



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

Date of reserving Judgment: 9th March, 2026

Date of decision: 7th April, 2026

IN THE MATTER OF:

+ CRL.A. 1469/2010 & CRL.M.(BAIL) 2542/2025

SUBHASH @ BABLOO

.....Appellant

Through: Mr. Chetan Bhardwaj & Mr. Priyal Bhardwaj, Advs.

versus

STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Satinder Singh Bawa, APP for the State with SI Priyanta, PS Lodhi Colony.

Mr. Sanjay Gupta (DHCLSC) for prosecutrix.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Appellant Subhash @ Babloo was held guilty under Section 363/366/376 Indian Penal Code ('IPC') vide the impugned judgment dated 10.08.2010 and was sentenced to undergo Rigorous Imprisonment (RI) through the order on sentence dated 11.08.2010, whereby RI for a period of two years and fine of Rs. 2,000/- was awarded under Section 363 IPC, in default of payment of fine, he was directed to undergo Simple Imprisonment (SI) for one month. Whereas, Appellant was awarded RI for a period of three years and fine of Rs. 2,000/- under Section 366 IPC, with rider that in default of payment of fine, he shall undergo SI for a period of 2 months and



finally, he was sentenced to undergo RI for a period of 7 years and fine of Rs. 5,000/- for the offence under Section 376 IPC, in default of payment of fine, he was sentenced to undergo simple imprisonment for a period of 3 months.

2. Assailing the aforesaid judgment of conviction and the sentence awarded, the Appellant preferred the instant appeal, which is hereby disposed of.

3. The indispensable facts are required to be looked into before adverting into the details and intricacies of the contentions raised by the rival parties. The Appellant and the prosecutrix were known to each other. The conduct of the prosecutrix reflect that she had reposed a lot of faith in the Appellant, inasmuch as when she was scolded by her mother on being late from the tuition on 06.03.2008 and apprehending that her brother would also scold her, she straight away went to the Appellant and insisted that he should marry her and that she would not go back to her place as stated in the statement under Section 164 Cr.P.C. However, there is a different version too, according to which it was the Appellant, who kidnapped her and took the victim to his native place in Kangra, Himachal Pradesh, where he married her in a temple and also had sexual intercourse.

4. The matter was reported to the police by the brother of the prosecutrix when she did not return home on 06.03.2008. The complaint lodged by the brother of the prosecutrix, namely, Rafiq Ahmed, resulted in the registration of FIR No. 56/2008, under Section 363 IPC. One phone call from the victim, seemingly gave a breakthrough in the instant case and the police team, along with the brother of the prosecutrix reached Himachal Pradesh, at the native place of the Appellant, from where the Appellant was arrested and the prosecutrix was recovered on 12.03.2008 and both were brought to Delhi.



5. Investigation was carried out including medical examination of the victim and the Appellant and other incidentals, that is, preparation of various documents, seizure of photos, recording of statements etc. and finally chargesheet was filed under Section 363/366/376 IPC.

6. To the charges framed under Section 363/366/376 IPC, the Appellant pleaded not guilty. Prosecution came up with examination of 14 witnesses, thereafter, statement of the accused was recorded in which he not only clarified, but gave his version also. According to him, the prosecutrix and the Appellant were in love with each other and on the insistence of the prosecutrix, the Appellant took her to his native place and married her. Whatever happened had happened with the consent and insistence of prosecutrix. He opted to bring evidence in his defence and apart from his father, examined himself, as DW-1 and DW-2 respectively.

7. As aforesaid, the trial resulted in conviction of the Appellant followed by the sentence as detailed at the outset. Assailing the impugned judgement, the main plank of the Appellant is that there was no element of force, coercion or any malafide on the part of the Appellant, since it was the insistence of the prosecutrix, which in a way, forced the Appellant to take the prosecutrix to his native place. He did not establish physical relations with the prosecutrix prior to the marriage, which took place in a very simple ceremony in a temple, and thereafter, only he had sexual intercourse with the prosecutrix, as husband and wife. It is, thus, submitted that the Appellant cannot be held responsible. It is asserted that the prosecutrix portrayed her age as 19 years and that is why the marriage took place.

