



2025:DHC:11816



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on :10.10.2025

Judgment delivered on :23.12.2025

+ **CRL.A. 380/2023 & CRL.M.(BAIL) 632/2023,**
CRL.M.(BAIL) 1746/2025

MOHD. FAISAL

.....Appellant

versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr. Siddharth Yadav and Mr. Anmol Kumar Pandey, Advocates.

For the Respondent :Mr. Sunil Kumar Gautam, APP for the State with SI Rinku, PS Khyala.
Mr. Asheesh Jain, Senior Advocate (Amicus Curiae) with Mr. Adarsh Kumar Gupta, Mr. Vishal Gupta and Ms. Neha Yadav, Advocates.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the judgment dated 07.11.2022 (hereafter '**impugned judgment**') and order on sentence



dated 17.12.2022 (hereafter '**impugned order on sentence**'), passed by the learned Additional Sessions Judge ('**ASJ**'), Tis Hazari Courts, Delhi in Sessions Case No. 56583/2016 arising out of FIR No. 853/2014 ('**FIR**'), registered at Police Station Khyala.

2. By the impugned judgment, the learned ASJ convicted the appellant for the offences under Sections 342/376 of the Indian Penal Code, 1860 ('**IPC**') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

3. By the impugned order on sentence, the appellant was sentenced to undergo simple imprisonment for 1 year and to pay a fine of ₹1000/- for the offence under Section 342 of the IPC, and in default of payment of fine, to further undergo simple imprisonment for three months; and to undergo rigorous imprisonment for 10 years and to pay a fine of ₹2000/- for the offence under Section 4 of the POCSO Act, and in default of payment of fine, to further undergo simple imprisonment for six months. The sentences were directed to run concurrently.

4. The brief facts of the case are as follows:

4.1. On 11.11.2014, the FIR was registered for offences under Sections 376/342/506 of the IPC and Section 4 of POCSO Act on a complaint made by the victim (seventeen years old) alleging that she had been raped by the appellant, who was the brother-in-law of her



landlord. It was alleged that the landlord and the appellant used to live on the ground floor of the same property.

Allegedly, on the day before Diwali, the appellant raped the victim in a room on the first floor and threatened her that if she disclosed about the incident to anyone, he would kill her and her family members, due to which, the victim did not tell about the incident to anyone.

On 10.11.2014, at around 11 PM, when the victim was returning after buying milk from a shop near her house, the appellant was standing on the first floor. When the victim started going upstairs, the appellant allegedly grabbed her hand, gagged her and took her to a room on the first floor. Allegedly, the appellant locked the door of the said room, made the victim lie down on the bed and forcibly raped her. It was alleged that the victim started screaming and her mother knocked on the door, but the appellant did not let the victim open the same. Subsequently, when the victim somehow managed to open the door and told her mother about what had happened, the victim's mother allegedly started hitting the appellant, however, the appellant pushed her mother away and ran off.

The victim reiterated the allegations during her medical examination as well.

4.2. Charges were framed against the appellant for the offences under Sections 376, 342 and 506 of the IPC and Section 6 of the POCSO Act.



4.3. The victim (PW2) and her brother (PW3) turned hostile in the present case and the victim's mother (PW4) deposed that she had not seen the face of the perpetrator.

4.4. By the impugned judgment, the learned Trial Court found that even though there was no direct testimony that pointed towards the appellant being guilty of the offence, however, the evidence of witnesses as well as scientific evidence points towards commission of offence by the appellant. It was noted that the no suggestion was put to the victim, her brother and her mother to disprove the victim's proof of age adduced by the prosecution which evidenced that the victim was a minor aged 17 years old at the time of the incident.

It was observed that although the prosecution had failed to show that the victim was subjected to penetrative sexual assault more than once, however, the FSL report indicates that the appellant's DNA was found on the seized clothes of the victim and also on her vaginal, vulval and cervical swabs. It was observed that the discrepancy in the statement of the victim regarding the place of occurrence is not such that it will discredit her testimony. The appellant was thereby convicted for the offences punishable under Section 4 of the POCSO Act as well as under Section 376 of the IPC.

