



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

Date of reserving Judgment: 27th July, 2026

Date of decision: 23rd September, 2026

IN THE MATTER OF:

+ CRL.A. 1146/2013

SHAHBUDDIN

.....Appellant

Through: Mr. Sunil Kumar, Advocate.

versus

STATE

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for
State with SI Nimmi, PS Shahdara.
Ms. Astha, Adv. (DHCLSC) with Mr.
Pankaj Kumar and Ms. Megha Singh,
Adv. for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

1. The present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') assails the judgment of conviction dated 19th July, 2013 and the order on sentence dated 24th July, 2013 passed by the learned Additional Sessions Judge, Special Fast Track Court, Karkardooma Courts, Delhi, in Sessions Case No. 137/2013 arising out of FIR No. 307/2010 registered at Police Station Shahdara. By the impugned judgment, the Appellant Shahbuddin was convicted for the offences punishable under Sections 363, 368 read with Section 366, 376 and 506 of the Indian Penal Code, 1860 (hereinafter 'IPC'). By the order on sentence,



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he was sentenced as under, all the sentences being directed to run concurrently:

Offence	Rigorous Imprisonment	Fine (and default sentence)
Section 363 IPC	3 years	Rs. 3,000/- (in default, simple imprisonment for 9 months)
Section 368 read with Section 366 IPC	5 years	Rs. 5,000/- (in default, simple imprisonment for 1 year)
Section 376 IPC	7 years	Rs. 7,000/- (in default, simple imprisonment for 1 year and 6 months)
Section 506 IPC	2 years	Rs. 2,000/- (in default, simple imprisonment for 6 months)

2. Laconically, the prosecution's case is that on 24th May, 2010 at about 7:00 PM, the Prosecutrix and her sister-in-law (*bhabhi*) Kiran (PW-5) and her two kids had gone to Budh Bazar Market, Mandoli Road, to purchase vegetables. The Appellant herein, a resident of Pilakhwa, who had earlier worked as a tailor at the shop of the brother of Prosecutrix Amar Singh (PW-4) threatened PW-5 and forcibly kidnapped the prosecutrix in a three-wheeler auto-rickshaw ('TSR'). According to PW-4, he went to Police Station Shahdara on the same evening of 24th May, 2010 and remained there between 8:30 PM to 12:00 midnight, but his complaint was not recorded by the police. On 25th May, 2010, PW-4 approached the office of the Deputy Commissioner of Police (DCP) and submitted a written report dated 25th May, 2010 (Ex. PW-4/DA, bearing date 26th May, 2010 in the body of the complaint). On the basis of the said complaint, FIR No. 307/2010 was registered on 27th May, 2010 at 2:50 AM under Section 363 IPC by the Duty Officer, ASI Dharam Pal Singh



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(PW-3). A wireless message was flashed and missing person forms were circulated.

3. On 28th May, 2010 at about 4:00 PM, the prosecutrix, dropped by the father and uncle of the accused, appeared of her own at Police Station Shahdara. The investigation was, by that time, handed over to W/SI Usha Sagar (PW-13). The prosecutrix was taken to Guru Teg Bahadur (GTB) Hospital along with Lady Constable Anamika (PW-9) for medical examination. Dr. Harpreet Kaur, Senior Resident, examined her and prepared the Medico-Legal Certificate (MLC Ex. PW-12/A) and the sealed parcels of sexual assault evidence were seized vide seizure memo Ex. PW-9/A. On 29th May, 2010, the statement of the prosecutrix under Section 164 CrPC (Ex. PW-7/C) was recorded by Ms. Shivali Sharma, learned Metropolitan Magistrate (PW-7).

4. On 13th July, 2010, the Appellant surrendered before the Court of the learned Metropolitan Magistrate, Karkardooma Courts and was formally arrested vide Arrest Memo Ex. PW-8/A by W/SI Usha Sagar (PW-13) in the presence of Ct. Devesh Kumar (PW-8). He was medically examined at GTB Hospital vide MLC Ex. C-2. The seized medical exhibits were sent to the Forensic Science Laboratory ('FSL'), Rohini by HC Sardar Singh (Pw-10) through Ct. Mukesh (PW-11) and the FSL report (Ex. C-1) dated 9th May, 2011 was collected. Upon completion of the investigation, a charge-sheet was filed against the Appellant under Sections 363, 376 and 506 IPC.

