IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. : 4100 of 2013
Reserved on : 16.10.2026
Decided on : 20.11.2026
Uploaded on : 20.11.2026

State of Himachal Pradesh

....Appellant.

Versus

Harish Kumar

...Respondent.

Coram

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

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

Whether approved for reporting?[1] Yes

For the appellant : Mr. Raj Negi, Deputy Advocate General.

For the respondent : Mr. Devender K. Sharma, Advocate.

Bhupesh Sharma, Judge

The State of Himachal Pradesh is in appeal against the judgment of acquittal dated 28.03.2013, passed by the learned Special Judge, Mandi, District Mandi, H.P., in Sessions Trial No. 47 of 2009, titled as *'State of H.P. vs. Harish Kumar'*, whereby respondent

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

(hereinafter referred to as the 'accused') has been acquitted for the commission of the offences punishable under Section 376 of the Indian Penal Code (for short 'IPC'), Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information Technology Act, 2000.

2. The accused was sent to face trial for the commission of offences punishable under Section 376 of the IPC, Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 and Section 67 of the Information Technology Act, 2000, by SHO Police Station Balh, District Mandi, H.P., in case FIR No. 310 of 2008, dated 16.09.2008, under Section 376 of the IPC, Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information Technology Act, 2000. The accused was prosecuted for the said offences and was subsequently acquitted by learned Special Judge, Mandi, H.P., vide impugned judgment of acquittal dated 28.03.2013, passed in Sessions Trial No. 47 of 2009, titled as *'State of H.P. Vs. Harish Kumar'*.

3. The case of the prosecution as set out against the accused, in brief, is as under:

3(a). The accused during the years from 2004 to 2006 forcibly and repeatedly established physical relations with Victim/Prosecutrix 'G' at his house situated in village Dadour, Tehsil Balh, District Mandi, H.P. and also in Room No. 204 of Hotel Shringar at Sauli-Khad Mandi, District Mandi, H.P. The accused clandestinely recorded the intimate acts without the consent and permission of the Victim/Prosecutrix 'G' during the intervening period and later circulated the same in electronic form. The accused indulged in the aforesaid acts deliberately and knowingly that the Victim/Prosecutrix 'G' belonged to the Scheduled Caste (Lohar).

3(b). As per allegations, Victim/Prosecutrix 'G' runs a 'Manyari Shop' (Variety Store) at Kummi Chowk. During the period 2004-2006, the accused was posted as Teacher (JBT) at Govt. Primary School, Kummi, District Mandi, H.P. They met each other in the year 2004, and

later developed acquaintance. The accused during the years 2004-2006 repeatedly established physical relations with Victim/Prosecutrix 'G' without her consent and against her wishes. He violated her privacy on various occasions at various places and also clandestinely recorded the intimate acts without her consent and permission and later circulated the same in electronic form.

3(c). In the year 2008, the accused circulated and transmitted video recording containing sexual explicit acts in electronic form by way of MMS. The Victim/Prosecutrix 'G' came to know about this fact and on 16.09.2008, she reported the matter to the police and case FIR No. 310 of 2008, dated 16.09.2008, under Section 376 of the IPC, Section 3(2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989, was registered against the accused at Police Station Balh, District Mandi, H.P. Pursuant to the filing of a complaint and registration of case FIR No. 310 of 2008, dated 16.09.2008, the Victim/Prosecutrix 'G' was sent for medical examination at CHC Ratti (Balh),

District Mandi, H.P. The accused was arrested on 20.09.2008.

3(d). The accused during the course of investigation on the basis of his disclosure statement under Section 27 of the Evidence Act got the various places identified where the Victim/Prosecutrix 'G' was subjected to forcible sexual intercourse during the intervening period w.e.f. 2004 to 2006. The Investigating Officer during the course of investigation took into possession the caste certificate of Victim/Prosecutrix 'G'.

3(e). The police on the basis of detailed investigation found the accused for being involved in sexually abusing and violating privacy of Victim/Prosecutrix 'G' during the period w.e.f. 2004 to 2006 at various places knowingly that she is a member of Scheduled Caste (Lohar). It was also found that the accused had clandestinely recorded the intimate acts without the consent and permission of Victim/Prosecutrix 'G' and later circulated the same in General Public by electronic means. Accordingly, he was challaned for the commission of the offences punishable under Section 376 of the IPC, Section 3(2) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act,1989 and Section 67 of the Information Technology Act, 2000.

