2026:HHC:50606-DB

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 148 of 2015
Reserved on : 31.10.2026
Date of decision: 23.11.2026
Uploaded on : 23.11.2026

State of Himachal Pradesh …Appellant.

Versus

Rajesh Kumar @ Raju …Respondent.

Coram

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Bhupesh Sharma, Judge.

Whether approved for reporting?[1]

For the appellant : **Mr. Yashwardhan Chauhan, Senior Additional Advocate General.**

For the respondent: **Ms. Sheetal Vyas, Advocate as Amicus Curiae.**

Bhupesh Sharma, Judge

This appeal has been filed by the State of Himachal Pradesh against the judgment of acquittal dated 21.11.2014 passed by learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, District Shimla, H.P., in Session Trial No.0100002/2012, titled as *'State of Himachal Pradesh Vs. Rajesh Kumar @ Raju'*,

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[1]***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

whereby the respondent (hereinafter referred to as 'accused') has been acquitted of the charges under Sections 363, 366 and 376 of Indian Penal Code (for short ‘IPC’).

2. The accused was sent to face trial for the commission of the offences punishable under Sections 363, 366 and 376 of the IPC, by the SHO Police Station Nirmand, District Kullu, H.P., in case FIR No. 231/2011 dated 12.08.2011.

3. The accused was charged for the commission of the offences punishable under Sections 363, 366 and 376 of the IPC by learned trial Court vide order dated 01.03.2012 and after trial he was acquitted vide impugned judgment of acquittal dated 21.11.2014 passed in Sessions Trial No.0100002/ 2012, titled as *‘State of Himachal Pradesh Vs. Rajesh Kumar @ Raju’*,

4. Briefly, the facts relevant for the disposal of this appeal, in short, are as under:

4(a) On 12.08.2011, during the day time, the Victim Child/Prosecutrix ‘R’ (minor aged 14 years) (Date of Birth 01.04.1997) went missing from her parental village Baghir, PO Jaon, Tehsil Nirmand, District Kullu, H.P. It is alleged that the accused kidnapped the Victim Child/Prosecutrix ‘R’ (name and identity withheld) out of lawful guardianship of her parents and

thereafter, repeatedly subjected her to forcible sexual intercourse w.e.f. 12.08.2011 to 18.08.2011 at village Badagaon and Ahar, Tehsil Kumarsain, District Shimla, H.P.

4(b). On 11.08.2011, the Victim Child/Prosecutrix ‘R’ went to the shop of Heera Devi at village Dhamar and later went missing at about 6:00 PM. In the evening, the complainant Ram Lal being father of the Victim Child/Prosecutrix ‘R’ received a call from his acquaintance Nolla Ram apprising that he had seen his daughter along with the accused going towards the Bagipul side. The complainant Ram Lal thereafter reported the matter to the Police on 12.08.2011 and got case FIR No.231 of 2011 registered against the accused for the commission of offences punishable under Sections 363, 366 and 367 of IPC at Police Station Nirmand, District Kullu, H.P.

4 (c). On 19.08.2011, the Police recovered the Victim Child/ Prosecutrix ‘R’ from the house of the sister of the accused at village Ropru (Brow), District Kullu, H.P.

4(d). The Victim Child/Prosecutrix ‘R’ during the course of investigation disclosed that she met the accused at the shop of Heera Devi at Village Dhamar on 11.08.2011 at about 06:00 PM from where she was kidnapped by the accused and was taken to the house of Kamla Devi at village Ahar, Tehsil Kumarsain, District

Shimla, H.P. where she was repeatedly subjected to forcible sexual intercourse w.e.f. 12.08.2011 to 18.08.2011. On the basis of disclosure of the facts and the statement of the Victim Child/Prosecutrix ‘R’, the accused was arrested on 19.08.2011.

4(e). The Victim Child/Prosecutrix ‘R’ and the accused were sent for medical examination at CHC Nirmand on 19.08.2011. The Investigating Officer also procured the relevant record regarding the age of the Victim Child/Prosecutrix ‘R’ from the Secretary, Gram Panchayat Chayal and Principal Government Primary School, Dhamar, Tehsil Nirmand, District Kullu, H.P. The Police also recovered the bedsheet from the room of the house of Kamla Devi at Village Ahar for the purpose of chemical and forensic examination.