5. Charges were framed against the Appellant under Sections 363, 376, 368 and 506 IPC, to which he pleaded not guilty and claimed trial.

6. To substantiate its case, the prosecution examined thirteen witnesses, namely, PW-1 Rajni (the prosecutrix); PW-2 Ms. Beena Verma (Principal,



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M.C. Primary School, Krishna Nagar, North-A, Delhi); PW-3 ASI Dharam Pal Singh (Duty Officer); PW-4 Amar Singh (brother of the prosecutrix and complainant); PW-5 Smt. Kiran (sister-in-law of the prosecutrix); PW-6 ASI Surender Sharma (the first Investigating Officer); PW-7 Ms. Shivali Sharma (learned Metropolitan Magistrate); PW-8 Ct. Devesh Kumar; PW-9 Lady Ct. Anamika; PW-10 HC Sardar Singh (MHCM); PW-11 Ct. Mukesh; PW-12 Dr. Bindiya Gupta (Assistant Professor, Department of Obstetrics and Gynaecology, GTB Hospital, who proved MLC Ex. PW-12/A prepared by Dr. Harpreet Kaur); and PW-13 W/SI Usha Sagar (the Investigating Officer).

7. Before evaluating the rival contentions, it is necessary to notice the material depositions of the principal witnesses. PW-1 (the prosecutrix) deposed in her examination-in-chief that on 24th May, 2010 at about 5:00 PM she had gone to Budh Bazar Market, Shahdara with her *bhabhi* Kiran (PW-5). According to her, the Appellant, who used to work as a tailor in the shop, came there and forcibly took her away with him initially in a TSR and then in a train to Islam Nagar, Pilakhwa, Uttar Pradesh. The prosecutrix was kept there for four days and was forcibly subjected to sexual intercourse (*'galat kaam'*) by the Appellant. She stated that the Appellant threatened to kill her family members if she disclosed the incident. She further stated that on 28th May, 2010, the father and uncle of the Appellant brought her back and left her near the gate of Police Station Shahdara after her brother informed them over the telephone regarding the lodging of the case.

8. In cross-examination, she stated that there was no crowd at the spot, that besides herself, the accused, and the driver nobody else was present, and that she raised an alarm when being put into the Auto Rickshaw. She



admitted that police officials, RPF and CISF were present near Railway station and metro premises, but stated no police officials/public were present on the route adopted by the Appellant to enter the platform as he took her through a sideway. She admitted that passengers, and railway police were present on the platform where they waited for five minutes, but stated that she did not raise any alarm or seek help from anyone on the platform or inside the passenger train as she was threatened by the accused. She deposed that on reaching Pilakhwa, they walked to the house of the Appellant's aunt (*chachi*), where his uncle and aunt beat her up, and that she was confined in a room for four days, though food was provided. The toilet was inside the house. She stated that her clothes were not torn and there was no external injury on her person, but asserted that "my clothes soak blood." When confronted with the history recorded in MLC Ex. PW-12/A, wherein she had informed the examining doctor that she had absconded from home on 24th May, 2010 due to parental pressure, and returned on her own on 28th May, 2010, and had stated that she had not been subjected to any physical or sexual assault, and also mentioned a previous instance of absconding on 9th May, 2010, the prosecutrix, examined as PW-1, claimed that she gave that history under threat mounted by the Appellant and his family. She admitted that the Appellant worked in her brother's shop for only 15 days, carried no weapon, and had never exhibited dangerous behavior. She also admitted that the Appellant had given her one threatening letter in the shop on the evening of the incident, which got misplaced before she could show it to her brother.

9. PW-2 Ms. Beena Verma, Principal, M.C. Primary School, Krishna Nagar, produced the admission form (Ex. PW-2/A) and the admission register (Ex. PW-2/B), in which the date of birth of the prosecutrix is



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recorded as 1st June, 1993 upon her admission in Class I on 4th July, 1998. In her cross-examination, PW-2 admitted that she cannot say whether the parents have provided any document on the basis of which her date of birth was recorded and that the date of birth disclosed orally by the parents was presumed to be correct.