Taking note of the testimony of the victim in regard to the appellant catching hold of her hand and gagging her mouth, the learned Trial Court convicted the appellant for the offence under Section 342 of the IPC. It was noted that as the victim had denied that the appellant had



threatened her and considering that there was no other material to evidence that the victim was threatened by the appellant, the prosecution had not been able to prove that the offence under Section 506 of the IPC was made out.

4.5. Aggrieved by the same, the appellant filed the present appeal.

5. The learned counsel for the appellant submitted that the impugned judgment has been passed in a hasty manner without appreciating the material on record and the appellant has been erroneously convicted in the present case.

6. He submitted that none of the witnesses have identified the appellant and the learned Trial Court has ignored that the allegations are vague in nature and neither the victim nor her family members knew the exact date and time of the alleged crime.

7. He submitted that the fact that the victim has refused to identify the appellant and clearly deposed that she could not see the accused, due to it being dark, has not been appreciated by the learned Trial Court. He submitted that there also existed contradictions in the version of the victim in relation to the room (where the rape allegedly took place) being on the first floor or the second floor. He further submitted that the victim, in her evidence, has denied that the appellant raped her.

8. He submitted that the appellant was the brother-in-law of the victim's landlord and he was residing on the ground floor along with



some family members. He submitted that admittedly, the whole property except the ground floor was in possession of tenants and there was no vacant room, which further belies the case of the prosecution.

9. He submitted that the brother of the victim (PW3), in his evidence before the Court, categorically stated that he was informed about the victim being raped by the appellant by his mother. He submitted that contrarily, the victim, in her evidence, stated that one *fellow* had taken her in a room on the second floor and that her mother came when she cried. He further submitted that the victim, in her evidence, gave a contrary account of the incident and stated that her brother himself had also come to see the perpetrator. He submitted that version of the prosecution is further rendered doubtful when considered in the light of the evidence of the victim's brother who, in his evidence, stated that he had gotten the appellant arrested as his sister suspected the appellant to be the perpetrator.

10. He submitted that the victim's mother, in her evidence, further stated that *somebody* had come to the house on the alleged date of the incident, however, the said person has neither been identified nor has the said person been produced as a witness. He submitted that the victim's mother, in her evidence, has also stated that while she heard the cries of the victim from the room of the appellant, the moment she opened the door of the said room, a person escaped from the room and



she categorically stated that she was not able to see the face of the said person.

11. He submitted that although the victim, on being cross examined by the learned Additional Public Prosecutor for the State, had volunteered that the appellant had opened the door when her mother knocked at the door, she refused to identify him, which casts further doubt on the veracity of the case of the prosecution. He submitted that the benefit of such doubt cannot be denied to the appellant.

12. He submitted that it cannot be ignored that the evidence of the victim as well as the categorical admission of the victim's mother and brother in their evidence makes it clear that the appellant was implicated only on the basis of suspicion and neither the victim nor her family members were sure that the offence was committed by the appellant.

13. He submitted that the prosecution has not made any independent persons as witnesses either to give credence to the case of the prosecution and none of the listed witnesses have stated that penetrative sexual assault took place more than once.

14. He submitted that there is a delay of one day in registration of FIR as well, which shows that the appellant has been falsely implicated in the present case, especially when the appellant has not been identified by the victim as well as her family members.



15. He submitted that there is also significant doubt in the age of the victim since as per the prosecution, her date of birth was mentioned by her parents at the time of admission and there is no documentary evidence like Birth Certificate, medical documents to evidence that the victim was a minor at the relevant time.

16. He submitted that the victim is a major girl and at best the physical relations, if any, were consensual in nature. He submitted that the conviction of the appellant is solely helmed on scientific evidence and the same is insufficient for conviction, on account of being merely corroboratory in nature, in the absence of any ocular evidence.

