


**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Criminal Appeal (DB) No. 38/2019

Surajbhan S/o Shri Nawal Kishore, R/o Vill. Sop PS And Teh.
Nadoti Dist. Karauli Raj. (Presently Confined In Central Jail Kota)

----Appellant

Versus

State Of Rajasthan Through PP.

----Respondent

For Appellant(s)	:	:	Shri Rahul Agrawal
For Respondent(s)	:	:	Shri Amit Kumar Punia, PP

**HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE ANIL KUMAR UPMAN**

Judgment

Date of Conclusion of Arguments : : 19/05/2026

Judgment Reserved On : : 19/05/2026

Whether the full judgment or

only the operative part is pronounced : : Full Judgment

Judgment Pronounced On : : 27/05/2026

Per Hon'ble Mahendar Kumar Goyal, J.

This appeal is directed against the judgment dated 13.12.2018 passed by learned Special Judge, Protection of Children from Sexual Offences Act Cases cum Child Welfare Commission No.2, Kota (for short-`the learned trial court') in Sessions Case No.72/2018 (CIS No.72/2018) whereby, the accused-appellant has been convicted and sentenced as under:

- 1. Section 376D r/w 120B IPC r/w 5(g)/6 of the Protection of Children from Sexual Offences Act, 2012:** Life imprisonment, which shall mean remainder of his natural life and fine of Rs.50,000/-; in default whereof, six months' additional imprisonment.
- 2. Section 342 r/w 120B IPC:** Six months' imprisonment.

3. Section 11(v)/12 of Protection of Children from

Sexual Offences Act, 2012: One year rigorous imprisonment and fine of Rs.10,000/-; in default whereof, one month's additional imprisonment.

All the sentences to run concurrently.

The relevant facts, in nutshell, are that Smt. Kamla Meena (PW3) submitted a typed report (Ex.D1) on 24.01.2014 to SHO Police Station Bheemganj Mandi, Kota City, Kota wherein, it was averred that her minor daughter aged about 13 years, studying in Central School No.1, had gone to Agra on 15.10.2013 along with school team to participate in the sports activities but, when she went to school in the month of December, she came to know that her daughter did not participate in the sports activities and her teachers informed that she did not go to Agra along with the team. When she asked her daughter, she was found to be very frightened but, after much consolation, she disclosed that the co-accused-Ramkaran Jangid threatened her to go with him from Kota to Mathura and thereafter to Agra. It was alleged that in the night, she was taken to Gangapur City in the room of his friend-appellant-Surajbhan where his another friend Ashish @ Kalli was also present. It was alleged that she was subjected to rape there whereafter, the co-accused-Ramkaran took her to Udaipur, kept her there for about 3-4 days and was again subjected to wrongful act. It was averred that the co-accused-Ramkaran had threatened her of publicizing the video clip prepared by him and had also threatened of eliminating her and the family and therefore, she did not disclose anything to her family members. Based thereupon, an FIR no.38 dated 24.01.2014 was registered under the provisions of Sections 363, 366 and 376 IPC and Section 3/4

of the Protection of Children from Sexual Offences Act, 2012 (for short-`the POCSO Act') and Section 3(1)(xii) of the SC/ST (Prevention of Atrocities) Act (for short-`the SC/ST Act').

After investigation, the appellant was chargesheeted, along with co-accused Ramkaran under Sections 363, 366, 376D, 376(2) (h), (m) and 342 IPC and Sections 3/4 & 5/6 of POCSO Act and Section 3(2)(v) of SC/ST Act. Charges under Sections 376D, 342 & 120B of IPC, Sections 5(g)/6 & 11(v)/12 of POCSO and Section 3(2)(v) of SC/ST Act were framed against him. After trial, he has been convicted and sentenced by the learned trial court, vide judgment impugned dated 13.12.2018, as stated hereinabove. The co-accused Ramkaran was also convicted vide same judgement and he had preferred the criminal appeal no.102/2019 which shall, for the reasons recorded therein, be decided separately.