10. PW-4 Amar Singh (the complainant) deposed that on 24th May, 2010 at 6:30 PM, his wife Kiran (PW-5) and his sister Rajni (PW-1) went to Budh Bazar to buy vegetables where the Appellant, along with an unknown associate, forcibly took Rajni away in a three-wheeler. He stated that on 28th May, 2010, the Appellant himself left Rajni at the police station in the company of his own father and uncle. In cross-examination, he admitted that he had gone to the police station on 24th May, 2010 but no complaint was recorded; that he went to the office of the DCP on 25th May, 2010; and that complaint Ex. PW-4/A was registered on 27th May, 2010. He admitted that in Ex. PW-4/A he had recorded the date of birth of his sister as 1st August, 1992, but conceded in his cross-examination:

“At that time, I was not sure about her date of birth. Her date of birth is of year 1993 ... We are not having any janampatri of my sister.”

PW-4 further admitted that he never made any telephone call to the Appellant's uncle Imamuddin to inquire about his sister.

11. PW-5 Smt. Kiran (sister-in-law of the prosecutrix) deposed that on 25th May, 2010 at about 6:30-7:00 PM, she went to Budh Bazar Market with her *nanad* Rajni (PW-1) and her two young children (aged 3½ and 4½ years). She stated that while she was buying vegetables, two persons came in a TSR, dragged Rajni and took her away. When cross-examined by the learned APP as to the date, she stated that she could not say whether the



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incident took place on 24th May, 2010 or 25th May, 2010. In the cross-examination by the defence, she admitted that the market was highly crowded and was located on the main Mandoli Road and that despite her raising a hue and cry, none from the public intervened.

12. PW-6 ASI Surender Sharma and PW-13 W/SI Usha Sagar deposed that the prosecutrix arrived at the police station herself.

13. PW-12 Dr. Bindiya Gupta proved MLC Ex. PW-12/A prepared by Dr. Harpreet Kaur. The MLC was recorded on 28th May, 2010 at 5:00 PM. The history recorded therein is as under:

“17 Yr. old Female brought by W.P.C. Anamika Singh 1753 NE P.S. Shahdara with alleged H/O having absconded from home on 24-5-10 and returned by herself on 28-5-10 to P.S. Shahdara. Previously also absconded on 09-05-10 for one day. No H/o physical or sexual assault.”

The findings on physical and local examination were recorded as follows:

“Pt conscious cooperative ... Hymen ruptured, old tear ... Introitus easily admits 2 fingers.”

The FSL Report (Ex. C-1) dated 09th May, 2011 detected no semen on any of the exhibits examined, including her outer clothes (jeans Ex. 1a, T-shirt Ex. 1b), undergarments (underwear Ex. 2a-1, brassiere Ex. 2a-2), vaginal secretion swab and slides (Ex. 2l-1, 2l-2a, 2l-2b), cervical mucus swab (Ex. 2k), or pubic hair clippings/combings (Ex. 2h, 2i, 2j), and no blood was detected on her clothes or medical swabs.

14. In his statement recorded under Section 313 Cr.P.C., the Appellant denied all the incriminating evidence and pleaded innocence. He stated:

“When I was working as a tailor in the tailoring shop of brother of the prosecutrix namely Amar Singh, prosecutrix was also working in the said shop. During that period prosecutrix fell down in love with me and she used to pressure me to marry her which I refused



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and when this fact came to the knowledge of the brother of the prosecutrix, he asked me not to attend his tailoring shop. Even thereafter, the prosecutrix used to meet me and for that reason brother of the prosecutrix falsely reported the present case against me.”

The Appellant opted not to lead any defence evidence.

15. Learned counsel for the Appellant submitted that the Trial Court fell into grave error in convicting the Appellant. It was contended that there are material contradictions among the key prosecution witnesses regarding the date and time of the incident (PW-1 deposed that the incident took place at 5:00 PM on 24.05.2010; PW-4 deposed that it took place at about 6:30 PM on 24.05.2010; PW-5 deposed that it took place on 24.05.2010 or 25.05.2010 at about 6:30-7:00 PM), the sequence of the incident (PW-1 deposed that she was kidnapped while returning from the market; PW-5 deposed that it took place while buying vegetables), and the presence of children (PW-5 deposed that her two children aged 3 ½ and 4 ½ years were present; PW-1 deposed that besides her, accused and driver nobody was present whereas PW-5 stated the market was crowded with lots of public persons).

16. It was further submitted in the grounds for appeal that during the alleged transit to Hapur by train, PW-1 met passengers, railway police officers and security guards, but did not seek help from any one nor she narrated the incident to anyone albeit no weapon was shown to her by the Appellant. It was also submitted that the MLC (Ex. PW-12/A) recorded no history of physical or sexual assault and recorded that she left home on 24.05.2010 and returned by herself on 28.05.2010, and previously also absconded on 09.05.2010 for one day. Further, the FSL report (EX.C-1) was negative for blood and semen on all exhibits. On the question of age, it



was submitted that the school register entry (Ex. PW-2/A) rests on unverified oral disclosure by parents, PW-4 admitted uncertainty regarding her date of birth, and no ossification test was conducted and no report was placed on record.