8. Primarily, the challenge to the impugned judgment is on *two counts* that the prosecutrix was not a minor, rather major, and thus, was capable to take her decisions. Apart from that, the aspect which has been highlighted by



learned counsel for the Appellant is that the narration on behalf of the prosecutrix is so improbable that it cannot be believed and acted upon. The prosecutrix had taken a clear and categorical stand in her statement under Section 164 Cr.P.C., which totally supports the Appellant and his version, whereas, under the influence of her family and pressure from the society, it being an inter-religious marriage, the prosecutrix took the stand against the Appellant before the Court during trial. However, her testimony is indicative of the fact that what had been stated by her in her statement under Section 164 Cr.P.C., is, verily, the truth. Learned Counsel for the Appellant had placed reliance on the following Judgments in order to support and strengthen his contentions:-

- (a) ***Jyoti Prakash Rai @ Jyoti Prakash vs. State of Bihar***, 2008 (15) SCC 223;
- (b) ***Shweta Gulati & Anr. vs. The State of Govt. of NCT of Delhi***, (2018) SCC Online Del 10448;
- (c) ***P.Yuvaprakash vs. State Rep. By Inspector of Police*** (2023), SCC Online SC 846; and
- (d) ***Ram Suresh Singh vs. Prabhat Singh @ Chhotu Singh & Anr.***, AIR 2009 Supreme Court 2805.

9. Learned APP for the State, on the other hand, came up with the plea that the consent of the prosecutrix is immaterial in view of the fact that she is a minor as can be seen from the records of the schools, where the prosecutrix studied. In any case, even if it is presumed that she had herself gone with the Appellant, still it does not give any licence to the Appellant to rape her. In these circumstances, learned APP for the State stood by the impugned judgment and asserted that the same is based upon the evidence on record and the applicable law.



10. The two aspects hold the key to the instant case. First, the *age* of the prosecutrix as to whether she was a minor or major at the relevant time? Second aspect is, how *reliable and credible* her testimony is? As regards the age, the guiding principle is under Section 94 of the Juvenile Justice Act, 2015, which almost akin to Rule 12 of Juvenile Justice Rules, 2007 which provides as under:-

“Section 94. Presumption and determination of age.

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

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

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

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

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

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

11. However, in a recent judgment Hon’ble Supreme Court fallen back on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules,



2007 *qua* age determination in ***K.P. Kirankumar @ Kiran vs. State by Peenaya Police*** CrI. Appeal No.5614/2025 arising out of SLP (CrI.) No.11287/2025 dated 19.12. 2025, the observation made in ***Jarnail Singh v. State of Haryana***, 2013 SCC OnLine SC 507:

“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.”

12. In the absence of certificate from the concerned examination board of 10th standard, the school records can be looked into, but then, as was



provided in Rule 12 of Juvenile Justice (Care and Protection of Children) Rules 2007, the said school should not be 'play school' but should be the first attended school. There seems to be a reason as to why play school has been excluded, but the first attended school has been given importance. The attitude with regard to the play school could not be serious, therefore, that has been ruled out and the first attended school has been given importance. The reason seems to be the fact that the proper schooling commences after the play school. Therefore, it is expected that the relevant records would be correctly and truly incorporated.

13. In the instant case, the date of birth, according to the school records, is from 6th standard. There is no record of the first attended school. It cannot be presumed that the prosecutrix commenced her education from 6th standard onwards. Therefore, the record produced by Admission Incharge of S.G.T.B. Khalsa Girls Sr. Sec. School, Aliganj Lodhi Colony and from Govt. Co-Ed Sr. Secondary School Laxmi Bai Nagar, do not fit in the bill of the first attended school. As such, the date of birth i.e. 12.12.1993 coming in the school records cannot be taken as the correct date of birth and that seems to be the reason why the Investigating Agency also resorted to the 'ossification test'. So for all practical purposes, it is the result of the '*ossification test*', which is required to be looked into and relied upon.