4(f). The Police after conducting detailed investigation found involvement of the accused in the commission of offences under Sections 363, 366 and 376 of the IPC and accordingly, he was challaned for the commission of said offences and was put for trial before learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr, District Shimla H.P.

5. The prosecution in order to prove and substantiate the allegations and accusations against the accused examined 13 witnesses and heavily relied upon the documentary evidence.

6. Learned trial Court after considering the material and evidence on record acquitted the accused for the offences punishable under Section 363, 366 & 376 of the IPC, vide impugned judgment of acquittal dated 21.11.2014.

7. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 21.11.2014, passed by learned Trial Court in Sessions Trial No.0100002/2012, titled ‘State of Himachal Pradesh vs. Rajesh Kumar @ Raju’, the accused filed the instant appeal before this Court on following grounds:-

- That the impugned judgment passed by the Learned Trial Court is wrong on facts as well as on law, hence, liable to be set-aside.
- That the impugned judgment is based on hypothetical reasoning surmises and conjectures hence liable to be set-aside.
- That the Learned Trial Court has appreciated the evidence on record in a slip-shod and perfunctory manner and has acquitted the accused person on the flimsy grounds.
- That the Learned Trial Court has not only failed to view the prosecution evidence in its proper perspective but at the same time has set unrealistic standards to

evaluate the direct and cogent prosecution evidenced. The reasoning of the Trial Court is manifestly unreasonable and unsustainable as there was warrant at all for the Trial Court to discard the well reasoned and consistent testimony of prosecution witnesses on material point.

- That the ld. Trial court has brushed aside the testimony of the prosecutrix despite the fact that the sole testimony of prosecutrix without corroboration is sufficient to convict the accused otherwise also the corroboration is a rule of prudence and not a rule of law. This very fact has not been taken into consideration by the trial court while acquitting the accused.
- That the prosecutrix at the time of incident was minor as per her record filed before the ld. Trial court but the ld. Trial court has wrongly arrived at the conclusions that the factum of prosecutrix being minor could not be proved by the prosecution and the prosecution failed to conduct the relevant examination for the ascertainment of the age of prosecutrix and adverse inference has been drawn against prosecution by the ld court which is liable to be set-aside despite the fact that relevant school entries and panchayat record of birth stands proved by the prosecution.
- That the prosecutrix who was examined as Pw4 has clearly deposed her age and has clearly stated that she was raped by the accused. Thus proving the offence of

rape on record, but the ld. Trial court has not relied upon her statement and no convincing reasons has been assigned as to why sole testimony was not worthy of credence.

- That the testimony of the prosecutrix is duly supported by medical evidence on record which leaves no doubt regarding the offence of rape committed by the accused upon prosecutrix.
- That the ld. Trial court has given more importance to minor contradictions which are not material and does not go to the roof of prosecution case and which are bound to occur by the lapse of time, otherwise also parrot like version is not the requirement of law. This fact has been ignored by the ld. Trial court.
- That no other appeal or revision arising out of the impugned judgment has been filed either in this Hon'ble Court or in the Hon'ble Supreme Court of India.
- That this appeal is being filed within the period of limitation.

8. We have heard Mr. Yashwardhan Chauhan, learned Senior Additional Advocate General and Ms. Sheetal Vyas, learned amicus curiae for the respondent, and carefully gone through the material on record and the findings recorded by the learned Trial Court while passing the impugned judgment dated 21.11.2014.

9. Learned trial Court on meticulously considering and evaluating the evidence disbelieved the prosecution case on all

counts. The learned trial Court disbelieved the evidence of the Victim Child/Prosecutrix ‘R’ and accordingly, acquitted the accused.

10. Since the present appeal has been filed against the judgment of acquittal, therefore, the scope of powers of the Appellate Court in the case of an appeal against acquittal needs to be considered before embarking upon the factual matrix.

11. The scope of the powers of the Appellate Court in case of an appeal against acquittal has been elaborately dealt with by the Hon’ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnatka reported in (2014) 5 SCC 730**. and **Rajesh Prasad vs. State of Bihar & another, (2022) 3 SCC 471** and in **H.D. Sundara & others vs. State of Karnataka, (2023) 9 SCC 581**, the Hon’ble Supreme Court has observed that the appellate court cannot overturn acquittal only on the ground that after reappreciating evidence, it is of the view that the guilt of the accused was established beyond a reasonable doubt.