17. Per contra, learned Additional Public Prosecutor for the state submitted that the Trial court rightly convicted the Appellant. It was submitted that the testimony of a victim of sexual assault carries great weight and minor discrepancies arising out of lapse of time should be ignored, relying upon *State of Punjab v. Gurmit Singh*, AIR 1996 SC 1393, *State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550, *State v. Jai Hind*, 2012 VI AD (Delhi) 170, and *Pardeep @ Sonu v. State*, 2011 (2) JCC 1031

18. So far as the allegations of sexual assault, kidnapping and criminal intimidation are concerned, the case of the prosecution rests on the testimony of the prosecutrix (PW-1) alone; PW-5 speaks only of the alleged forcible taking away, and the remaining witnesses are formal or speak of steps taken thereafter. The question that arises is whether the testimony of the prosecutrix is of such a quality that a conviction can safely be founded upon it and, if it is not, whether the medical, forensic and documentary evidence lends the assurance required. The connected question is whether the prosecution has proved that the prosecutrix was a minor on the date of the occurrence.

19. At the outset, this Court finds that the learned Trial Court misdirected itself in its appreciation of the principle regarding the uncorroborated testimony of a prosecutrix. The decisions relied upon by the Trial Court, including *Gurmit Singh*, *Jai Hind*, and *Pardeep @ Sonu* (supra), affirm that a conviction may rest on the sole testimony of the



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prosecutrix where such testimony inspires confidence, and that minor discrepancies do not, by themselves, discredit an otherwise reliable case. The said principle, however, is one governing the appreciation of evidence and cannot be understood as dispensing with testing the intrinsic reliability of the testimony. The version of the prosecutrix must necessarily be assessed in the backdrop of the entire evidence on record.

20. It is well settled that a conviction for rape can rest on the sole testimony of the prosecutrix, but only if that testimony inspires confidence and is found to be impeccable and reliable. The question, therefore, is not whether corroboration is mandatory, but whether the testimony is of such quality as to safely sustain a conviction on its own. In **Rai Sandeep v. State (NCT of Delhi)**, (2012) 8 SCC 21, the Supreme Court, explained this standard while considering what may constitute a “sterling witness”, observing as under:

“22. ... In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to



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the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

21. In **Krishan Kumar Malik v. State of Haryana**, (2011) 7 SCC 130, it was held that the solitary evidence of the prosecutrix is sufficient to hold the accused guilty provided it inspires confidence and appears to be absolutely trustworthy, unblemished and of sterling quality, and the same was also ensued in **Ganesan v. State**, (2020) 10 SCC 573. Further, in **Santosh Prasad v. State of Bihar**, (2020) 3 SCC 443, the Hon’ble Supreme Court, after noticing the above decision in **Krishan** (*supra*), observed that there can be a conviction solely on the evidence of the prosecutrix, ‘However, the evidence must be reliable and trustworthy’, and, finding that the prosecutrix had failed to pass any of the tests of a sterling witness and that the medical and FSL reports did not support the prosecution, gave the benefit of doubt to the accused. It is on this touchstone that the testimony of PW-1 has to be examined.

22. The first parameter is the consistency of the version from the starting point till the end. The manner in which the prosecutrix was allegedly taken away is the foundation of the charge under Sections 363, 366 and 368 IPC. As noticed above, the version of PW-1 is not in consonance with the



versions of the other witnesses. As to the time of the incident, PW-1 places it at 5:00 PM, PW-4 at 6:30 PM and PW-5 at 6:30 PM to 7:00 PM, the latter also giving the date as 25th May, 2010 in her examination-in-chief although the complaint and the prosecution's case place the incident on 24th May, 2010. PW-1 says that she was taken while returning after purchasing vegetables; PW-5 says it was while they were purchasing vegetables. PW-1 stated that there was no crowd at the spot from where she was taken and that no one else was present except herself, the Appellant and the TSR driver, whereas PW-5, the only other witness to the alleged forcible taking, stated that the vegetable market was situated on the main road as well as in the *gali* and was crowded with public persons, and that her two minor children aged 3½ and 4½ years were also with them, a fact omitted by both PW-1 and PW-4. This Court is conscious that minor discrepancies in the matter of timing can be there and expected. However, these are not confined to the time. They relate to whether the spot was crowded, who was present and at which stage the incident happened. It is on these particulars, which lie at the core of the alleged forcible taking away, that the sole eyewitness other than the prosecutrix fails to support her. The requirement of **Rai Sandeep** (*supra*) that the version should consistently match with that of every other witness is not met.