14. The prosecution has examined PW-9 Naveen Sharma, TGT Maths, Govt. Co-Ed Senior Secondary School, Laxmi Bai Nagar, New Delhi and PW-10 Smt. Tajinder Kaur, Admission Incharge, GTB Khalsa Girls Senior School, Aliganj, Lodhi Colony, New Delhi, to show that the date of birth of the prosecutrix was 12.12.1993. PW-9 Naveen Sharma came with the requisite record i.e. Admission and Withdrawal Register of the school, according to which the prosecutrix was admitted in the school on 14.07.2004



in the 6th Standard and on 17.07.2006, her name was struck off from the Rolls of the school. As per the school records, her date of birth is 12.12.1993 as could be seen from Ex.PW.9/A. On the basis of the School Leaving Certificate issued by the Govt. Co-Ed Senior Secondary School, Laxmi Bai Nagar, the prosecutrix was admitted and was studying in the 7th Standard in S.G.T.B Khalsa. Sr. Sec. School and was a bonafide student of class 7th as on 11.03.2008. PW-10 Smt. Tajinder Kaur also endorsed the fact deposed by PW-9 about the date of birth being 12.12.1993. The relevant records brought by her of the Admission and Withdrawal Register are Ex.PW10/A and School Leaving Certificate is Ex.PW.10/B. The certificate issued by the Principal, S.G.T.B Khalsa. Sr. Sec. School, Aliganj, Lodhi Colony, New Delhi is Ex.PW10/C. Thus, according to the evidence on record, the date of birth of prosecutrix was 12.12.1993 and accordingly her age as on the date of offence i.e. 06.03.2008 was around 15 years.

15. The conjoint reading of the statement of PW-9 Naveen and PW-10 Smt. Tajinder Kaur, reveals that the prosecutrix was in 6th standard in 2004 and took admission in S.G.T.B. Khalsa Sr. Sec. School, Aliganj, Lodhi Colony, New Delhi in 7th standard in the year 2008. No other inference can be deduced from these facts except that the prosecutrix must have flunked in 6th standard. Incidentally, this falsifies a part of the deposition of PW-3 Rafiq Ahmed, when he says that the sister did not fail in any class. The date with regard to date of birth is not credible in this country unless based on sound documentary evidence. To avoid such situation where a child is not progressing normally or in order to tackle unforeseen circumstances, the parents resort to incorrect date of birth, so that the progress in education and progress in age may go hand in hand. The appearance of the prosecutrix in the photos indicates that her age was more than what has been portrayed by



the prosecution.

16. However, the Investigating Agency did not stop therein so far as determination of the age of the prosecutrix is concerned and got the 'Ossification Test' of the prosecutrix done. As deposed by PW-5 Bhuwan Ram i.e. Record Clerk from AIIMS. The MLC of the prosecutrix i.e. Ex.PW5/A was prepared by Dr. B.L. Chaudhary and Dr. Nidhi, both of whom were not available in the hospital. He has also brought the X-Ray report bearing No. 79826 dated 20.03.2008, which was examined by Dr. P. Rajni Shankar and according to the Bone Age Test, the age of the prosecutrix was more than 15.03 years and less than 16.04 years.

17. Determination of the age is very crucial for the outcome of the cases of such nature, where there are two sets of evidence, with regard to the age of the victim, one is her date of birth on the basis of school records. Whereas, the other is the outcome of the 'ossification test'. As per the school records, the age of the victim was 14 years, 2 months and 23 days, at the relevant time.

18. What is the basis of recording the date of birth in the school is not clear, as nothing has been brought on record in this context. It may be true that there was no occasion with the parents of the prosecutrix to record any incorrect date of birth, as they could not have perceived that such situation would come in future where the age would become a very crucial factor. Nevertheless, the determination of age should be on a sound basis. In the absence of any document, the deposition or the material to fix the date of birth as 12.12.1993, makes it a bit shaky and that seems to be the reason why the investigating agency went for the ossification test.