4. Learned Special Judge, Mandi, District Mandi, H.P. after considering oral and documentary evidence led by the prosecution acquitted the accused for the commission of the offences punishable under Section 376 of the IPC, Section 3(i)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 67 of the Information Technology Act, 2000, vide judgment of acquittal dated 28.03.2013, passed in Sessions Trial No. 47 of 2009, tilted as '*State of H.P. Vs. Harish Kumar'.*

5. Feeling aggrieved and dissatisfied with the judgment of acquittal dated 28.03.2013, passed in Sessions Trial No. 47 of 2009, titled as '*State of Himachal Pradesh vs. Harish Kumar*', the State of Himachal Pradesh is in appeal before this Court.

6. **GROUNDS OF APPEAL**

(i) *The impugned judgment passed by the learned Trial Court is wrong on facts as*

well as on law, hence liable to be set aside.

(ii) The impugned judgment is based on hypothetical reasoning surmises and conjectures, hence liable to be set aside.

(iii) The 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.
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(iv) The 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 evidence. 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.

(v) The Trial Court has discarded the testimony of prosecution witnesses for untenable reasons in the absence of any proof of enmity no reasons what so ever have been assigned for discarding the version of official witnesses. The acquittal in this case is in disregard of material evidence on record and as such, the same is unreasonable, therefore, the impugned judgment is liable to be set aside.

(vi) That in this case Vitim (prosecutrix) has corroborated each and every facts of the case categorically but the ld. Trial Court had not believed her testimony.

(vii) The prosecutrix have proved all the ingredients of Section 376 of IPC in a natural, systematic manner but the learned Court have not believed her testimony and acquitted the accused with appreciating the circumstance under which the prosecutrix was subjected to sexual assault and rape.

(viii) *The Trial Court have mentioned in para 16 of the judgment regarding the evidence of discrimination and sexual assault upon the prosecutrix. This statement qua the caste based on persons and sexual assault had not questioned. The learned Defence counsel during the cross examination of the prosecutrix when she appeared as PW-2 qua acquitting the accused on the charges of rape and Section 3(ii) of SC and SC Act are baseless.*

(ix) *That delay in lodging the report and subsequent investigation qua the provision of I.T. and rape have been categorically explained by the prosecutrix and I.O. Gurdev Sharma, who has appeared as PW-11. The Investigating Officers namely Dy. S.P. Raj Kumar PW-10 and Dy. S.P. Gurdev Sharma, PW-11 have clearly and categorically explained the investigations and corroborated the factum of rape with prosecutrix but the ld. Trial Court has not believed and appreciated their statement in accordance with law and procedure.*

(x) *No other appeal or revision against the impugned judgment has been filed before the High Court or the Supreme Court.*

(xi) *The present appeal has been filed within the prescribed period of limitation.*

7. We have heard learned counsel for the parties and carefully gone through the material on record and the findings recorded by the learned Trial Court while passing the impugned judgment of acquittal dated 28.03.2013. .

8. Mr. Raj Negi, learned Deputy Advocate General

has strenuously argued that the findings recorded by the learned Trial Court are not legally sustainable since the testimony of Victim/Prosecutrix 'G' (PW-1) has been disbelieved and discarded without any cogent reasons. The findings of the learned Trial Court are in disregard of material evidence, as such, the same is liable to be set-aside.

9. *Per contra*, Mr. Devender K. Sharma, learned counsel for the respondent/accused defended the judgment of the acquittal dated 28.03.2013, passed by the learned Trial Court having been passed after appreciation of oral as well as documentary evidence led by the prosecution. Learned counsel highlighted that there is inordinate delay in reporting the matter to the police, which is completely unexplained. There is no medical or forensic evidence on record to lend credence to the prosecution version that the Victim/Prosecutrix 'G' (PW-1) was subjected to forcible sexual intercourse during the intervening period w.e.f. 2004 to 2006, as alleged. Learned counsel further argued that the physical relations, *inter se*, if any, were with the consent and

violation of the Victim/Prosecutrix 'G' (PW-1), who was major at the relevant time and cannot be said to be forceful and against her consent. Therefore, sexual relationship, *inter se*, cannot be said to be a 'Rape' within the meaning of Clause-Secondly of Section 375 read with Section 90 of the Indian Penal Code, 1860. Furthermore, there is no evidence whatsoever to infer that the accused committed the alleged offence on the basis of caste identity of the Victim/Prosecutrix 'G' (PW-1). The factum of recording of the intimate acts and further circulating and transmitting the same by electronic means is not established on record since there is no evidence whatsoever.