23. The conduct of the prosecutrix throughout the alleged episode is the next aspect that deserves scrutiny. According to PW-1, she was taken at about 5:00 PM from Budh Bazar Market, Mandoli Road, a weekly market on the main road which, as PW-5 admitted, was crowded. She was made to sit in a TSR which travelled for about 15 minutes to Shahdara Railway Station. While PW-1 admits in cross examination that she raised an initial alarm when being put into the TSR, she admitted that the driver did not



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oppose or intervene, and the auto rickshaw proceeded unhindered through public roads. She admitted in cross-examination that CISF and RPF personnel were present near the station and the Metro premises, though she explained that no police officials were present along the specific sideway route adopted by the Appellant to enter the platform. She further admitted that passengers were present on the platform where they waited for about five minutes, and that they thereafter boarded a passenger train for Pilakhwa, where railway police were also present and the train stopped at intermediate stations. Yet, at none of these stages did she raise an alarm or seek assistance from any of the persons around her. Her explanation for remaining silent was that a threat had been extended to her. No specific threat of any kind was mentioned by her while explaining her conduct during the journey and at the various public places, except for the threat to kill her family, which was stated in the context of her being asked what she meant by “*galat kaam*”. Thus, she merely referred to a threat, without stating what that threat was or in what manner it operated upon her. Further, on arriving at Pilakhwa at about 8:30 PM, they covered the distance to the house of the aunt of the Appellant on foot. She stayed at Islam Nagar, Pilakhwa, for four days, in a house where the toilet was inside, and thereafter she was brought back to Delhi by the father and uncle of the accused in a train. Even at this stage, she did not ask for help or raise any alarm. She deposed:

“I did not ask for help to any railway officials or passengers as I was threatened by uncle and father also not to disclose the matter to anyone.”

Throughout this journey, spread over several hours and across public roads, public conveyances, a railway platform, a passenger train, as



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well as during her stay and return to Delhi, she did not raise an alarm to any co-passenger or approach any of the uniformed personnel present at the station, nor did she make any effort to flee or to attract attention.

24. In **State Govt. of NCT of Delhi v. Ajay Kumar Yadav**, 2025 SCC OnLine Del 6493 the Court while dealing with an alleged forcible abduction of a young female through public transport, observed:

“...that she and accused had gone to ISBT in a local bus and that from there, they had gone to Farrukhabad, Uttar Pradesh in a State Transport Bus. She also admitted that there were other passengers in the buses and that she did not raise any alarm. Though she volunteered that accused had seduced her with his ‘sweet talks’, her such stand does not seem to be inspiring enough. Even when she stayed with accused in said village, she did not raise any alarm. All these things gather significance as she even admitted in witness box that there used to be quarrel between their families and that the reason behind such quarrel was her constant visits to the house of accused.”

25. Further in **Raju v. State**, 2025 SCC OnLine Del 6361 the Court observed:

“60. The fact remains that the testimony of ‘Miss A’ does not seem to be of sterling quality. If the accused had any malafide intention and wanted to kidnap her and wanted to take her away in a forcible manner, he would have, rather, done the same in a clandestine manner and would not have taken her in public transport to various places including Mathura and Chandigarh. Moreover, if, at all, the intention of the accused was other than bonafide, he would have certainly not taken her to the house of his own close relative... Therefore, quite palpably, it seems to be a case of elopement and consensual relationship.”

“69. In Tameezuddin @ Tammu v. State (NCT of Delhi): (2009) 15 SCC 566, Supreme Court observed that though it was true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that such evidence had to be accepted even if the story was improbable and belied logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. In Rajak Mohammad (supra), the prosecutrix moved freely with the accused for around 12 days and despite the fact she came in contact of many persons at



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different times, she made no complaint of any criminal act on the part of accused and, therefore, the Supreme Court was compelled to hold that the possibility of her being a consenting party could not be ruled out. Reference in this regard be also made to Tilku alias Tilak Singh v. State of Uttarakhand:2025 SCC OnLine SC 353 and Shyam v. State of Maharashtra: 1995 SCC (Cri) 851.

