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

Date of reserving Judgment: 13th February, 2026

Date of decision: 27th March, 2026

IN THE MATTER OF:

\+ CRL.A. 1344/2011

MADAN SINGH .....Appellant

Through: Mr. Zeeshan Diwan, Mr. Krishna Datta Multani, Mr. Harsha, Mr. Joel Jamesh and Ms. Ankita Yadav, Advs.

versus

STATE OF THE NCT OF DELHI .....Respondent

Through: Ms. Kiran Bairwa, APP for the State.
Ms. Astha (DHCLSC) with Ms. Megha Singh, Advocate for victim/ prosecutrix.
SI Nirankar Nagar, PS Defence Colony.

CORAM:
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Constraints and restrictions so also the facilities have immense potential to change the life drastically. The financial constraints coupled with the lack of proper education, skills and training brought the victim herein, as many other such individuals land up in the big metropolitan cities, as this metropolis. The victim, who hails from a North-Eastern state of India, came from about 2000 kms away to this city looking for a job. It was the financial constraint of the family which persuaded or in a way compelled a young girl of about 22 years of age to seek job of a cook and that is how the

victim / complainant herein landed in the city of Delhi, though, how and through whom, is not known. She was working as domestic help/cook with one Mr. Lee, a Korean National, who along with his family was not in the city and was travelling to Korea during the relevant time i.e. on 26.07.2009. The family occupied first floor in C-5, Gulmohar Park, New Delhi, whereas the owner, Mr. Ashok Kumar Soni occupied the ground floor and another family was in occupation of second floor. On the top floor / terrace, 3 servant quarters were there, each meant for each floor.

2. The complaint / victim, in the absence of her employer, was working as a caretaker also, but was not permitted to stay in the house for more than 5-6 hours and she, as usual, used to sleep in one of the three servant quarters on the terrace. One of such room was occupied by the Appellant Madan Singh, who was employed by the owner of the building residing at the ground floor, namely Mr. Ashok Kumar Soni.

3. Incidentally, the cooler which was being used by the victim was malfunctioning for the last about 10 days, and she was, therefore, compelled to sleep on the terrace in the open. On the fateful day i.e. 26.07.2009, while the prosecutrix was sleeping on the terrace at about 10:30 PM, the Appellant herein came there and forced himself upon her despite the resistance offered by the victim and in the process, the appellant got nail scratches on his chest and upper body. Somehow, the victim could not save herself and she was raped.

4. She called her employer telephonically, who in turn, asked her to call the Police and that is how the information reached to the police and was recorded as DD No. 28 dated 26.07.1999 (Ex. PW-9/E) at the Defence Colony, Police Station. SI Sanjay Sharma was assigned the DD, who, being In-charge of the Police Post, Gulmohar Park reached there alongwith Ct.

Purshottam and ASI Sri Krishan. The statement of the victim Ex. PW-2/A was recorded by SI Sanjay Sharma who made his endorsement and got FIR registered. The FIR No. 205/2009 was assigned to SI Saroj Bala who took over the investigation therefrom.

5. SI Saroj Bala reached the spot, she arrested the Appellant Madan Singh, and prepared the site plan Ex.PW-9/A, at the instance of the victim, and thereafter, the victim was taken to All India Institute of Medical Sciences, Delhi, (AIIMS), where she was medically examined. The Doctor who examined the victim gave certain Exhibits which were seized by SI Saroj Bala through Seizure Memo Ex. PW-4/A, containing vaginal smear, under garments of the victim, nail clippings of both the hands of the victim and a sample seal inasmuch as of the aforesaid Exhibits were sealed by the Doctor.

6. Appellant/accused Madan Singh, who was arrested vide memo Ex. PW-2/B and his personal search was accounted for through memo Ex. PW-2/C, made a disclosure statement, Ex. PW-3/B. A wrapper of a condom which was also found at the spot, was seized through Memo Ex. PW-2/D as it was alleged that when the Appellant / Accused committed rape, condom was used. Appellant/accused was also medically examined and Exhibits in respect of him were also seized. The Appellant too was medically examined at AIIMS vide, MLC Ex. PW-9/F. After the medical examination of the Appellant, blood sample of the Appellant was given in a gauze by the doctor together with the underwear of the Appellant and sample seal, all three were seized through Memo Ex. PW-3/A.