17. This Court, by order dated 21.05.2025, considering that the victim and her family members in their deposition before the Court had failed to support the case of the prosecution had appointed Mr. Asheesh Jain, Senior Advocate as *Amicus Curiae* in the present matter.

18. The learned *amicus curiae* argued that while the victim and her family members turned hostile and did not identify the appellant as the perpetrator subsequently, the scientific evidence in the present case is sufficient for conviction. He submitted that the appellant has failed to rebut the presumptions under POCSO Act.

19. He submitted that the DNA of the appellant was found on the seized clothes of the victim and the swabs obtained from her and while



the witnesses turned hostile in regard to identity of the rapist, the fact of rape was not denied.

ANALYSIS

20. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh : Criminal Appeal No. 1350/2021*** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

“9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in Majjal v State of Haryana [(2013) 6 SCC 799] , where the Court held:

‘6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments



advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order. ”

(emphasis supplied)

21. In that regard, before this Court embarks on its journey to ascertain the guilt of the appellant, it is pertinent to note that the foundation of the criminal jurisprudence rests on the principle that the conviction of the accused cannot be sustained on mere conjecture or speculation. The prosecution is thus tasked to establish, by way of clear and compelling evidence, every element of the alleged offence. This evidentiary burden is not merely a procedural formality and ought to be discharged beyond any reasonable doubt. The standard serves as an indispensable safeguard against the peril of wrongful conviction. Consequently, if the case of the prosecution is marred with



evidentiary gaps, the benefit of such deficiencies ought to be extended to operate in the favour of the accused.

22. From that prism when this Court shifts its gaze to the facts of the present case, it is borne out that the case of the prosecution is riddled with evidentiary gaps and fails to establish the case against the appellant beyond reasonable doubt. Infact, a perusal of the judgment would further reveal that several material aspects having a direct bearing on adjudication of the present case were either not properly addressed or simply brushed aside in a cursory manner.

23. In the present case, while sustaining the conviction of the appellant for the charged offences, undue weightage was given by the learned Trial Court to the presumptions under Sections 29 and 30 of the POCSO Act without first ascertaining whether the foundational facts stood established by the prosecution. Sections 29 and 30 of the POCSO Act, in unequivocal terms, provide for statutory presumption as to the commission of certain offences and presumption as to the culpable mental state of the accused. Considering the rigours with which the said provisions operate, their invocation ought not to be a matter of routine.

24. For this reason, in order to trigger the presumption, it is incumbent on the prosecution to lead evidence to prove the foundational facts. If the prosecution fails to do so, a negative burden cannot be thrust upon the shoulders of the accused to prove otherwise.



25. In the present case as well, the primary responsibility of the prosecution was to establish that the age of the victim was below 18 years. The learned counsel for the appellant has emphasised that there is a doubt insofar as the age of the victim is concerned. It has been argued that there is no documentary evidence like Birth Certificate, medical documents to evidence that the victim was a minor at the relevant time.

26. In that regard, it is pertinent to note that the case of prosecution is that the date of birth of the victim was 05.11.1998 as per the school records thereby bringing her age on the date of incident that is, 10.11.2014, to around 17 years. According to the statement of the victim recorded at the time of registration of the FIR, the victim stated that her age is 17 years. Subsequently, the statement of the victim under Section 164 of the CrPC as well as the MLC records the age of the victim as 17 years. The chief issue before this Court is thus whether it stood established that the victim was below the age of 18 years on the date of the incident.

27. Before delving to examine the evidence on record insofar as the age of the victim is concerned, it is pertinent to note that Hon'ble Apex Court in the case of *Yuvaprakash v. State of T.N. : (2024) 17 SCC 684* when delineating the issue of determination of age of a minor under the provisions of the POCSO Act where the prosecution had relied upon a school transfer certificate to establish that the age of the victim therein was below 18 years as per Section 2(1)(d) of the



POCSO Act had observed as under:

“13. Before discussing the merits of the contentions and evidence in this case, it is necessary to extract Section 34 of the Pocso Act which reads as follows:

“34. Procedure in case of commission of offence by child and determination of age by Special Court.—(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016). (2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination. (3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person.”