26. In **Atiqur Rehman v. Govt. of NCT of Delhi**, 2016 SCC OnLine Del 6289, a learned Single Judge of this Court likewise found, on the facts of that case, that the prosecutrix, who had remained in the company of the accused at a faraway place for several days without at any stage raising an alarm or complaining to anyone, and who had no injury or violent mark on her person, was a consenting party, and observed that there was no cogent reason for her to remain mum for a considerable time.

27. The observations in these decisions apply with considerable force to the present case. If the Appellant had entertained the intention of forcibly abducting and confining the prosecutrix against her will, it defies ordinary human experience that he would carry her in daylight through a busy market, hire a public auto-rickshaw, wait on a railway platform where security personnel were present, travel by a public train, walk with her through the streets of Pilakhwa and take her to the residence of his own aunt and uncle. The finding of the Trial Court that the silence of the prosecutrix during the entire multi-stage journey was excused by a general threat cannot be sustained, for the threat itself, as discussed hereinabove, is not borne out by the record. The total absence of any protest, struggle or outcry at any of the points of transit, when viewed in the light of the above decisions, gives rise to a strong probability that the prosecutrix accompanied the Appellant of her own volition. This Court, however, is not required to, and does not, record any positive finding beyond this; it is



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enough that the prosecution has failed to prove, beyond reasonable doubt, that she was forcibly taken away and confined.

28. There is a further contradiction in respect of the manner of return. PW-1 stated that she was brought back by the father and uncle of the Appellant and left outside the gate of PS Shahdara after her brother (PW-4) had contacted them over the telephone. PW-4 deposed in his examination-in-chief on 09.01.2012 that:

“On 28.5.2010, accused himself had left my sister Rajni in the PS in the company of his father and chacha,”

But in cross examination on 10.12.2012 stated that he was informed by his sister after her recovery that she was left outside the PS by the chacha and father of the accused. Further, PW-4, admitted in cross-examination that:

“I did not have the village address of the accused ... I had not made a call to Imamuddin, chacha of the accused to ask him whether my sister had been brought to his house. There is no question of any answer when I had no conversation with him”.

The brother and sister thus flatly contradict each other regarding the manner of return and the telephonic contact, which is a part of the narrative of the prosecution and not a peripheral detail.

29. The Court now turns to the history recorded in the MLC (Ex. PW-12/A) prepared at GTB Hospital on 28th May, 2010, on the very day of her return, which reads:

“17 Yr. old Female brought by W.P.C. Anamika Singh 1753 NE P.S. Shahdara with alleged H/O having absconded from home on 24-5-10 and returned by herself on 28-5-10 to P.S. Shahdara. Pt. gives H/O having absconded due to parental pressure. No H/O sexual contact. Giving h/o being in N. Delhi railway station. No H/O physical or sexual assault. Pt. had previously absconded on 9-5-10 for one day and came back by herself.”



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30. This is the earliest account of the prosecutrix to an independent medical officer in a hospital, made before her statements under Sections 161 and 164 Cr.P.C. were recorded. It attributes her leaving home to 'parental pressure', states that she returned by herself, records that she had left home on an earlier occasion also, and, in terms, records no history of sexual contact or of physical or sexual assault. Significantly, this history was recorded when she had already returned and was brought to the hospital by Lady Constable Anamika Singh (PW-9) under official police escort, with her brother (PW-4) present outside the hospital, while the accused was nowhere present (having surrendered only on 13th July, 2010). Thus, being under police protection and away from the accused, her explicit statement to the doctor disclaiming any physical or sexual assault and attributing her departure to parental pressure carries substantial weight. None of this is consistent with the case that she was kidnapped by force, confined and raped, and it is wholly consistent with the Appellant's plea that he has been falsely implicated.