7. Charge-sheet was filed against the Appellant and the charge under Section 376 IPC was framed, to which he pleaded not guilty.

8. During the trial, prosecution examined 09 witnesses and thereafter,

the evidence so coming on record was put to the accused, giving an opportunity to explain the circumstances in his statement recorded under Section 313 Cr.P.C. He pleaded innocence and asserted that he has been falsely implicated in this case. He did not opt to bring evidence in his defence, although he claimed that the victim was habitual in taking liquor and on the fateful day, she came back drunk and started abusing the Appellant therefore, he pushed her and that's how a sort of scuffle took place during which she scratched on his chest and lodged a false complaint. Ultimately, through the Impugned Judgment, the Appellant was convicted under Section 376 IPC and sentenced to undergo Rigorous Imprisonment (RI) for a period of 5 years and pay a fine of Rs. 1,000/-, in default to further undergo Simple Imprisonment (SI) for 6 months.

9. Against the backdrop of the aforesaid facts, the instant appeal has emerged, whereby it is asserted on behalf of the Appellant that the Learned Trial Court has not taken into account a very vital statement of the victim recorded under Section 164 Cr.P.C. She has not even whispered a word of being assaulted in any manner, leave alone being raped by the Appellant. The Statement is under oath recorded by a Magistrate, therefore, it should have been given due credence and weight, which the learned Trial Court has not given. This reflects that there was something which has not come on record, and it certainly was something in favour of the Appellant.

10. Learned counsel for the Appellant has further assailed the impugned judgment that when the assailant was known and identified, then why the name of the Appellant is not there in the DD-28, through which the initial complaint was made. In the MLC of the victim, no injury is reported on any part of the body including the genital area. The FSL report does not support the case of the prosecution, as neither the nail clippings nor the clothes have

any traces which may connect or hold the Appellant responsible for the offence complained against him.

11. It is further contended that this is a case of false implication. Why the victim lodged a complaint on 26.07.2009, whereas she was allegedly raped at least 5 times during the last seven days by the Appellant, as has been stated by victim in the MLC. Why she did not lodge a complaint on the very first instance when she was violated by the Appellant? What kept her quiet for all these days and what happened suddenly which prompted her to lodge a police case?

12. It was elaborated by the learned counsel for the Appellant, that he was taking rest at around 10:00 PM, when the victim came and started playing music loudly, which disturbed the sleep of the Appellant. The victim did not pay heed to the request of the Appellant to lower down the sound. Enraged, the Appellant threw the speakers of the music system. It was the act of breaking speakers of the music system which triggered the victim to lodge a false complaint of rape. The circumstances, as such, do not point out qua the offence of rape inasmuch as no witness other than the victim is there, no bodily injury is reflected in the MLC, the FSL result nowhere indicates presence of semen on the clothes of the victim or the Appellant and above all the statement under oath recorded on 27.07.2009 by Magistrate under Section 164 Cr.P.C is completely silent on the aspect of rape and has no reference at all, not even of molestation or any such attempt.

13. Learned Additional Public Prosecutor, on the other hand, stood by the impugned judgment and stated that the substantive evidence is what is material and that leaves no scope for any other inference except that of the complicity of the Appellant. No evidence in defence has been brought by the Appellant, despite the fact that opportunity was there with him. As regards

the flaws in the investigation, it is submitted that the prosecution should not be allowed to suffer on account of defects in the investigation, if at all, something was there. It was by force and without consent, as has come on record, therefore, it is submitted that appeal is bound to fail. There is no answer with the Appellant about the contradictory stand taken by him inasmuch as at one stage he says that there was a fight on account of loud playing of music, but in his statement under Section 313 Cr.P.C., he took a plea that the victim was a consenting party to the act. He, thus, by implication says that the sexual intercourse was there. It was by force and without consent, as has come on record, therefore, it is submitted that appeal is liable to be dismissed.

