said that there was any sexual assault, which resulted into the hymen being not intact. The observation that the hymen was not intact cannot be co-related to the sexual assault.”

19. This along with the FSL report would show that there is no medical evidence to show that any rape had been committed. Moreover, the MLC of the victim also clearly records that there was no external injury or any other injury on the private parts except that the hymen was not fully intact. This issue has been explained by PW-10, the doctor, clearly in her cross examination.

20. DW-1 has also stated that there was previous acrimony between the two families and this also shows that there is a possibility that the incident was not actually genuine.

21. This position has also been taken by the Respondent in his statement under Section 313 of CrPC.

22. The Apex Court in *Santosh Prasad v. State of Bihar, (2020) 3 SCC 443*, held that if the testimony suffers from material contradictions, lacks credibility, and is not supported by medical or forensic evidence, it cannot be treated as a sterling piece of evidence to sustain conviction. The relevant portion of the judgment is extracted hereinbelow:



“6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall the accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4.00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW 1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW 5, prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on



the appellant and the accused is to be given the benefit of doubt.”

23. The above principle has been reiterated by the Supreme Court in *State (NCT of Delhi) v. Vipin, 2025 SCC OnLine SC 78*, wherein it was held that though conviction can rest on the sole testimony of the witness, such testimony must inspire complete confidence. The pertinent part of the judgment is extracted hereunder:

“10. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.

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12. In any case as we have already stated above that the testimony of the prosecutrix does not inspire confidence, under these circumstances, we are not inclined to interfere with the well considered order of the Trial Court and the High Court.”

24. The essential principle reiterated in the aforesaid judgements is that a witness’s testimony must be reliable, consistent and free from material contradictions. Furthermore, in the present case, the prosecution version is entirely derivative in nature, being based upon the statements of the parents, as the victim herself has not been examined. Moreover, the testimonies of the material witnesses suffer from material inconsistencies, and the prosecution case also lacks corroboration from reliable medical evidence. In such



circumstances, the prosecution version does not inspire confidence.

25. In view of the above, the findings of the Id. Trial Court, in the opinion of this Court, do not warrant any interference.

26. Accordingly, the appeal of the State is dismissed. The bail bonds furnished by the Respondent are discharged.

**PRATHIBA M. SINGH
JUDGE**

**MADHU JAIN
JUDGE**

MARCH 17, 2026/MR