31. The prosecutrix sought to explain this in Court by stating that the Appellant had threatened to kill her family. The Trial Court, in paragraph 25 of the impugned judgment, accepted this explanation. This Court is unable to concur. When the medical examination took place, the prosecutrix was already in the company of the police and away from the accused, who was not present at the hospital. In her cross-examination, the prosecutrix conceded that the Appellant had worked at her brother's tailoring shop for 15 days before the incident and that 'during those days he had not done anything which suggested that he is a dangerous man'. No weapon was shown or recovered, no physical force during the multi-day transit was described, and she was speaking to a doctor in a hospital, not in



the presence of the Appellant. A threat of such an unsupported nature cannot reasonably explain why she categorically denied any assault to an independent medical officer while under police protection, and it is equally unable to explain her failure to seek help at the railway station, in the train or in the streets. The explanation has the appearance of an afterthought, offered to account for the earlier disclaimers. In ***Ved Pal v. State of Haryana***, 2023 SCC OnLine SC 1611, the Supreme Court, while noticing that a conviction under Section 376 IPC can be recorded on the sole testimony of the prosecutrix if it is trustworthy, cogent and reliable, gave the benefit of doubt where the evidence of the prosecutrix was not borne out by the surrounding circumstances and the medical and FSL evidence did not support the prosecution's case. It applies with equal force here.

32. This brings the Court to the medical and forensic evidence. In her deposition, the prosecutrix stated that in the course of the alleged sexual assault her clothes were soaked with blood. She deposed as follows:

"My clothes were not torn at the time of commission of rape. I was wearing the clothes which I have identified today in the court as Ex.PW1/P1 to Ex.PW1/P4. My arm was twisted by the accused but there was no external injury on my person. My clothes soak blood."

The MLC (Ex. PW-12/A), proved by Dr. Bindiya Gupta (PW-12), on the other hand, records on local examination 'hymen ruptured, old tear ... Introitus easily admits 2 fingers', and the FSL Report (Ex. C-1) dated 09th May, 2011 detected no blood on any of her garments or swabs (blood being detected solely on the following exhibits; Ex. 2q, Ex. 2r-1, Ex. 4, namely:

*"2q: Dark brown foul smelling liquid kept in two tubes & then in an envelope marked 'Step 14 "Blood Collection of victim."'
2r-1: Dark brown foul smelling liquid kept in a tube.
4: Gauze cloth piece having brown stains described as blood sample").*



Further, no semen was detected on any of the exhibits, including her undergarments (underwear Ex. 2a-1, brassiere Ex. 2a-2), outer clothes (jeans Ex. 1a, T-shirt Ex. 1b), vaginal secretion swab and slides (Ex. 2l-1, 2l-2a, 2l-2b), cervical mucus swab (Ex. 2k), pubic hair clips/combing (Ex. 2h, 2i, 2j), nail scrapings (Ex. 2e), or oral/rectal swabs (Ex. 2p-1, 2p-2a, 2p-2b, 2o-1, 2o-2a, 2o-2b).

33. Therefore, the testimony of the prosecutrix that her garments were soaked in blood is thus wholly disproved by the clinical findings as well as by the scientific analysis. It is not a case of mere absence of corroboration but of positive contradiction of the ocular version on a material particular by scientific evidence. In **State v. Irfan**, 2026 SCC OnLine Del 1898, where the prosecutrix had made the same assertion of bleeding, the Division Bench held, after noticing that the MLC recorded no bleeding and the FSL report detected no blood or semen, as under:

“This inconsistency between the ocular testimony, medical findings, and forensic evidence strikes at the root of the prosecution case and renders the testimony of the prosecutrix unreliable on a material aspect.”

34. On the pivotal issue of age, the prosecution relied on the admission register of MCD Primary School, Krishna Nagar (Ex. PW-2/A and Ex. PW-2/B), proved through the Principal, Ms. Beena Verma (PW-2), reflecting the date of birth of the prosecutrix as 1st June, 1993, on the basis of which the Trial Court held her to be aged 16 years, 11 months and 23 days on 24th May, 2010. In cross-examination, PW-2 admitted:

‘I cannot say if any document was produced by the parents of the prosecutrix at the time of admission in the school on the basis of which her date of birth was recorded ... Since the forms were filled by the parents, the date of birth disclosed by them was presumed to be correct. It is correct that we do not have any document on our



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record except the records that I have produced today showing her date of birth’.

Thus, the entry rests on nothing more than the oral disclosure of the parents at the time of admission.

35. The parents of the prosecutrix were not examined to prove her date of birth. The only member of the family examined, PW-4, admitted in cross-examination:

“Contents of Ex. PW4/A are in my handwriting and I had written the date of birth of my sister as 1.8.1992. However, at that time I was not sure about her date of birth. Her date of birth is of year 1993. She was born in the village ... We are not having any janampatri of my sister”.