14. There are ample evidences on record to reflect that it was not consensual rather the victim was raped. There was no motive with the prosecutrix to falsely implicate the Appellant. The silence of the prosecutrix in her statement to the police with regard to the earlier assaults cannot be taken against the prosecutrix, especially when her circumstances and situations are visualized and analyzed. Finally, it is contended that there are catena of judgments to the effect that the sole testimony of the prosecutrix is enough to record a finding against an accused, if that is trustworthy.

15. Learned counsel for the Appellant, in order to strengthen his arguments that non-examination of material witnesses and material contradictions render the case of the prosecution vulnerable to doubt and suspicion, placed reliance on the following judgments:-

1. ***Jasbir Singh vs State*** *(2022) SCC online Delhi 1427.*
2. ***Davinder Singh vs State of Punjab*** *(2023) 19 SCC 229.*

16. So far as the propositions of law laid down in the aforesaid judgments, there is and there cannot be any quarrel *qua* the same. However,

the witnesses whom the learned counsel for the Appellant has termed as material witnesses are, in fact, not as material as it has been sought to be emphasised upon. The employer of the victim or the landlord of the building could have been examined and they might have also added some substance to the case but then their non-examination is not fatal, and in any case, the Appellant was free to bring them in his defence, if he was expecting something material and in his favour. There is no answer with the Appellant on this aspect.

17. As regards contradictions in the statements are concerned, the same are bound to be there in the narrative for the simple reason that human limitations are there. A parrot like testimony cannot be expected from the witnesses. The same event, if narrated by two persons, it would be different and for that matter the same person who is narrating an incident is bound to narrate with some variation, some difference each time it is stated by him. What is of paramount importance is that the substance and the soul of the narrative should remain intact. It should not be viewed adversely giving any scope for any kind of doubt that the narrative is incorrect. In this context reference can be made to the judgments:

In ***State of Rajasthan vs. Smt. Kalki & Anr.,*** reported in 1981 (2) SCC 752, it was held as under:-

> *8. "In the depositions of witnesses there are always some normal discrepancies however honest and truthful they may be. These discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of the occurrence, and the like. Material discrepancies are those which are not normal, and not expected of a normal person."*

In ***Narayan Chetanram Chaudhary & Anr. vs. State of Maharashtra***, 2000 (8) SCC 457, the Apex Court held as under:

> *42. "Only such omissions which amount to contradiction in material particulars can be used to discredit the testimony of the witness. The omission in the police statement by itself would not necessarily render the testimony of witness unreliable. When the version given by the witness in the Court is different in material particulars from that disclosed in his earlier statements, the case of the prosecution become doubtful and not otherwise. Minor contradictions are bound to appear in the statements of truthful witnesses as memory sometimes plays false and the sense of observation differ from person to person. The omissions in the earlier statement if found to be of trivial details, as in the present case, the same would not cause any dent in the testimony of PW. 2. Even if there is contradiction of statement of a witness on any material point, that is no ground to reject the whole of the testimony of such witness.*
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> *xxxxxx*
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> *There is bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefore should not render the evidence of eye-witnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence."*

18. The view taken by the learned Trial Court and that is settled principle of law that conviction of an accused can be based on the sole testimony of the victim/prosecutrix provided her evidence is of sterling quality and inspires confidence. Learned Trial Court has also considered that very proposition and recorded a finding against the Appellant. However, learned counsel for the Appellant has placed reliance on the following judgments in order to hammer his point that evidence should be aboveboard;

i. ***Nirmal Premkumar and Another V. State, Rep. by Inspector of Police***, (2024) SCC Online SC 260**;**

ii. ***State of Himachal Pradesh V. Sanjay Kumar,*** (2025)

SCC Online SC 885*;*

iii. ***Rai Sandeep V. State (NCT of Delhi),*** (2012) 8 SCC 21;

iv. ***Krishan Kumar Malik V. State of Haryana,*** (2011) 7 SCC 130.