10. The perusal of the record evidently shows that the learned Trial Court, on considering and evaluating the material and evidence, did not find force in the prosecution case, resulting in acquittal of the accused vide judgment dated 28.03.2013.

11. 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.

12. The Privy Council of Hon'ble Supreme Court in **Sheo Swarup v. King Emperor, 1934 SCC OnLine PC 42** has observed that the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses.

13. The aforesaid principle of law has consistently been followed by the Hon'ble Supreme Court in **Tulsiram Kanu v. State, 1954 Cri.LJ 225, Balbir Singh v. State of Punjab, AIR 1957 SC 216, M.G. Agarwal v. State of Maharashtra, AIR 1963 SC 200.**

14. Furthermore, the scope of the powers of the Appellate Court in case of an appeal against acquittal

were again reiterated by the Hon'ble Apex Court in **Muralidhar alias Gidda & another vs. State of Karnataka reported in (2014) 5 SCC 730**; **Rajesh Prasad vs. State of Bihar & another reported in (2022) 3 SCC 471**; **H.D. Sundara & others vs. State of Karnataka reported in (2023) 9 SCC 581; Jafarudheen and others vs. State of Kerala reported in (2022) 8 SCC 440; Geeta Devi vs State of U.P. reported in (2023) 12 SCC 741 and Surendra Singh v. State of Uttarakhand reported in 2025 SCC OnLine SC 176: (2025) 5 SCC 433**.

15. Having considered the ratio of law laid down by Hon'ble Apex Court in judgments referred supra, it is now well settled that 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.

16. 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 were possible on the basis of the evidence on record, the Appellant Court should not disturb the finding 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.

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

18. This Court has to look into whether the accused with *malafide* motives established sexual relationship with the Victim Prosecutrix 'G' (PW-1) against her will and without her consent and whether the said sexual relationship amounts to 'Rape' within the meaning of Clause-Secondly of Section 375 read with

Section 90 of the Indian Penal Code, 1860.

19. In order to have better appreciation to the submissions made by learned counsel for the parties and the facts alleged against the accused, in the backdrop, the relevant provisions contained in Section 90 and Section 375 of the IPC are being reproduced as under:-

> *"90. Consent known to be given under fear or misconception. —A consent is not such a consent as it intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or Consent of insane person.—if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or Consent of child.— unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*
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> *375. Rape.- A man is said to commit "rape" if he-*
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> *(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or*
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> *(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or*

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven

First- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- when she is unable to communicate consent.

Explanation 1- For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2.- Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication,

communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception1. A medical procedure or intervention shall not constitute rape.

Exception 2.- Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape."

20. Needless to emphasis that a consent given by person would not be a consent as intended by any Section of the Indian Penal Code, if such consent was given by the person under the fear of injury, or under a misconception of fact as contemplated in Section 90 IPC. Further, Section 375 also describes certain acts which if committed by the accused under the circumstances mentioned therein, as the commission of 'Rape', even though committed with the consent of the prosecutrix. Therefore, the expression "misconception of fact" contained in Section 90 IPC is also required to be appreciated in the light of the Clauses –contained in Section 375 IPC, more particularly the Clauses -Thirdly, Fourthly and Fifthly thereof, when the accused is

charged for the offence of 'Rape'.