14. In view of Section 34(1) of the Pocso Act, Section 94 of the JJ Act, 2015 becomes relevant, and applicable. That provision is extracted below:

“94. Presumption and determination of age.—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining—

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the



absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board: Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

15. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the court concerned has to determine the age by considering the following documents: “94. (2)(i) The date of birth certificate from the school, or the matriculation or equivalent certificate from the examination Board concerned, if available; and in the absence thereof; (ii) The birth certificate given by a corporation or a municipal authority or a panchayat; (iii) And only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.”

16. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the examination board concerned has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through “an ossification test” or “any other latest medical age determination test” conducted on the orders of the authority concerned i.e. Committee or Board or Court.”

28. Recently, a Coordinate Bench of this Court in the case of **Karan**



2025:DHC:11816



Kumar v. State & Anr. : 2025 DHC 4871 had acquitted the accused of the charged offences where there existed no documentary proof to evidence the date of birth of the victim and no ossification test had been conducted in terms of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

29. In the present case, the only proof brought forth by the prosecution to establish that the date of birth of the victim was 05.11.1998 is the admission withdrawal register of the victim when she was admitted in the school in Class-I, an affidavit given by the mother of the victim at the time of the victim's admission, the admission form and the School Leaving Certificate of the victim.

30. In order to prove the contents of the admission withdrawal register, admission form and affidavit of the mother of the victim tendered at the time of the admission of the victim, the prosecution only examined PW-1/in charge of the MCD school who deposed that the victim was admitted in the school in first class on 03.07.2004. On being specifically cross examined by the learned counsel for the appellant, PW1 stated that no MCD birth certificate was given to the school authority at the time of admission of the victim. PW1 further stated that the only basis to record the same was the affidavit given by the mother of the victim which stated that the date of birth of the victim is 05.11.1998. PW1 further admitted that no original document of birth of the victim had been produced by the parents at the time of her admission. Significantly, no document evidencing the basis on



which the date of birth of the victim was recorded in the admission withdrawal register but for the affidavit of the mother has been brought forth. Further, it is pertinent to note that the prosecution only examined PW1/school incharge to prove the contents of the admission withdrawal register. Evidently, the person who filled the contents of the admission withdrawal register was not examined. Considering that there was no documentary proof to evidence on what basis the date of birth of the victim was recorded as 05.11.2018, the Trial Court ordinarily ought to have conducted an ossification test or any other medical test to determine the age of the victim. The prosecution thus, in the opinion of this Court, failed to establish that the age of the victim was below 18 years as per Section 2(1)(d) of the POCSO Act.

31. Even otherwise, while such failure, in the opinion of this Court, is not *per se* fatal to the case of the prosecution, and even though it could not be established that the victim was a minor when the alleged incident took place, the appellant can still be held guilty for the offence under Section 376 of the IPC. However, considering the manifest discrepancies in the present case in addition to the hostility of the victim and the other evidentiary gaps in the case of the prosecution, this Court is of the opinion that the doubts created in the present case cast a dent at the root of the case of the prosecution.

32. The learned counsel for the appellant has also emphasised that there are material deficiencies in regard to allegations levelled against the appellant and the manner in which the alleged offence was



committed. Upon a meticulous examination of the evidence, in the opinion of this Court, the same has the effect of casting a serious doubt on the veracity of the case of the prosecution.