The complainant thus himself recorded a date of birth in the complaint which differs from that in the school register and candidly admitted his uncertainty. The record thus reveals differing age particulars in the brother’s complaint (Ex. PW-4/A giving 1.8.1992), the prosecutrix’s deposition (PW-1 stating ‘aged approximately 18 years’), her 164 statement (Ex. PW-7 stating 17 years), and the MLC (Ex. PW-12/A) recording her age as 17 years. Furthermore, no bone age or ossification test was carried out, which ought to have been conducted in these circumstances. In **State v. Sonu**, 2026 SCC OnLine Del 3614, the court placing reliance on **State v. Tofil Ahmed**, 2024 SCC OnLine Del 5403 and **State v. Rajiv @ Raju**, CRL.L.P. 69/2023 decided by Delhi High Court on 24.09.2024, states that:

“In the absence of any other document to establish the date of birth, mere recording in the register of a school would not be sufficient to conclusively establish the date of birth. Thus, where there was a doubt, an ossification test ought to have been conducted, which has not been conducted in the present case.”



The observation assumes significance in the present case where the date of birth recorded in the school register is not supported by any document produced at the time of admission, neither parent was examined, and the complainant himself gave a different date of birth in the complaint while admitting that he was not certain of it. In these circumstances, and in view of the conflicting age particulars on record, the school register cannot, by itself, be treated as conclusive proof of the prosecutrix's age.

36. The Trial Court further treated the defence suggestions put to the witnesses as an indirect admission of guilt. This approach is not sustainable. The Appellant has consistently maintained that he has been falsely implicated because he had declined the proposal of marriage of the prosecutrix, following which her brother asked him to stop coming to the shop. The prosecutrix herself admitted that she worked alongside the Appellant in the same tailoring shop, on machines owned by her brother, which shows that there was sufficient daily proximity between the two. This Court does not find it necessary to hold that the defence has been established, for the burden of proving the guilt of the accused beyond reasonable doubt lies on the prosecution throughout and does not shift. As observed by the Supreme court in **Raju and others v. State of M.P** (2008) 15 SCC 133, while the testimony of the prosecutrix is evaluated with care, her statement cannot be presumed to be gospel truth without exception, and the court must guard against the possibility of false implication. Thus, the defence set up by the Appellant is a plausible one and finds support in the surrounding circumstances in the prosecution's own record, namely the history recorded in the MLC of the prosecutrix leaving home due to parental pressure, the admitted acquaintance between the two, the



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movement in public places without any protest, and the infirmities in the medical, forensic and documentary evidence.

37. In the cumulative light of the foregoing discussion, the testimony of the prosecutrix is rendered inherently improbable and untrustworthy. The material infirmities on record namely, the earliest history recorded in MLC Ex. PW-12/A wherein the prosecutrix denied any physical or sexual assault and attributed her leaving home to parental pressure, recorded while accompanied by the police in the absence of the accused; the negative FSL report (Ex. C-1) directly disproving her assertion of being soaked in blood; the unverified school admission entry beset with conflicting age particulars; the contradictions on the manner of the alleged abduction/kidnapping are neither trivial nor ordinary variations attributable to trauma or the passage of time. Crucially, her conduct in traveling from one public place to another, spanning an auto-rickshaw ride through public roads, waiting on an open railway platform, and traveling in a passenger train without raising an alarm or seeking assistance, despite ample opportunity and the presence of railway police, and co-passengers, clearly points towards her voluntarily accompanying the Appellant rather than taking/enticing or forcibly abducting. These foundational infirmities strike at the root of the prosecution's case and create a reasonable doubt as to the guilt of the Appellant. The learned Trial Court fell into grave error in brushing these infirmities aside. The Appellant is, accordingly, entitled to the benefit of doubt.

38. In view of the above discussion, this Court holds that the prosecution has failed to prove the charges against the Appellant under Sections 363, 368 read with Section 366, 376 and 506 IPC beyond reasonable doubt. The



learned Trial Court committed a manifest error in the appreciation of the evidence and misapplied the governing principles.

39. The appeal is, accordingly, allowed. The impugned judgment of conviction dated 19th July, 2013 and the order on sentence dated 24th July, 2013, are set aside. The Appellant Shahbuddin is acquitted of all the charges.

40. The Appellant, who is on bail pursuant to the orders of this Court, is discharged from his bail bonds and surety bonds. Pending applications, if any, stand disposed of. Trial Court Record be sent back along with a copy of this judgment.

VIMAL KUMAR YADAV, J

SEPTEMBER 23, 2026/vs