19. As stated earlier the principle about the sole testimony being sufficient in such cases is a well entrenched principle followed by Courts across the length and breadth of the country with the rider that it should be of sterling quality. And for that matter, as provided in Section 134 Indian Evidence Act it is the quality not the quantity of the evidence which is material. Reference can be made to the judgment in ***Raja vs. State,*** (1997) 2 crimes 175 (Del), ***State of UP vs. Kishan Pal***, 2008 (8) JT 650 and ***Lallu Manjhi vs. State of Jharkhand,*** (AIR) 2003 SC 854**.**

20. Learned counsel for the Appellant with the aid of the aforesaid judgments asserted that the prosecutrix is not a truthful witness inasmuch as she has initially lodged a complaint of being raped, but on the very next day in her statement under Section 164 Cr.P.C, she has not levelled any such allegation of being sexually assaulted. Astonishingly, while deposing before the Court she again reverted back to her stand in the FIR. Testimony of such a witness cannot be believed and certainly cannot be treated as that of sterling quality. In such circumstances, it is argued that sole testimony of the prosecutrix cannot be relied upon to record a finding against the Appellant. Some or other kind of corroboration is required, which is not there inasmuch as neither the medical evidence nor the forensic evidence gives credence or support to the version of the prosecutrix.

21. It is asserted further that there was no injury on the person of the

victim especially in the region of genitalia. The hymen had an old tear and there was no trace of semen either on the clothes or body of the prosecutrix or the Appellant. In such circumstances, the plea that the Appellant had used a condom while committing rape is nothing but a ploy to fill the lacuna in the prosecution's case. It is, thus, asserted that in view of contradictory stands and absence of any corroborative evidence either medical or forensic unequivocally indicate that the Appellant has been falsely implicated in this case. The stand taken by the Appellant that the prosecutrix has falsely implicated him, by being enraged on account of the issue of playing loud music and breaking the speakers of the music system by the Appellant is, verily, the fact.

22. Appreciation of evidence should not be confined to the written words in the statement but the same is required to be looked into in the facts and circumstances of the case, which vary from case to case and from person to person. It is pertinent to note here that the prosecutrix was about 22 **y**ears of age studied only up to be 10th standard and her circumstances were such which forced her to travel more than 2000 kms or so from her native place in Assam to work as a cook in Delhi. She was in the city for about last four months prior to the incident having no friends, family or support except may be her employer. However, at the relevant time, even her employer was not in the country, being a Korean National and travelling to his native, with family.

23. The landlord of the building residing on the ground floor, with whom the Appellant was employed, was also not very supportive in the sense that some of the misdeeds of the appellant, in the shape of tearing the clothes of the victim which were put out for drying, noting obscene of offensive things on the door of the servant quarter of the prosecutrix etc., were not checked.

In fact, when this matter was reported by the prosecutrix to her employer, who, in turn, directed her to report to the employer of the Appellant i.e. landlord of the house Mr. Ashok Kumar Soni. He also did not take any steps to curb the activities of the Appellant rather scolded the victim.

24. Imagine the situation of a person, who is already very vulnerable and placed in such circumstances. It can be easily visualised that the prosecutrix, whose vulnerability, constraints and poverty brought her to this city was rendered further vulnerable due to the unchecked offensive behaviour of the Appellant which went unabated and reached to the extent to this rape case. The non co-operative and unsupportive attitude of her employer and the landlord of the building, were seemingly very dampening rendering the victim further insecure, vulnerable and susceptible.

25. It indeed is surprising that the prosecutrix did not report the previous incidents, but reported the incident on 26.07.2009 to her employer, who in turn asked her to inform the police, which she did. Her statement to the police resulted into registration of an FIR under Section 376 IPC at about 02:45 AM and the medical examination of the victim was carried out at 03:52 AM at AIIMS. However, she informed the Doctor not only about the incident, which resulted into registration of the FIR rather the trauma she faced during last seven days as she was raped by the Appellant on 5/6 occasions. On that very day, in the afternoon, when her statement was recorded by the Magistrate she did not, surprisingly, utter a word about the incident of rape(s). It is not easy to reconcile and digest this.