19. The School Leaving Certificate and the Admission Withdrawal Register should not be taken as gospel truth, unless the basis of furnishing



such an age is clearly noted in the records. In the instant case, there appears to be nothing except that it was simply recorded in the school records. However, in the cross-examination of the brother of the prosecutrix, PW-3 Rafiq Ahmed, it has come on record that their mother had filed an Affidavit regarding the age of the prosecutrix. The relevant part of the testimony is reproduced as under:-

“My sister Rukaiya had been studying in 7th class. She did not fail in any class. At the time of her admission, I went along with my mother to the school of my sister. At the time of admission, affidavit of my mother was filed regarding age of my sister. No birth certificate or its copy was given. The birth certificate obtained was misplaced.”

20. The affidavit as referred by PW-3 Rafiq Ahmed, has not seen the light of the day. As such, the date of birth given in the school records, cannot be accepted as the correct date of birth, given the tendency in this country to record a date of birth, which suits the parents or the circumstances. It is a settled proposition of law that entries in school records are neither conclusive nor foolproof proof of date of birth and can only be treated as corroborative evidence, subject to proof of its source and authenticity.

21. This brings the ossification test report into contention. According to the ossification test report Ex.PW-5/C, the age of the prosecutrix was more than 15.3 years and less than 16.4 years. In this context, the legal proposition is that the age reflected in the ossification test is not a definite proof and, therefore, margin of error of 2 years (+ / -) has been recognized. Reference in this context can be made to the two leading cases on the subject relied upon by the Appellant in ***Jyoti Prakash Rai @ Jyoti Prakash's case*** (*supra*) and ***Ram Suresh Singh's case*** (*supra*).

22. This may be read in favour of the victim too if the circumstances so



warrant. The margin of error is to be read in favour of the Accused / Appellant. By this standard, the age of the prosecutrix can be taken as 18.4 years on the relevant date as the range available is between 13.3 years to 18.4 years. Once the prosecutrix is held to be 18 years plus, she becomes capable of giving 'consent' and may have impact on the offence(s), for which the Appellant has been held guilty and convicted. Incidentally, the Ossification test is not a conclusive test and proof of age and based on approximation. In such circumstances, it is strange that the doctor has opined the age in months too, that too with a kind of certainty about even number of months.

23. The contentions raised on behalf of the learned APP for the State that the consent was missing and even if it is presumed that the prosecutrix was major and was capable of giving consent, still outcome remains unaltered in view of substantive statement made before the Court. It is submitted that the prosecutrix, in a way, was lured, intoxicated and was taken to Himachal Pradesh by the Appellant, where he married the prosecutrix against her will and had established physical relations, that too without the consent and against the will of the prosecutrix, as has been categorically deposed by the prosecutrix.

24. Learned counsel for the Appellant on the other hand, has submitted that the true version of the prosecutrix is the one given in her statement recorded under section 164 Cr.P.C. In addition to that, it has been pointed out that the testimony of the prosecutrix is so improbable that it cannot be trusted at all, to hold the Appellant guilty.

25. When the evidence of the prosecutrix is tested on the parameters of credibility, truthfulness and trustworthiness, then it starts falling apart. The prosecutrix and the Appellant were known to each other prior to the date of



incident and were probably having some sort of an amorous relationship. The prosecutrix was spotted with Appellant in his car by the brother-in-law (Jija) of the prosecutrix, as deposed by PW-3 Rafiq, that too for 2-3 months prior to incident (Ex.PW3/A). The tone and tenor of her testimony reflects that she trusted the Appellant so much that she went out to him in order to save herself from being scolded by her brother Rafiq, of which she was apprehensive of after being scolded by her mother. The testimony further reflects that the prosecutrix returned late from her tuition classes on 06.03.2008, and she presumably, was moving around with the Appellant, as she deposed before who asked the Appellant to drop her to her home, albeit from tuition as she got late. The disclosure statement of Appellant and statement of prosecutrix under section 161 Cr.P.C., albeit both not falling in the definition of evidence but can be read for the Appellant, also reflect that the Appellant and prosecutrix used to move around together in the car of the Appellant.