12. It is more than settled that the powers of Appellate Court while hearing the appeals against the acquittal are not unbridled. There is a clear caveat that in case the view arrived at by the trial Court is a possible one borne from the material on record, the same cannot be viewed differently, even if, there is a possibility of any other view. Reference in this regard can be made to the judgment

passed by Hon'ble Supreme Court in **Jafarudheen and others vs. State of Kerala (2022) 8 SCC 440**,

13. Similarly, the Hon’ble Supreme Court in **Surendra Singh v. State of Uttarakhand, 2025 SCC OnLine SC 176: (2025) 5 SCC 433** that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/ omission to consider the material evidence and reached at a conclusion which no reasonable person could have reached.

14. Thus, the law on the issue can be summarized to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the Appellate Court can interfere with the order of acquittal. Further, if two views are possible on the basis of the evidence on record, the Appellant Court should not disturb the findings of acquittal recorded by the Trial Court, merely, because the Appellate Court could have arrived at a different conclusion than that of the Trial Court.

15. The burden of proof in a criminal trial never shifts and it is always the burden of the prosecution to prove its case beyond reasonable doubt on the basis of acceptable evidence. In fact, it is a settled principle of criminal jurisprudence that more serious the

offence, the stricter the degree of proof required, since a higher degree of assurance is required to convict the accused.

16. The case of the prosecution is that on 11.08.2011 at about 06:00 PM at village Dhamar, Tehsil Nirmand, District Kullu, H.P., accused kidnapped the Victim Child/Prosecutrix ‘R’ (minor aged 14 years) from the lawful guardianship of her parents and thereafter, repeatedly, subjected her to forcible sexual intercourse w.e.f. 12.08.2011 to 18.08.2011 at village Ahar, Teshil Kumarsain, District Shimla, H.P.

17. There are certain undisputed facts which are required to be enumerated in order to understand the allegations and accusations in a better prospective.

17(i). The Victim Child/Prosecutrix ‘R’ (PW-4) went missing from her parental village Jaon on 11.08.2011.

17(ii). She was later recovered along with accused from the house of his sister at village Ropru (Brow), District Kullu, H.P.

17(iii). The Victim Child/Prosecutrix ‘R’ and the accused during the intervening period w.e.f. 12.08.2011 to 18.08.2011 stayed in the house of Kamla Devi (PW-8) at village Ahar, Teshil Kumarsain, District Shimla, H.P.

18. The complainant Ram Lal (PW-1) being father of the Prosecutrix ‘R’ reported the incident to the Police on 12.08.2011

leading to registration of case FIR No.231 of 2011 dated 12.08.2011 under Sections 363, 366 and 376 of the IPC at Police Station Nirmand.

19. At the very outset, this Court is compelled to dwell into the issue regarding the age of the Victim Child/Prosecutrix ‘R’ at the time of the alleged incident. Since the learned trial Court on the issue regarding the age of the Victim Child/Prosecutrix ‘R’ has failed to acknowledge the documents i.e. Ex.PW9/B Birth Certificate of the Victim/Prosecutrix ‘R’ (PW-4), Ex.PW9/C being the copy of Pariwar Register and Ex.PW11/A being the copy of School Leaving Certificate of the Victim/Prosecutrix ‘R’. Needless to emphasize that all these documents i.e. Ex.PW9/B, Ex.PW9/C and Ex.PW11/A mention the date of birth of the Victim Child/Prosecutrix ‘R’ as 01.04.1997. The learned trial Court on the basis of statement of Ram Lal (PW-1), Maya Devi (PW-2) discarded these documents since the evidence of these witnesses failed to co-relate with the entries in the said documents. Apart from this, the learned trial Court also observed that the documents Ex.PW9/B, Ex.PW9/C and Ex.PW11/A had been prepared on the basis of the record, which did not have clean entries.