21. In the present case, the Victim/Prosecutrix 'G' (PW-1) is alleging that she was repeatedly subjected to forcible sexual intercourse by the accused between the years 2004-2006. As per her evidence, on one day when she was on the way to Mahadev she met the accused between Dadour and Kansa Chowk Bridge, he took her to his house on the pretext that there was a birthday function of his son and subjected her to forcible sexual intercourse. She resisted to the sexual overtures but later succumbed under threats to her life. Later, after three months, the accused met her at Mandi and took her to Hotel Shringar at Sauli-Khad and subjected her to forcible sexual intercourse in Room Number 204. Accused drugged and raped her and also clandestinely recorded the intimate acts without her consent and permission. Later, during the years, she was again subjected to forcible sexual intercourse by the accused at various places at Dadour and Mandi.

22. The careful perusal of the statement of Victim/Prosecutrix 'G' (PW-1) and complaint (Ext.

PW1/A) reveal that there is lack of specificity and details regarding the incidents during the intervening period. The Victim/Prosecutrix 'G' (PW-1) has come up with general allegations against the accused for violating her privacy on various occasions. The version of the Victim/Prosecutrix 'G' (PW-1) for being subjected to forcible sexual intercourse in Room Number 204 of Hotel Shringar at Sauli-Khad is not well substantiated since no document in this regard have been brought on record by the prosecution to ascertain her visit with the accused at the said venue.

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

> *"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.

24. 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 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."*

25. 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 would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."*

26. 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 todiscredit 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 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."

27. 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.

28. 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.**

29. 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.

30. 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."*

31. 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."

32. 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, 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."

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33. 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 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."

34. 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.

35. 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.

36. Reiterating the earlier view, the Hon'ble Supreme Court in **Sham Singh vs. State of Haryana (2018) 10 SCC 34, State (NCT of Delhi) vs. Pankaj Chaudhary (2019) 11SCC 575 and Ganesan vs. State (2020) 10 SCC 573** held that sole testimony of the

prosecutrix is sufficient to establish commission of rape if 'duly corroborated'.

37. The prosecution in order to corroborate the allegations and accusations against the accused examined Dr. Richa, Medical Officer posted at CHC Ratti (Balh) in the year 2008. She conducted medical examination of the Victim/Prosecutrix 'G' (PW-1) on 18.09.2008 and issued MLC (Ext. PW2/B) with opinion:-

> *"The examinee is an adult, healthy, sexually active female, habitual to sexual intercourse. It is not possible to say at this stage (duration of 2 years) whether any forced sexual assault had taken place between 2004 to 2006. There are no physical evidences in the present examination, which can or cannot confirm the alleged sexual assault."*

38. The medical evidence led by the prosecution does not help in any manner to ascertain that the Victim/Prosecutrix 'G' (PW-1) had been subjected to forcible sexual intercourse during the alleged period. Therefore, the version put on record by her becomes unbelievable.

39. It may be pertinent to put on record certain

undisputed facts, which are material and relevant to the facts and circumstances of the case.

40. The Victim/Prosecutrix 'G' (PW-1) admittedly belongs to Scheduled Caste (Lohar), which fact is evident after going through the copy of Parivar Register (Ext.PW6/B). It is also undisputed that the accused is Rajput by caste, which fact can be inferred after going through certificate (Ext. PW9/A) issued by the Pradhan, Gram Panchayat Dadour. The parties had prior acquaintance since the Victim/Prosecutrix 'G' (PW-1) was running a 'Manyari' Shop (Variety Store) at Kummi Chowk and the accused during the relevant period was posted as Teacher (JBT) at Government Primary School, Kummi. It is also undisputed that the Victim/Prosecutrix 'G' (PW-1) at the relevant time was major, aged 25 years (date of birth i.e. 09.01.1979). Although, the accused has denied and disputed for being in physical relationship with the Victim/Prosecutrix 'G' (PW-1) for a long period w.e.f. 2004 to 2006, nevertheless, even if it is assumed that the parties had physical relationship, it appears to be consensual in nature. There is nothing on record to

infer that her consent was obtained by the accused by misconception of fact or by putting under threat to her life.