26. The incident of rape took place between 10:30 PM to 12:55 AM on 26.07.2009 and the matter was reported to the police somewhere between 12:00 to 01:00 on the same intervening night of 26/27 July, 2009. When the medical examination of the victim took place at 03:52 AM, she narrated

about multiple rapes by the Appellant to the Doctor and in the afternoon of 27.07.2009 within 12 hours, or so she did not utter a word about the incident of rape. How come that is possible? The circumstances indicate that the victim was accompanied by police officials, and came into contact with none other than the hospital staff before her statement was recorded under Section 164 Cr.P.C. What happened within such a short span of time is bewildering?

27. Incidentally, the Appellant too was examined in the same hospital i.e. AIIMS, at around 11:50 AM on 27.07.2009. What went wrong in between the incident, reporting of incident and the victim making a statement under Section 164 Cr.P.C is anybody's guess. It may sound conjecturing but then the statement under Section 164 Cr.P.C, Ex. PW-2/E, if read then it is indicative of some confusion in the mind of the victim as to what for she was there. During the initial questioning by the Learned Magistrate, who recorded the statement under Section 164 Cr.P.C., the victim has stated that she has come to the Court in order to tell in respect of her report, which she has lodged about a boy: *"Ek ladke maine report ki hai us sambandh me batane ke liye"*.

28. Change is constant phenomenon, inherent, relevant and present at all the times in all the spheres of life. With changing times, value systems, norms, perspectives, thoughts and behaviour also undergo transformation, may be for good and bad, but then transformation is invariably found. A decade is enough to change the course of rivers, shapes of mountains, face of cities and also the human beings. What was in vogue 16 years ago may not be today. Although, change is constant, so is some of the basic human nature, but collateral changes are omnipresent in the basic human nature of love, lust, greed, anger, compassion, kindness, etc. A lot of instances of

sexual offences go unnoticed on account of being unreported. A female is to think a thousand times before coming forward to complaint about being sexually harassed as with changing times things may not be as it used be a decade ago. Gender equality, openness in society, hesitation etc., have undergone changes and the present day female is not going to take anything of such nature by lying down and are coming forward to fight for their rights. However, it was not so a decade ago, and for that matter even now in some societies, some areas and communities, the norms are still such which dissuade and discourage the females, not supportive of their plight, rather prejudicial to them, which robs the voice of a wronged female. This phenomena has been observed in various judgments as to what all comes into play and dictates the behaviour of a victim of sexual offence.

In ***State of Punjab vs. Gurmit Singh & Ors.***, (1996) 2 SCC 384, it was observed that in a tradition bound non-permissive society in India, victim would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society.

29. It may be a case with the victim that she thought that she has to add to the complaint she has already made to the police, and that is why she tells about her being working there for the last about 4/5 months and the employment of the Appellant in the landlord's house together with the trivial events which took place in the intervening period i.e. from the arrival of the Appellant to work with the owner of the building Mr. Ashok Kumar Soni to the last incident. The Appellant was troubling, teasing and bothering her repeatedly. She has also stated that the matter was reported to Mr. Ashok Kumar Soni i.e. the landlord and employer of Appellant, but he also did not

do anything rather scolded the victim. In the concluding lines of her statement under Section 164 Cr.P.C., she refers about breaking of the speakers of the music system by the Appellant. Incidentally, Appellant too has spoken about the playing of music loudly and the consequent fight which took place after the Appellant broke the speakers of the music system. She in a way, elaborate the complete details rather the prelude to the incident.

30. Here the flaw in the investigation is evident as the Investigating Officer did not care to look at this aspect and did not even seize the broken speakers of the music system and did not even care to probe the issue any further. It cannot be that the police came straightway and arrested the Appellant. There must be have been an initial probe by the police about the statement of the victim and then the Appellant must have also stated his version about the incident, if he was so candid to admit his guilt in the disclosure statement. According to him, as has been stated by the prosecutrix too, the issue of music system was there. It is unbelievable that while being arrested by the police, the Appellant would not mention about all this. The Investigation Officer should have collected the broken speakers of the music system as piece of evidence and should have also, for that matter, examined the employer of the prosecutrix and the Appellant, if not anybody else from the vicinity.