26. Additionally, then again, even if it is presumed that the prosecutrix did not voluntarily accompany the Appellant, then how she reached a small village in Kangra, Himachal Pradesh from Delhi. She has deposed that the Appellant had given her something to drink after which she became unconscious and regained her consciousness when she reached Himachal Pradesh. In such circumstances, how the Appellant managed to board the bus with the prosecutrix in an unconscious condition? In a public transport, such a situation is definitely going to attract the attention of the co-passengers and the conductor, etc. There must have been some cogent explanation to the fellow passengers, else every likelihood of the matter being reported to the police available at the Bus Addas / Depot or at the border check posts on the way from Delhi to Himachal Pradesh was there.



This factor renders the testimony of the victim unbelievable that she was moved to Himachal Pradesh under some sort of intoxication. The only possibility, thus, is the one as has been told before the learned Metropolitan Magistrate under Section 164 Cr.P.C., that she herself accompanied the Appellant. She being major, as observed hereinbefore and was voluntarily going with the Appellant, therefore, the findings qua the offences under Section 363 and 366 IPC come under cloud.

27. It is settled principle of law that in case of sexual offence(s) against the females, the testimony of the victim alone is sufficient to nail down the accused provided it is of sterling quality, trustworthy, impeccable and credible. In such a scenario, the testimony of the victim is required to be probed very minutely as that testimony even without corroboration has the potential to hold a person guilty. Reference in this context can be made to the judgments in *Vijay vs. State of M.P.*, (2010) 8 SCC 191 and *Sadashiv Ramrao Hadbe vs. State of Maharashtra*, (2006) 10 SCC 92. In *Raju vs. State of Madhya Pradesh*, (2008) 15 SCC 133, a word of caution is given while upholding the principle that sole testimony of prosecutrix is sufficient to hold accused guilty by equating her with an injured's testimony. All this stems from the fact that such sort of offences do not have any eye-witness / witness other than the victim. Reference in this context can also made to the following judgments:-

- i. *Vimal Suresh Kamble vs Chaluverapinake Apal S.P. & Anr.*, (2003) 3 SCC 175;
- ii. *Tameezuddin @ Tammu vs. State (N.C.T of Delhi)*, (2009) 15 SCC 566;
- iii. *Narender Kumar vs. State (N.C.T of Delhi)*, (2012) 7 SCC 171; and



iv. ***Mukesh vs. State (N.C.T of Delhi)***, (2017) 6 SCC 1.

28. When the testimony of the victim is dug deep and appreciated by juxtaposing it to the circumstances of the case, the normal human behaviour and conduct in given situation reflected, in the testimony of the prosecutrix, then credibility and trustworthiness of the prosecutrix becomes the biggest casualty. If the statement of the prosecutrix recorded under Section 164 Cr.P.C. is looked into, albeit not a substantive statement but cannot be ignored altogether, then it gives a clean chit to the Appellant as it was the prosecutrix, who after being scolded by her mother went to the Appellant. It was she who, in a way, insisted, that the Appellant should take her away, the Appellant has tried to reason with her by not resorting to elopement, but it was the prosecutrix who stood her ground and kind of forced the Appellant to take her to Himachal Pradesh. On reaching at the house of brother-in-law of the Appellant, the brother-in-law had also condemned both of them for their act of elopement. Statement of the prosecutrix under Section 164 Cr.P.C. further reflects that she got married to the Appellant in a temple and certain photographs are there to that effect which are Ex.PW12/A (6 photographs).