It may also be pertinent to notice here that two co-accused were also subjected to trial before the Juvenile Justice Board, Kota. While, the co-accused-Manish Kumar was acquitted in regular criminal case no.16/2015 vide judgment dated 06.09.2018 of the charges framed against him under Section 354D of IPC, Section 17/8 of POCSO Act and Section 3 of SC/ST Act, the another co-accused namely; Ashish @ Kalli was convicted under Section 376 IPC and Section 3/4 of the POCSO Act by the learned Juvenile Justice Board, Kota in regular criminal case no.128/2014 vide its judgment dated 17.04.2017 and was sentenced, under Section 15(1)(c) of the Juvenile Justice Act, 2000, for two hours community service on every working day at Primary Health Centre for a period of six months. We are informed at Bar that no appeal

was preferred by the accused Ashish Kumar @ Kalli against his conviction recorded vide judgment dated 17.04.2017.

Assailing the impugned judgment, learned counsel for the appellant contended that the learned trial court has erred in recording his conviction based on conjectures and surmises in absence of legally admissible evidence against him. Inviting attention of this Court towards the deposition of the prosecutrix (PW1), he would contend that it is full of contradictions and improvements on material aspects of the case and therefore, was not reliable. He, therefore, prayed that the appeal be allowed, the judgment impugned dated 13.12.2018 be quashed and set aside and he may be acquitted of the charges framed against him. In the alternative, he prayed that the substantive sentence awarded to him may be reduced to the sentence of 20 years-the minimum sentence provided under Section 376D of IPC.

Per contra, learned Public Prosecutor, opposing the submissions, contended that the learned trial court has held the appellant guilty of the charges framed against him assigning cogent reasons based on appreciation of the evidence available on record which warrant no interference by this Court. He, therefore, prayed for dismissal of the appeal.

Heard. Considered.

The learned trial court has, after appreciating the school record of the prosecutrix, statement of Ms. Deepti Nair (PW8)- the Principal, Central School and statement of prosecutrix as PW1, held the date of birth of the prosecutrix to be 23.01.2000 and her to be minor being 13 years 8 months and 22 days on the date of incident i.e. 15.10.2013. Her date of birth or for that matter, her

minority has not been assailed by the appellant. Therefore, we find no reason to interfere with the same.

Genesis of the prosecution case is the typed report (Ex.D1) submitted by Smt. Kamla Meena (PW3)-mother of the prosecutrix with a delay of more than three months and a week from the date of incident i.e. 15.10.2013. As per it, the delay occurred as she had come to know in the month of December, 2013 that the prosecutrix-her daughter had not gone to Agra to participate in the sports meet and thereafter, when she confronted the prosecutrix, she was found to be very frightened and only after much consolation, she disclosed the incident. However, the prosecutrix has, as PW-1, made no such averment; rather, has stated that on 23.01.2014 two boys riding on a bike had cut her hand outside the school and had threatened of her murder if she disclosed anything against co-accused-Ramkaran as also the co-accused Ashish. She further alleged that on the next day, four boys riding on two bikes again threatened her whereupon, she disclosed entire incident to her mother. But, her mother, as PW3, stated in the examination-in-chief that Solanki Sir had informed her to have seen the prosecutrix at Kota Station and that she did not go to Agra along with school team and when after coming back to home, she questioned the prosecutrix, she disclosed the entire incident. Thus, her deposition is in stark contrast with the explanation offered in the typed report. Furthermore to substantiate the allegation of threatening the prosecutrix by two boys on 23.01.2014 and on the next day, by four boys, no evidence was led by the prosecution; rather, as a matter of fact, the material on record does not reflect that any investigation was

carried out in this regard. Thus, this unexplained inordinate delay in lodging the FIR raises a serious doubt as to veracity of the prosecution case.

Furthermore, there is material contradiction in the prosecution case as to the source of information that the prosecutrix did not go to Agra along with school team. As per Ex.D1 and the deposition of the complainant-PW3, she was informed by Solanki Sir-a Teacher in the Central School that the prosecutrix had not gone to Agra along with school team but, Mukesh Kumar Solanki (PW4) has deposed that brother of the prosecutrix had telephoned him enquiring as to whether she had gone with the school team. In his cross examination, he has categorically denied to have talked to the complainant. Another School Teacher namely Ritesh Kumar Chausariya as PW2, has also claimed to have spoken only with the brother of the prosecutrix. This contradiction also dents the reliability of the genesis of the prosecution case.