31. The Investigating Officers invariably collect the copy of the statement under Section 164 Cr.P.C. Therefore, it cannot be presumed that it was not done in the instant case. This reflects that the Investigating Officer came to know what the prosecutrix had stated that too on 27.07.2009, but no efforts are visible as seemingly not made by the Investigating Officer to look into the aspects, which emerged in the statement under Section 164 Cr.P.C.

32. While considering the aspect of defective investigation, it has been observed in various pronouncements that cause of justice cannot be made to suffer on account of the defects in the investigation, and the Investigating Officer should not be given such liberty to dictate the outcome of the legal proceedings. In this context, a reference can be made to certain important judgments on the subject:

> In ***C. Muniappan Vs. State of T.N. (2010) 9 SCC 567****, the Supreme Court held that it was a case of highly defective investigation but this was not the end of the matter, for if primacy was given to omissions and lapses by perfunctory investigation, faith and confidence of the people in criminal justice administration would erode. In such case, there is a legal obligation on the part of the Courts to examine prosecution evidence de hors such lapses, to find out whether evidence is reliable or not, and to what extent it is reliable and whether the lapses had affected the object of finding the truth. Reference was made to several decisions in support of said ratio.*
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> In ***Ganga Singh Vs. State of M.P.,*** (2013) 7 SCC 278*, it was held that Courts cannot acquit an accused on the ground that there were some defects in the investigation, unless such defects cast reasonable doubt on the prosecution case.*
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> Similar findings were recorded in ***Sunil Kundu Vs. State of Jharkhand,*** (2013) 4 SCC, 422*, holding that lapses or irregularities in investigation would not be material if the evidence produced on record, despite the said lapses or irregularities, does not go to the root of the matter and dislodges the substratum of the prosecution case.*
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> In ***Surjit Sarkar Vs. State of West Bengal***, (2013) 2 SCC 146, *after referring to several earlier decisions, it has been held that deficiencies in investigation by way of omission and lapses by the investigating agency cannot themselves justify total rejection of the prosecution case and where prosecution evidence de hors such lapses, when carefully scrutinised and evaluated, does not affect the object of finding of truth."*

33. Learned counsel for the Appellant, as another leg of the arguments, has put forth-two fold arguments in relation to section 311 Cr.P.C. and 313

Cr.P.C. It is stated that in case the counsel is not able to cross-examine the witness properly, then it is the duty of the Court to see that case is being conducted properly. Additionally, all the incriminating circumstances are required to be put to the accused and in case the Court feels that further or any other evidence is required then with the aid of Section 311 Cr.P.C. even that should be done.

34. In the instant case, it is submitted that the defence counsel did not confront the prosecutrix with her statement, recorded under section 164 Cr.P.C. It is submitted that the statement, on the basis of which the FIR was registered, is poles apart from the statement recorded under Section 164 Cr.P.C. In fact, it is submitted that statement under section 164 Cr.P.C. is bereft of any instance of anything wrong. The same being on oath recorded by a Magistrate, should have been given due importance. Incidentally, this aspect has been dealt with by the learned Trial Court and it has been observed that the statement under Section 164 Cr.P.C. has a limited purpose. It may be used to fortify the case of the prosecution or otherwise at the stage of investigation and secondly, it is useful when the aspect of perjury comes into picture. Being a prior statement, it can be used to confront the witness also.

35. Nevertheless the substantive statement or evidence is the evidence recorded during the trial by the Court. Section 3 of the Indian Evidence Act defines evidence. 'Evidence' means and includes:–

> *(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;*
>
> *`such statements are called oral evidence;*
>
> (2) *[all documents including electronic records produced*

for the inspection of the Court]; [Substituted by Act 21 of 2000, Section 92 and Sch.II, for the words "all documents produced for the inspection of the Court"] such documents are called documentary evidence.