20. Although, the learned trial Court had different reasons to discard these documents, but this Court has to consider the same

making reference to the judgments of the Hon'ble Supreme Court in **Jarnail Singh v. State of Haryana (2013) 7 SCC 263, Rishipal Singh Solanki v. State of U.P. and Others (2022) 8 SCC 602, P. Yuvaprakash v. State, Represented by Inspector of Police (2023) INSC 676** and the judgments of Co-ordinate Bench of this High Court in **Criminal Appeal No. 193 of 2022** titled as **Sewak Ram @ Sanjeev Vs. State of Himachal Pradesh (neutral citation No. 2025:HHC:2110)** and **Criminal Appeal No. 246 of 2021,** titled as **'V' Vs. State of H.P. (Neutral Citation No. 2024: HHC:13464).**

21. Therefore, considering the ratio of law laid down by the Hon'ble Supreme Court in ***Jarnail Singh* case (supra), *Rishipal Singh Solanki* case (supra)** and ***P. Yuvaprakash* case (supra)** and the judgments of the Co-ordinate Bench in ***Sewak Ram @ Sanjeev* case (supra) and '*V*' case (supra),** the documents i.e. Birth Certificate Exhibit PW9/B, copy of Pariwar Register PW9/C and copy of School Leaving Certificate Ex.PW11/A cannot be looked into and considered to ascertain the date of birth of the Victim Child/Prosecutrix 'R' as 01.04.1997. Therefore, there are no authentic and legal documents proving that the Victim Child/Prosecutrix 'R' was minor at the time of alleged incident. Therefore, we are constrained to hold that the prosecution has failed to establish that the Victim Child/Prosecutrix 'R' was minor at the

time of the alleged incident for lack of evidence as required under the law.

22. As per the prosecution allegations, the accused repeatedly subjected the Victim Child/Prosecutrix ‘R’ to forcible sexual intercourse w.e.f. 12.08.2011 to 18.08.2011 at village Badagaon and Ahar in the house of Kamla Devi (PW-8).

23. In order to prove the aforesaid fact, the prosecution heavily relied upon the statement of the Victim Child/Prosecutrix ‘R’ examined as PW-4 and Kamla Devi examined as PW-8. Apart from this, heavy reliance is also placed upon the medical and forensic evidence i.e. MLC of the Victim Child/Prosecutrix ‘R’ Ex.PW5/B, RFSL report No.539 RFSL Bio. (73)/11 Ex.PW13/E-1 and the result Ex.PW13/E-2.

24. In order to ascertain whether the Victim Child/ Prosecutrix ‘R’ (PW-4) was subjected to forcible sexual intercourse by the accused w.e.f. 12.08.2011 to 18.08.2011, we have carefully gone through the evidence led by the prosecution in this regard.

25. Needless to emphasize that the prosecution case heavily rests upon the sole testimony of the Victim Child/ Prosecutrix ‘R’, examined as PW-4, therefore, she is the most material and relevant witness in order to ascertain the involvement of the accused in the said incident.

26. Before adverting to the factual matrix and material adduced in support thereof, it may be fruitful to refer to the relevant provisions of law and the ratio of the law laid down by the Hon'ble Supreme Court which may be relevant in context to the facts and circumstances of the present case.

27. The Hon'ble Supreme Court in **Mohd. Imran Khan vs. State (Govt. of NCT of Delhi),(2011)10 Supreme Court Cases 192**, has held:-

> *"15. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Indian Evidence Act, 1872 (hereinafter called Evidence Act'), nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it*

to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. The court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. (Vide: State of Maharashtra v. Chandraprakash Kewalchand Jain, AIR 1990 SC 658; State of U.P. v. Pappu @Yunus & Anr. AIR 2005 SC 1248; and Vijay @ Chinee v. State of M.P., (2010) 8 SCC 191).

Thus, the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

28. In **State of Maharashtra Vs. Chandraprakash Kewalchand Jain AIR 1990 SC 658,** the Hon'ble Supreme Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under :-

> *"A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is 10 corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an*

> *accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."*

29. In **State of U.P. Vs. Pappu @ Yunus & Anr. AIR 2005 SC 1248**, the Hon'ble Supreme Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. The Hon'ble Supreme Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under :-

> *"It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which 11 would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."*

30. In **State of Punjab Vs. Gurmit Singh & Ors. AIR 1996 SC 1393,** the Hon'ble Supreme Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.

The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Hon'ble Supreme Court observed as under :-

> *"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self- respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.....Seeking corroboration of her statement before 12 replying upon the same as a rule, in such cases, amounts to adding insult to*

> *injury.....Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.*
> ** ** **
> *The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."*

31. In **State of Orissa Vs. Thakara Besra & Anr. AIR 2002 SC 1963**, the Hon'ble Supreme Court held that rape is not mere a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in

such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

32. In **State of Himachal Pradesh Vs. Raghubir Singh (1993) 2 SCC 622**, the Hon'ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by the Hon'ble Supreme Court in **Wahid Khan Vs. State of Madhya Pradesh (2010) 2 SCC 9**, placing reliance on earlier judgment in **Rameshwar Vs. State of Rajasthan AIR 1952 SC 54**.