33. From a scrupulous analysis of the material on record, it is borne out the victim has not merely turned hostile but the testimonies of the witnesses also run *inter se* contradictory to each other and render the version of the prosecution as implausible. The same is summarised as follows:

33.1 *Firstly*, on the factum of the multifarious varying stances taken by the victim: It is pertinent to note that the victim in her complaint dated 11.11.2014 alleged that the appellant had forcefully established sexual relations with her in October, 2014 on a day before Diwali. She further alleged that on 10.11.2014 when she was returning after fetching milk, the appellant who was standing on the first floor, caught hold of the victim's hand, gagged her and thereafter took her to a room on the first floor and thereafter forcefully established physical relations with her. She alleged that consequently she raised a cry whereafter her mother reached the spot and knocked the door. She alleged that initially the appellant did not let her open the door, however, after some time, she somehow managed to open the door and found her mother standing there. She further alleged that thereafter the mother of the victim started giving beatings to the appellant whereafter the appellant pushed the mother of the victim and



fled the spot.

Subsequently, in the statement recorded under Section 164 of the CrPC on 12.11.2014, no whisper of the appellant having forcefully established sexual relations with the victim sometime in October 2014 was made. A closer scrutiny of the statement would reveal certain contradictions in the stance of the victim in the manner in which the alleged incident took place. Relevantly, in her statement under Section 164 of the CrPC, the victim stated that on 10.11.2024 at around 10:30 PM – 11:00 PM, when she returned to her rented accommodation after getting milk, the appellant who used to stay at the ground floor of the house stopped her, held her hand, gagged her and took her to *his* house. She stated that thereafter the appellant locked the room and forcefully established physical relations with her. She stated that thereafter when her mother came looking for her and the victim heard her mother's cries, the victim also shouted whereafter the *appellant* went and unbolted the door. She further stated that the complaint was given one day after the incident took place, that is on 11.11.2014. Evidently, in her statement under Section 164 of the CrPC, the victim failed to mention where the alleged incident took place. The victim also contradicted on her stance as to who was the one who had opened the door when the victim's mother knocked.

Thereafter, the victim somersaulted in her evidence before the Court and failed to even identify the appellant. Infact, in her testimony before the Court, the victim stated that when she went downstairs to



buy milk, she found that *someone* was standing there who took her in a room on the *second* floor. She stated that thereafter she started crying after which her mother came. The victim also stated that thereafter her brother had also come to see who was the fellow and that thereafter she had gone to her room.

Significantly, not only did the victim resile from her earlier versions, during her testimony before the Court, the victim took peculiar stances in relation to the manner in which the alleged incident took place. On being cross examined by the learned Additional Public Prosecutor for the State, the victim refused that the appellant had raped her in the month of October 2014 one day prior to the festival of Diwali. She denied that the appellant gagged her mouth and took her in a room and had thereafter shut the door of the said room. She however agreed that the appellant had held her hand when she was going upstairs. She denied that the appellant had forcefully established sexual relations with her but voluntarily stated that when her mother knocked at the door, the appellant had opened the door. In fact, on one hand the victim agreed that the appellant held her hand when she was going upstairs, however, peculiarly on being shown, the victim failed to identify the appellant as the perpetrator who caught her hand on 10.11.2014 and stated that since it was dark, she could not see the face of the person.

33.2 *Secondly*, discrepancy in relation to the presence of the brother of the victim at the spot. It is pertinent to note that the victim in her



testimony before the Court stated that on the said date one *fellow* took her in a room on the *second* floor. She stated that thereafter she started crying after which her mother came. The victim also categorically stated that thereafter her brother had also come to see who was the fellow and that thereafter she had gone to her room. She further stated that she did not know whether her brother had caught the said fellow or not.

A deeper scrutiny of the evidence of the brother of the victim/PW-3 itself would reveal that he resided at Mahipalpur. PW3 stated that he had been informed by his mother that her sister had been raped in a room which was situated downstairs in the same building where her sister alongwith the family members resided on the fourth floor. He further stated that her mother had told him that the appellant had raped her sister whereafter he left for the victim's place of residence. The brother of the victim too failed to identify the appellant. On being cross examined by the learned counsel for the accused, the brother of the victim/PW3 stated that he got the appellant arrested because his sister had a strong suspicion over him that he had raped her. From a perusal of the testimonies of the witnesses, it is unclear whether the brother of the victim was present at the spot on the date of the incident or not.