36. That being so, the contentions raised on behalf of the Appellant by the learned counsels are of no avail.

37. In this context itself, the learned counsel for the Appellant placed the reliance upon the following judgments:-

i. ***Sovaran Singh Prajapati vs. State of Uttar Pradesh,*** (2025) SCC OnLine SC 351;

ii. ***Ashok vs. State of Uttar Pradesh,*** (2025) 2 SCC 381;

iii. ***Raj Kumar vs. State (NCT of Delhi),*** (2023) 17 SCC 95;

iv. ***Machander vs. State of Hyderabad,*** (1955) 2 SCC 106 [Re S. 342 *of the old Code of 1898];*

v. ***Varsha Garg vs. State of M.P.,*** *(2022) SCC Online 986;*

vi. ***Inderjeet Kaur Kalsi vs. NCT of Delhi,***(2013) SCC Online Del 4788*; and*

vii. ***Subash Chand Barjatya vs. Madhu Mishra,*** (2010) SCC Online Del 710.

viii. ***Vijay Kumar vs. State of U.P.,*** (2011) 8 SCC 136.

38. Learned counsel for the Appellant has not pointed out as to what incriminating circumstance was not put to the Appellant and for that matter, according to him, what prejudice was caused. According to the learned counsel for the Appellant, who should have been called as a witness, invoking Section 311 Cr.P.C. is not stated. His assertion that the witness was not properly cross-examined is subjective opinion. Tomorrow someone else in his place may put forth the same plea even if further cross-examination is

carried out. So, unless clear and distinct facts are not established, the argument remains for the sake of arguments. Courts have been empowered to call anyone at any stage as a witness provided it goes to serve the ends of justice. Therefore, the contentions in this context are brushed aside.

39. In view of the foregoing discussion, it is apparent that no two views are there and as such there is nothing which may be viewed in favour of the Appellant. As regards, the judgments relied upon, so far as the propositions propounded in the judgments in ***Pradeep Kumar vs. State of Chhatisgarh,*** (2023) 5 SCC 350 and ***Kali Ram vs. State of HP,*** (1973) 2 SCC 808 are concerned, the same holds field even today. But incidentally, in this case no two views emerge rather only one view is reflected on record thereby leaving no scope where choice is there.

40. Learned counsel for the Appellant has placed reliance on the judgment titled as ***State of Rajasthan vs. Ani Alias Hanif And Ors.,*** (1997) 6 SCC 162, which explains and reiterates the legal provision as contained in Section 165 of the Indian Evidence Act. There cannot be two opinions so far as the statutory provision is concerned, but then learned counsel for the Appellant again could not point out as to what ought to have been done by the Court, when the learned counsel for Appellant was there conducting the case. Undoubtedly, Section 165 Indian Evidence Act, empowers the Court to obtain or discover proof of relevant facts, but that is not an unfettered right. Additionally, it provides the 'Court may' in order to ascertain facts / proof as to any question or production of document etc., but may dispense with it, if the judgment is going to be based upon facts relevant and duly proved. So it seems that Court did not feel the necessity to invoke Section 165 of Indian Evidence Act and that cannot be faulted.

41. While relying upon the judgment ***Rafiq and Anr. vs Munshilal &***

Anr., (1981) 2 SCC 788, it is asserted that a litigant should not suffer injustice on account of inaction, negligence or misdemeanour of the Advocate. It is elaborated further by the counsel for the Appellant that the erstwhile counsel, who conducted the trial, should have been more careful and concerned and at least confronted the prosecutrix with her prior statement under Section 164 Cr.P.C. Presuming that the victim was confronted with the statement, but who knows what answer could have been there. In all probability, there would have been an explanation justifying the position. Had it not been the position, the prosecutrix would not have deposed against the Appellant before the Court rather she would have stuck to her statement recorded under section 164 Cr.P.C. and not the one which formed the basis of the FIR. So, even if the erstwhile counsel for the Appellant before the Trial Court did not do the right things, in the estimations of the counsel for the Appellant herein, still the substantive statement recorded before the Court during the trial would have held the ground. As such, the Appellant cannot derive any advantage out of these circumstances.