41. Furthermore, it appears that the consent of the Victim/Prosecutrix 'G' (PW-1), if at all, was conscious and deliberate choice as distinct from an involuntary action or in denial. Although, she has testified that when the accused firstly made physical relationship with her in the year 2004, she was not a consenting party and she did not disclose the incident under the fear and threat to her life. This Court fails to believe the reasons put forth by her in this regard and if this had been so, she would have never accompanied the accused on subsequent occasions and she had a clear choice to refuse for the coitus and to file a complaint against him. It appears that she did not resist to his sexual overtures and also did not file any complaint against him rather voluntarily kept interacting sexually till her video clip was circulated by electronic means. There is no reasonable explanation emerging on record which could have reasonably prevented the Victim/Prosecutrix 'G' (PW-1) to approach

the police after she was subjected to forceful sexual intercourse by the accused.

42. Having considered the aforesaid facts, the evidence of the Victim/Prosecutrix 'G' (PW-1) does not inspire confidence and hence, cannot be relied upon.

43. Hon'ble Supreme Court in **Santosh Prasad @ Santosh Kumar vs. The State of Bihar, 2020(3) Criminal Court Cases 459 (S.C.)** has held that the sole testimony of the prosecutrix cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence.

44. There are allegations against the accused that he violated the privacy of the Victim/Prosecutrix 'G' (PW-1) on various occasions, knowingly that she belongs to the Scheduled Caste (Lohar). However, there is no separate evidence led by the prosecution that the accused committed the offence on the basis of caste identity of the Victim/Prosecutrix 'G' (PW-1.)

45. At this juncture, it is necessary to take note of Section 3(1)(xii) of the Scheduled Castes and Scheduled

Tribes (Prevention of Atrocities) Act, 1989. The said provision so far relevant reads as follows:-

> *"Section 3(1)(xii):- Punishments for offences of atrocities:-*
>
> *(1) Whoever, not being a member of a Scheduled Caste or a Schedules Tribe-*
>
> *xxx xxx xxx*
>
> *(xii) being in a positon to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and Uses that position to exploit her sexually to which she would not have otherwise agree;*
>
> *xxx xxx xxx"*

46. *Sine qua non*, for application of section 3(1)(xii) of the Act is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the present case, although it has been established that the Victim/Prosecutrix 'G'(PW-1) belonged to the Scheduled Castes (Lohar), nevertheless, it is not established that the accused indulged in committing rape on the Victim/Prosecutrix 'G' (PW-1) since she was a

member of Scheduled Caste.

47. Therefore, the offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, is not established merely on the fact that the Victim/Prosecutrix 'G' (PW-1) is a member of the Scheduled Caste (Lohar) unless there is an intention to sexually abuse a member of the Scheduled Caste or the Scheduled Tribes for the reason that the victim belongs to such caste.

48. In this regard, reference can be made to **Khuman Singh** Vs. **State of Madhya Pradesh (2019) SCC OnLine SC 1104, Dinesh @ Buddha** Vs. **State of Rajasthan, (2006) 3 SCC 771** and **Patan Jamal Vali** Vs**. State of Andhra Pradesh AIR 2021 Supreme Court 2190**.

49. Coming to the allegations that the accused had clandestinely recorded the intimate acts on various occasions without the consent of the Victim/Prosecutrix 'G' (PW-1) and subsequently transmitted and circulated the same in an electronic form. Pertinent to note that Chapter XI of the Information Technology Act, includes

the offence punishable under Section 67 which provides the punishment for publishing or transmitting obscene material in electronic form. The relevant Section reads thus:-

> *"67. Punishment for publishing or transmitting obscene material in electronic form:- Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees".*

50. The accused has been charged for the commission of the offences punishable under Section 67 of the Information Technology Act, 2000. The said provisions of law prescribes the punishment for

publishing or transmitting of material containing sexually explicit act etc. in electronic form.

51. Section 67-A is a species of Section 67 which is a genus and makes an act of publishing or transmitting of material containing sexually explicit act in electronic form. Further, Section 67-B is another species of Section 67, which makes punishable an act of publishing or transmitting of material depicting children in sexually explicit act in electronic form.