29. The photographs no-where reveal that any act of force or pressure or unwillingness on the part of prosecutrix from being there and participating in the so called marriage ceremony which apparently was nothing but exchange of garlands in the temple. Nevertheless, all this goes on to show that the prosecutrix had an altogether different version before learned Metropolitan Magistrate where she had herself voluntarily given her age as 19 years.

30. However, when she was examined before the Court, she shifted the



entire blame on the Appellant by saying that she was given some stupefying substance in water, as a result of which she became unconscious and regained her consciousness in Himachal Pradesh. The mode of transport used to go to Himachal Pradesh was a public transport (bus). She stated that she was in a way forced to marry the Appellant and on the intervening night of 6th – 7th March, 2008, she was subjected to rape by the Appellant.

31. It is correct that the statement made before the Court during the trial is the substantive statement / evidence, which is relevant for consideration. However, statement made ‘*On Oath*’ before a Magistrate cannot be completely ignored either. It is the comprehensive justice which should be the aim and object of the judicial process. The observations made by Hon’ble Supreme Court can be looked for guidance in *P.Yuvaprakash v. State of T.N.*, (2024) 17 SCC 684:-

“34. The prosecution did not even cross-examine this witness. Having regard to these overall factors, the Court is of the opinion that M’s statement under Section 164CrPC contained a truthful narration of the events. This, in other words, meant that there was no penetrative sexual assault on her. Therefore, the provisions of the Pocso Act will not be applicable in this case. The impugned judgment set aside the charge under Section 366 IPC against the appellant. The charges against him, under Section 6 of the Pocso Act as well as Section 10 of the Prohibition of Child Marriage Act, cannot be sustained; the findings of the courts below i.e. conviction and sentences imposed are, therefore, set aside”.

Similarly, in *State (GNCT of Delhi) vs. Vipin @ Lalla*, CRL.A No. 94/2025 dated 07.01.2025, the Apex Court took into consideration the statement made under Section 164 Cr.P.C.

32. An inference about the trustworthiness or reliability or vice versa can be drawn from the fact that in her cross examination when she talks about her age, she deposed that she had given her age as 19 years, before the



learned Magistrate at the time of her statement under Section 164 Cr.P.C., but immediately clarifies it by saying that she was under pressure from the Appellant and his brother-in-law. The statement of the prosecutrix was recorded on 15.03.2008 and at that time, the Appellant was in police custody as his police custody remand was taken on 13.03.2008 for two days. As has been deposed further by the Investigating Officer PW-4 ASI Ajay Tyagi that on 15.03.2008 the Accused / Appellant was remanded to judicial custody. Evidently, no access was available to the Appellant to reach to the prosecutrix. In such circumstances, how the Appellant could have forced, threatened or influenced the victim / prosecutrix to make a statement, as was made by her. The presence of brother-in-law of the Appellant is not reflected on record. In any case the prosecutrix was in “Nirmal Chaya” a women shelter / home inaccessible to everyone.

33. The aforesaid facts and circumstances, renders the prosecutrix as an ‘untrustworthy and unreliable witness’. Her testimony is full of inherent contradictions and improbable circumstances, therefore, the same cannot be relied upon and certainly is not of sterling quality, as is the requirement of law. There is no other witness on the material aspects. The corroborative piece of evidence could have been the medical examination of the prosecutrix where it has been opined by the doctor that her hymen was not intact. However it has not been clarified as to whether it was a recent tear or an old one. Thus the corroboration is also strictly not there. In the absence of any cogent evidence, the doubt and suspicion is bound to crop up in the version of the prosecution and that goes to the benefit of the Appellant.

34. In view of the aforesaid facts and circumstances, the Appellant cannot be held responsible for the offence(s) for which he has been convicted i.e. under section 363, 366 and 376 IPC.



35. As a result, the appeal is accepted and the same is allowed. The Appellant be released forthwith, if not required in any other case. All the pending application(s), if any, also stand disposed of.

36. Copy of this judgment be sent to Prison Authorities as well as to the concerned trial court, for necessary compliance.

VIMAL KUMAR YADAV, J

APRIL 07, 2026/bj/tng