Further, since, the first report is a typed report submitted with a delay of more than three months and a week, it can safely be inferred that it was made after much deliberation still, it does not contain a specific allegation that the prosecutrix was subjected to rape in Gangapur City at the room of the appellant by whom; either by the appellant or, by the co-accused-Ramkaran or, by the co-accused Ashish @ Kalli or, by all of them; rather, it contains a bald allegation that the co-accused-Ramkaran had taken the prosecutrix to the room of the appellant where his another friend Ashish @ Kalli was also present and there, she was subjected to rape. However, the prosecutrix has, as PW1, levelled specific

allegation against all the accused of subjecting her to rape. She has further deposed that despite her protest and repeated screaming, they did not stop. She further alleged that they made a video film and threatened to make it viral on internet if she disclosed the incident to anybody. However, no such video film was ever recovered. Furthermore, the site plan of the scene of crime (Ex.P3) discloses that abutting the subject room, the rooms no.A2 and A3 existed inhabited by the children of the landlord Harkesh Meena (PW6). It also discloses that in the same residential house, other rooms also existed and the house itself was situated in a densely populated residential area. From the prosecution evidence available on record, the time of alleged gang rape comes on or around 12 o' clock in the night. In absence of the prosecution case that at that time, in the vicinity, there was some loud music or sound so as to suppress the sound of repeated screams by the prosecutrix, it is rendered highly improbable, even if not impossible, that the person residing/sleeping during the dead night in the vicinity in a town like Gangapur City would not have heard the screams / protest raised by the prosecutrix and would not have reached there; even if not with a sense of rescuing the victim, for the sake of anxiety. It is also worthy to notice here that although, Harkesh Meena (PW6)-the landlord of the appellant has deposed that when he reached to the house in the morning, his children informed that the co-accused-Ramkaran had visited the house along with a girl in the night but, he found there none. Conspicuously, neither the children who had allegedly informed the PW6 nor, any other neighbour was examined by the prosecution to lend credence to

its story of subjecting the prosecutrix to gang rape by the accused in the subject room or, her raising protest/alarm at that time.

Moreover, the prosecutrix has also asserted that the appellant as also the co-accused-Ramkaran were in her company till next evening in the room and for some time, they had gone out locking the room whereupon, she raised hue and cry but, none came. However, PW6 has categorically denied presence of anyone in the house when he reached in the morning. Again, despite the subject house being situated in the densely populated residential area and despite hue and cry raised by the prosecutrix as claimed, none came hearing the same which also raises a suspicion as to reliability of the testimony of the prosecutrix.

Further, her cross-examination as PW1 reveals another salient feature which discredits her testimony. She has stated that when she was being undressed, she did not try to run away as the room was locked and the accused were three in number. She has also admitted that she was not manhandled by the accused in the room. However, in the same breath, she has claimed that she was intimidated by them. But, when confronted with her statement recorded under Section 164 Cr.P.C. (Ex.P5), she feigned ignorance as to whether the allegation of intimidation was made in it or not. She also admitted that she had stated before the Magistrate that she complained as to why she was being subjected to sex when she was brought for a trip. As a matter of fact, from her statement under Section 164 Cr.P.C., it is not revealed that she ever raised any alarm or hue and cry when she was subjected to the alleged offence of gang rape by the three accused including the appellant as claimed in her court statement.

Indisputably, the instant case hinges on the sole deposition of the prosecutrix and we are conscious of the fact that conviction for the offence of rape can rest only on the sole testimony of prosecutrix provided it is intrinsically trustworthy, free from any suspicion and is creditworthy as held by the Hon'ble Supreme Court of India in the case of **State of Punjab vs. Gurmit Singh & Ors.-(1996) 2 SCC 384**, as under:

"xxxxxx The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?

The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its

judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable. In *State of Maharashtra v. Chandraprakash Kewalchand Jain* MANU/SC/0122/1990:1990CriLJ889 Ahmadi, J. (as the Lord Chief Justice then was) speaking for the Bench summarised the position in the following words :

A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars.