52. Needless to emphasize that the electronic records being more susceptible to tampering, alteration, transposition, excision etc. and without safeguards, the whole trial based on proof of electronic records can lead to travesty of justice. Section 65-B of the Indian Evidence Act, which deals with admissibility of electronic records, is being reproduced as under :-

> ***65-B. Admissibility of electronic records*** – *(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to*

> *be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

53. The Hon'ble Supreme Court in **Anvar P.V. versus P.K.Basheer and Others (2014) 10 SCC 473**, held that Computer Output is not admissible without compliance of Section 65B of the Indian Evidence Act. It overruled the Judgment in **State (NCT of Delhi) versus Navjot Sandhu alias Afzal Guru (2005)11 SCC 600.** The Hon'ble Court observed that "the Judgment of ***Navjot Sandhu***, to the extent, the statement of the law on admissibility of electronic evidence pertaining to electronic record of this court, does not lay down correct position and is required to be overruled."

54. A three Judge Bench of the Hon'ble Supreme Court in **Tomaso Bruno & Anr. versus. State of UP (2015) 7 SCC 178)** dealt with the admissibility of

evidence in a criminal case. The Hon'ble Supreme Court held that " the Computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65B of the Indian Evidence Act. Sub-section(1) of Section 65B makes admissible as a document, paper print out of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65B. Secondary evidence of contents of document can also be led under Section 65 of the Indian Evidence Act".

55. A three-Judge Bench of the Hon'ble **Supreme Court in Vikram Singh and Anr. verus State of Punjab & Anr., (2017) 8 SCC 518)**, *f*ollowed the law in ***Anvar P.V. (supra)*** clearly stating that where primary evidence in electronic form has been produced, no certificate under Section 65B would be necessary.

56. But in a subsequent judgment rendered in **Shafhi Mohammad versus The State of Himachal Pradesh (2018) 2 SCC 801**, a two Judge Bench of the

Hon'ble Supreme Court held that requirement of certificate under Section 65B(4) is not always mandatory.

57. As there was dichotomy of decisions between ***Anwar PV's case and Shafhi Mohammad's case,*** therefore, in 2019, a two Judge Bench of the Hon'ble Supreme Court referred the matter to another three Judge Bench for clarification on the point. The matter has been recently decided by the three Judge Bench of the Hon'ble Supreme Court in **ARJUN PANDITRAO KHOTKAR VERSUS KAILASH KUSHANRAO GOPRANTYAL AND ORS , 2020 SCC OnLine SC 571** by a Judgment dated July 14, 2020 and upheld the law laid down in ***Anwar PV's case***. Para No.72 contains the relevant observations. They are extracted hereunder :-

> *"(a) Anvar P.V (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also judgment in SLP (Crl.) No.9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore, overruled.*
>
> *(b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is*

> *produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V (supra) which reads as ".... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...." is thus clarified; it is to be read without the words " under Section 62 of the Evidence Act...." With this clarification, the law stated in paragraph 24 of Anvar P.V (supra) does not need to be revisited".*

58. The above judgment has put to rest the controversies arising from the various conflicting judgments and thereby provided a guidelines regarding the practices being followed in Trial Courts as to the admissibility of the Electronic Evidences. The legal interpretation by the Court of the following Sections 22A, 45A, 59, 65A & 65B of the Evidence Act has confirmed that the stored data in CD/DVD/Pen Drive is not admissible without a certificate under Section 65-B(4) of

Evidence Act and further clarified that in the absence of such a certificate, the oral evidence to prove the existence of such electronic evidence and the expert view under Section 45-A Evidence Act cannot be availed to prove authenticity thereof.

59. Now applying the ratio of law laid down by the Hon'ble Supreme Court in ***Arjun Panditrao Khotkar's case supra*** to the facts of this case and evidence produced by the prosecution.

60. In the present case, the prosecution has neither brought on record the explicit sexual content allegedly transmitted or circulated in electronic form as required under Section 67 of the Information Technology Act, 2000. The evidence on this aspect is completely missing since the VCD allegedly containing the obscene and sexually explicit act never formed part of the prosecution record during the course of trial before the learned Trial Court.

61. After going through the entire record and considering the material evidence brought on record, the allegations against the accused on all counts are not

established. This Court has no reason to either interfere or to differ with the findings recorded by the learned Trial Court.

62. In view of above, we do not find any merit in this appeal and the same is, accordingly, dismissed.

63. Pending miscellaneous application(s), if any, shall also stand disposed of.

(Vivek Singh Thakur)
Judge

(Bhupesh Sharma)
Judge

20th November, 2026
(sushma)