33.3 *Thirdly*, the mother of victim/PW-4, in her testimony took a divergent stand and stated that on the date of the incident, her daughter had gone to buy milk as *somebody* had come to visit her house. She



stated that when her daughter did not return, she went to search for her and while climbing the stairs she heard the cries of her daughter coming from the room of the brother-in-law of the appellant. She stated that she went to the room and *herself* opened the door whereafter a person ran away from the said place. She stated that she could not see the face of the person and stated that the name of the appellant was taken because he used to reside in the said room. She further stated that the name of appellant was taken on the basis of suspicion. From a testimony of the mother of the victim, it is unclear where the alleged offence took place and who had opened the door when she allegedly knocked at the door upon hearing the cries of the victim. Further, as per the testimony of the mother of the victim herself, *somebody* had visited her house on the day of the incident. Pertinently, the said person has neither been produced nor has the said somebody been named as a witness.

As is evident from a perusal of the record, not only did the victim turn hostile but the testimonies of the witnesses themselves run contradictory to each other thereby casting serious aspersions on the case of the prosecution.

33.4 *Fourthly*, what further renders the case of the prosecution uncertain is that even if the mother and brother of the victim had implicated the appellant only on the basis of suspicion why was the complaint given only one day post the occurrence of the alleged incident. It is not the case of the prosecution that the witnesses were



unaware of the identity of the appellant. As per the witnesses themselves, the appellant was the brother-in-law of their landlord and used to reside in the ground floor of the said property. While this Court does not mean to suggest that the delay of one day is *per se* fatal to the case of the prosecution, however, considering that the appellant resided in the same property as the witnesses and they were also aware of his identity, the delay in giving the complaint casts doubts on the case of the prosecution.

33.5 *Fifthly*, it is pertinent to note that as per the testimony of the victim herself, the said building where the victim resided with her family on rent comprised of three storeys and except the ground floor where the landlord used to live, tenants used to reside on all the other floors, and the victim had also raised an alarm, yet no independent persons were joined as witnesses to lend credence to the case of the prosecution especially considering the fact that the victim and the other witnesses took contradictory stances in relation to the manner in which the alleged incident took place.

34. At this juncture, it is pertinent to note that the prosecution has also placed reliance on the DNA report which showed that alleles from the gauze cloth piece of the accused were accounted in the alleles from the vaginal swab and the clothes of the victim. The same at best indicates that the parties had engaged in physical relations and does not by itself establish an absence of consent. Considering that the prosecution had failed to establish that the victim was a minor at the



time when the alleged incident took place alongwith the other evidence on record as elaborated *supra*, mere presence of DNA is insufficient to prove rape unless it is also shown that the act was non-consensual. In fact, the surrounding circumstances render the prosecution's case highly improbable.

Conclusion

35. It is axiomatic that the duty of the criminal court is not to convict on a leap of faith because an allegation is made but to convict only when the allegation is proved beyond reasonable doubt.

36. It is equally well-established and needs no reiteration that when two views are possible: one favouring the innocence of the accused and one pointing towards the guilt then the one titling in favour of the innocence of the accused ought to be adopted.

37. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned Trial Court is unsustainable. The evidence led by the prosecution does not meet the standard of proof required in a case of this nature. The benefit of doubt ought to be extended in favour of the appellant.

38. Accordingly, the impugned judgment and impugned order on sentence are set aside.

39. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other case.



2025:DHC:11816



40. The appeal is allowed and disposed of in the aforesaid terms. Pending application also stands disposed of.

41. This Court appreciates the efforts put in by Mr. Asheesh Jain, Senior Advocate, learned *Amicus Curiae* in assisting the Court.

42. The Delhi High Court Legal services Committee is directed to pay the fees of the learned *Amicus Curiae* as per its scheduled rates and rules.

43. A copy of the order be sent to the concerned Jail Superintendent for necessary compliance.

AMIT MAHAJAN, J

DECEMBER 23, 2025

DV