33. The Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat [1983(3) SCC 217]** has laid down the elaborate guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the Court.

34. In **Ved Parkash versus State of Himachal Pradesh (2005(1) SLC 395)**, the Hon'ble Supreme Court while dealing with the question of value of the statement of the prosecutrix, held as under:-

> *"8. At may be pointed out at the very outset that by now it is well settled that conviction of a person accused of the commission of rape can be based on the sole testimony of the prosecutrix because she is not an accomplice but victim of the offence, hence, the injured person. Her evidence can also not be suspected for the reason that no self respecting woman would come forward to lower her dignity and self esteem by making false allegations of rape on her. Therefore, a conviction can be based on the statement of the prosecutrix when her statement is found cogent, reliable and confidence inspiring. In case for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look into other evidence which may lend assurance to her testimony.. In a case where the prosecutrix is adult and of full understanding the Court can base conviction on her evidence unless shown to be infirm or untrustworthy. In case the prosecutrix has no motive to falsely implicate the accused the Court should ordinarily have no hesitation in accepting her evidence."*

35. The Hon'ble Supreme Court in **Aman Kumar and another vs. State of Haryana, (2004)4 SCC 379** held as under:-

> *“5. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured*

witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.

7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (See Joseph Lines IC & K 893). It is well-known in the medical world that the examination of smegma loses all importance after twenty four hours of the performance of the sexual intercourse. (See Dr. S.P. Kholi, Civil Surgeon, Ferozepur v. High Court of Punjab and Haryana thr. Registrar (1979) 1 SCC 212). In rape cases, if the gland of the male organ is covered by smegma, it negatives the possibility of recent complete penetration. If the accused is not circumcised, the existence of smegma round the corona gland is proof against penetration, since it is rubbed off during the act. The smegma accumulates if no bath is taken within twenty four hours. The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva

penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and,therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further,examination of the females for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there

should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC."

36. The Hon'ble Supreme Court in **Tarkeshwar Sahu vs. State of Bihar (now Jharkhand, (2006)8 SCC 560**, held as under:-

"10. Under Section 375 IPC, six categories indicated above are the basic ingredients of the offence. In the facts and circumstances of this case, the prosecutrix was about 12 years of age, therefore, 15 her consent was irrelevant. The appellant had forcibly taken her to his Gumti with the intention of committing sexual intercourse with her. The important ingredient of the offence under Section 375 punishable under Section 376 IPC is penetration which is altogether missing in the instant case. No offence under Section 376 IPC can be made out unless there was penetration to some extent. In absence of penetration to any extent would not bring the offence of the appellant within the four corners of Section 375 of the Indian Penal Code. Therefore, the basic ingredients for proving a charge of rape are the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would

be enough for the purpose of Sections 375 and 376 IPC. This Court had an occasion to deal with the basic ingredients of this offence in the case of State of U.P. v. Babul Nath. In this case, this Court dealt with the basic ingredients of the offence under Section 375 in the following words:- "8. It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:

"Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the

genitals or leaving any seminal stains. But in the present case before us as noticed above there is more than enough evidence positively showing that there was sexual activity on the victim and she was subjected to sexual assault without which she would not have sustained injuries of the nature found on her private part by the doctor who examined her."

37. The Hon'ble Supreme Court in **Narender Kumar vs. State (NCT of Delhi), (2012)7 SCC 171** held as under:-

"29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the 16 accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: Tukaram & Anr. v. The State of Maharashtra, AIR 1979 SC 185; and Uday v. State of Karnataka, AIR 2003 SC 1639).

> *30 . Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected."*

38. The Hon'ble Supreme Court in **Munna vs. State of Madhya Pradesh, (2014) 10 SCC 254,** has reiterated the principle that testimony of prosecutrix is almost at par with an immediate witness and can be acted upon without corroboration.

39. Reiterating its earlier view in **Mohd. Iqbal v. State of Jharkhand,(2013) 14 SCC, 481, Narender Kumar v. State (NCT of Delhi), (2012) 7SCC 171**, the Hon'ble Supreme Court in **Mukesh v. State of Chhattisgarh, (2014) 10 SC 327**, has held that sole testimony of prosecutrix is sufficient to establish commission of rape, even in the absence of any corroborative evidence.

40. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as

such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice of the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Refer: **Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508).**

41. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a

view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Refer: **Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)**.

42. In **Jai Krishna Mandal & Anr. v. State of Jharkhand, (2010)14 SCC 534**, the Hon'ble Supreme Court while dealing with the issue held:

> *"The only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improbable that it could not be believed."*

43. In **Rajoo & Ors. v. State of Madhya Pradesh, AIR 2009 SC 858**, the Hon'ble Supreme Court held that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. The Hon'ble Supreme court however, further observed:

> *".....It cannot be lost sight of that rape causes the 12 Session Trial No. Regd-CIS No.1/2014 CIS CNR No.HPSO01-0018432013 greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused*

> *must also be protected against the possibility of false implication….. there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."*

44. In **Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566,** the Hon'ble Supreme Court held has under:

> *"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."*

45. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the

accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Refer: **Tukaram & Anr. v. The State of Maharashtra,, AIR 1979 SC 185; and Uday Vs. State of Karnataka, AIR 2003 SC 1639).**

46. The Hon'ble Supreme Court in **Rai Sandeep alias Deepu vs. State (NCT of Delhi) (2011) 8 SCC 21**, found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies; reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness'.

47. **In Krishan Kumar Malik v. State of Haryana (2011) 7 SCC 130**, the Hon'ble Supreme Court held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunaes.

48. Similarly, the Hon'ble Supreme Court in **Nirmal Prem Kumar & Anr. vs State rep. by Inspector of Police 2024 INSC 193** (neutral citation) disbelieved the prosecution case on material contradictions apparent in the deposition of the prosecution witnesses, including the victim and acquitted the accused of the offence under Section 12 of the POCSO Act.

49. The testimony of the Victim Child/Prosecutrix 'R' examined as PW-4 is to be assessed and evaluated keeping in view the ratio laid down by the Hon'ble Supreme Court in the judgments referred supra.

50. In her statement as PW-4 has testified that she met the accused in the year 2010 during Shrikhand Yatra. The accused later met her on the day she had gone to bring rice bags from the shop of Heera Devi. The accused abducted her from that place and threatened of consuming poison in case she refuse to marry him. Thereafter, they went to village Badagaon where they stayed in the house of the friend of the accused for 2-3 days. The accused raped her twice in the house of his friend. The police later apprehended along with the accused from Rampur and handedover her custody to her father.

51. The statement of the Victim Child/Prosecutrix 'R' (PW-4) is apparently in contradiction to the prosecution case wherein it is

alleged that the accused took her to the house of Kamla Devi (PW-8) at village Ahar and repeatedly subjected her to forcible sexual intercourse w.e.f. 12.08.2011 to 18.08.2011. There is no evidence on record to infer that the accused took the Victim Child/Prosecutrix ‘R’ (PW-4) to Bagadaon where they stayed in his friend’s house for 2-3 days. The Prosecution has also examined Kamla Devi as PW-8 and as per her evidence, the accused and the Prosecutrix ‘R’ (PW-4) came to her house and stayed for few days before leaving to Rampur. As per her evidence, when she inquire from the Prosecutrix that how she had come with the accused, then she disclosed that she had contracted temple marriage with him. She had denied that the Victim Child/Prosecutrix ‘R’ (PW-4) was either kidnapped or abducted by the accused and was subjected to forcible sexual intercourse during the period they stayed in her house.

52. Considering the evidence of the Victim Child/Prosecutrix ‘R’ (PW-4) and Kamla Devi (PW-8), there is nothing on record to infer that the Victim Child/Prosecutrix ‘R’ (PW-4) was either kidnapped by the accused or she was subjected to forcible sexual intercourse during the period they stayed together in the house of Kamla Devi (PW-8) at village Ahar, Teshil Kumarsain, District Shimla, H.P.

53. Having considered the aforesaid evidence, the allegations against the accused are not proved, therefore, this Court has no reason to differ with the findings recorded with the learned trial Court whereby the accused stands acquitted for the commission of offences punishable under Sections 363, 366 and 367 of IPC.

54. In view of the above, the present appeal fails and it is dismissed, so also the pending miscellaneous application(s), if any.

(Vivek Singh Thakur)
Judge

23rd November, 2026
(Kiran)

(Bhupesh Sharma)
Judge