42. As is the settled principle and discussed earlier, testimony of the prosecutrix alone is sufficient to record a finding of guilt, if it is found trustworthy. Corroboration is not required. However, in the instant case, contrary to the submissions of the learned counsel for the Appellant, corroborative evidence is also there. It is correct that the MLC nowhere reflects any signs of injury on the body of the victim nor traces of semen, but then it certainly points out towards recent sexual activity. The doctor concerned has prepared three slides of the vaginal swab of the victim and it has been clearly stated in the MLC and FSL report too that three slides of vaginal swab were prepared. Those slides, reportedly, reflect presence of

some fluid, which is not semen. However, it is the secretion of fluid during the sexual activity, as nothing else seemingly could be there. The incident took place at between 10:30 PM to 12:55 AM in the night of 26.07.2009. The medical examination of the victim took place at 03:52 AM on the intervening night of 26-27.07.2009. The proximity of time between incident and medical examination leaves no scope for any other inference that the sexual activity, traces of which were found by the Doctor in Ex. PW-1/A and Ex.PW-1/B was there and it was nothing else except the rape reported by the prosecutrix.

43. Prosecutrix has reported that she was raped and a condom was used thus, the traces of semen were not found. Nevertheless the MLC Ex. PW1/A and Ex.PW-1/B corroborates the version of the prosecutrix. The FSL results Ex.PW-1/C and Ex.PW-1/D further fortifies it. And so far as the testimony of the victim is concerned, the same is otherwise aboveboard except for her statement under Section 164 Cr.P.C., which too does not absolves the Appellant, but presents a different picture of her being traumatized and harassed by the Appellant. She is a truthful and trustworthy witness as she disclosed all the facts at the very first instance to the police and to the Doctor as well. She was candid and truthful which can be inferred from her narrative to the police and Doctor. Her initial PCR call contains information about rape by a boy (Ex. PW-9/E). She was taken to the Hospital where she not only names the Appellant as the perpetrator of crime, but tells about her fiance, names him and also told about her first sexual activity four months back in Assam with her fiance. There was no occasion for her to give details. She told the Doctor that she had scratched the assailant as also about the use of condom. The corresponding injuries were found on the person of the Appellant as can be seen in the MLC Ex. PW-5/A of the Appellant. Four

fresh injuries were noticed by Dr. Akhilesh Raj (PW-5) all of which were on the upper body parts on neck, chest, etc.

44. There was no occasion with the prosecutrix to falsely implicate the Appellant, as has been put forth by the learned counsel for the Appellant. Had it been so then the statement under Section 164 Cr.P.C. would have also been on the same lines as was there at the time of registration of FIR and deposition before the Court. Apparently, police had no occasion to falsely implicate the Appellant either. On the contrary, the defective investigation reflects the carelessness on the part of the investigating agency.

45. Appellant has, in his statement under Section 313 Cr.P.C., to the answer of question no. 18, stated that the prosecutrix used to come home drunk and on the fateful day also she came drunk. If it was so that the victim was drunk, then there should have been some reference or trace about alcohol in the MLC. The doctors invariably mention if they found even the smell of alcohol. If the victim was drunk at around 10:30-11:00 PM on 26.07.2009, then there is no reason that the doctor would not be able to ascertain this fact after about 3-4 hours at 03:52 AM on the intervening night 26-27.07.2009, when the victim was taken for her medical examination.

46. Incidentally, the Appellant has taken contradictory stands and tried to wriggle out of the situation in which he got entangled by portraying that it was a consensual act, which is contrary to his stand that he has been falsely implicated. He is blowing hot and cold in the same breath and in the process, binds himself in a unbreakable bind.

47. The facts and circumstances as discussed herein before disentitles the Appellant to be given any indulgence, notwithstanding the strenuous arguments advanced on behalf of the Appellant by the learned counsel. The

Appellant is unable to puncture the case of the prosecution or to point out anything which may go in favour of the Appellant.

48. As a result, considering the entire gamut of facts and circumstances, the Appeal stands declined.

49. The Appellant is called upon to surrender forthwith to undergo the sentence.

50. Appeal stands disposed of accordingly.

51. Copy of the judgment be transmitted to the learned Trial Court and the prison authorities for necessary compliance.

VIMAL KUMAR YADAV, J

MARCH 27, 2026/*ps/tng*