She is undoubtedly a competent witness Under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have 'a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

In **Nirmal Premkumar and Anr. Vs. State Rep. by Inspector of Police-(2024) 20 SCC 293**, their Lordships have held as under:

"24. What flows from the aforesaid decisions is that in cases where witnesses are neither wholly reliable nor wholly unreliable, the Court should strive to find out the true genesis

of the incident. **The Court can rely on the victim as a "sterling witness" without further corroboration, but the quality and credibility must be exceptionally high. The statement of the prosecutrix ought to be consistent from the beginning to the end (minor inconsistencies excepted), from the initial statement to the oral testimony, without creating any doubt qua the prosecution's case. While a victim's testimony is usually enough for sexual offence cases, an unreliable or insufficient account from the prosecutrix, marked by identified flaws and gaps, could make it difficult for a conviction to be recorded.**" (Emphasis supplied)

What evidence is of sterling worth has succinctly been explained by their Lordships in the case of **Rai Sandeep @ Deepu vs. State of NCT, Delhi-(2012) 8 SCC 21**, 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

everyone 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 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, it can 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."

If the deposition of the prosecutrix (PW1) is tested on the anvil of aforesaid principles, we do not find the same to be of sterling worth or intrinsically trustworthy so as to sustain the finding of conviction of the appellant as to the offence of rape or for that matter, of gang rape. Following are the circumstances which raise a suspicion as to reliability of the testimony of the prosecutrix. As already observed, in the FIR, though, lodged with a delay of more than three months and a week from the date of incident after much deliberation, there is absence of specific allegation against him of subjecting the prosecutrix to rape; in her deposition as PW1, she has claimed to have protested and

screamed repeatedly when being subjected to gang rape but, despite it being the dead night and the subject room being situated in a residential house surrounded by other rooms inhabited by residents and the house itself being situated in a densely populated residential area, none either heard the alarm or, came to her rescue as also failure on the part of the prosecution to examine any such resident/neighbour; further, despite testimony of Harkesh Meena (PW6) that when he reached in the morning, his children informed of bringing a girl by the co-accused-Ramkaran but, neither the children were examined nor, it was stated that they had disclosed to have heard the alarm raised by the prosecutrix, as claimed by her; absence of any averment of raising any alarm in her Section 164 Cr.P.C. statement as claimed in her court statement; claim of continue to stay in the same room with the accused till evening of next day and having food there which was contradicted by PW6 who claimed to have seen none in the following morning; her claim to have raised hue and cry when, on the next day, the appellant along with co-accused Ramkaran had left the room locking her inside but, none heard the same and none came to her rescue despite the subject room being situated in a densely populated residential area, as already observed.

The aforesaid circumstances render the testimony of the prosecutrix highly doubtful and unreliable so far as involvement of the appellant in the offence of rape/gang rape or, for that matter, offences for which he was charged with is concerned so as to sustain the finding of his conviction.

So far as the provisions of Section 29 of the POCSO Act are concerned, since, in our considered opinion, the prosecution has

miserably failed to establish the foundational facts necessary to constitute the offence, we are not persuaded to draw an inference on the strength thereof.

In view of aforesaid sketchy, inconsistent, unnatural, insufficient and unreliable evidence, we are not persuaded to uphold the findings of conviction of the appellant.

Resultantly, the criminal appeal no.38/2019 deserves to be allowed. The appeal is allowed accordingly. The judgment dated 13.12.2018 passed by the Special Judge, Protection of Children from Sexual Offences Act Cases cum Child Welfare Commission No.2, Kota in Sessions Case No.72/2018 qua the appellant is quashed and set aside. The appellant-Surajbhan is acquitted of the charges framed against him. He is in jail and therefore, shall be released forthwith, if not required to be detained in any other case.

In view of the provisions of Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the appellant-Surajbhan is directed to furnish a personal bond in the sum of ₹25,000/- each, and a surety in the like amount before the Registrar (Judicial) of this Court which shall be effective for a period of six months with the stipulation that in the event of Special Leave Petition being filed against the judgment or on grant of leave, the appellant aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

(ANIL KUMAR UPMAN),J

(MAHENDAR KUMAR GOYAL),J