A.F.R.

Neutral Citation No. - 2025:AHC:62014-DB

Court No. - 45

Case :- GOVERNMENT APPEAL No. - 43 of 2025
Appellant :- State of U.P.
Respondent :- Pushpendra Alias Gabbar S/O Brahamdutt
Counsel for Appellant :- Ashutosh Kumar Sand
Counsel for Respondent :- Mukesh Kumar Pandey

Hon'ble Saumitra Dayal Singh,J.
Hon'ble Sandeep Jain,J.

Per:- Saumitra Dayal Singh, J.

1. Heard Shri V.P. Srivastava, learned Senior Advocate assisted by Shri Mukesh Kumar Pandey, learned counsel for the respondent and Shri L.D. Rajbhar, learned A.G.A. for the appellant.

2. The present government appeal arises from the order of acquittal dated 08.12.2023 passed by Shri Atik Uddin, learned Additional District and Sessions Judge/F.T.C., Auraiya, in S.T. No. 75 of 2017 (State of U.P. *v.* Pushpendra @ Gabbar), arising out of Case Crime No. 694 of 2016, under Sections 452, 506 and 376 IPC, Police Station Auraiya, District Auraiya.

3. By that order, the learned trial court has acquitted the accused of the offence alleged under Sections 452, 506 and 376 IPC, Police Station Auraiya, District Auraiya.

4. The above Sessions Trial emerged on the F.I.R. lodged in above noted Case Crime number. It was lodged on the strength of the Written Report dated 14.09.2016 submitted by 'S' (P.W.-2 at the trial). He is the brother of the victim 'X' (P.W.-1 at the trial). In that Written Report, it was narrated, 'X' aged about 18 years suffered rape by the present accused on 11.09.2016, at around 01:30 p.m. at the residence of the informant side at Awas Vikas Colony, Auraiya (hereinafter described as the 'apartment'). In that, it was disclosed, prior to the occurrence the accused used to make obscene

utterances at 'X'. On the day and time of occurrence, he forcibly entered the 'apartment' and forced her to first undress by threatening her with a country made firearm. Upon 'X' calling for help, her younger brother, 'R' intervened. He was pushed out by the accused. Then, rape was committed on 'X'. The Written Report is Ex. Ka-2 at the trial. On that Written Report submitted by P.W.-2, F.I.R. was registered on the same day. It is Ex. Ka-8 at the trial. On such F.I.R. lodged, statement of P.W.-2 was recorded on 16.09.2016. Therein, he disclosed that the accused used to live at Awas Vikas Colony, Kanpur Road, Auraiya. The accused was his neighbor. The 'X' had been engaged to one 'S'. On the date of occurrence, she along with 'S' and her brother 'R' were present in the 'apartment'. At that time, the accused along with 3-4 accomplices forced their entry into the 'apartment' threatening her and her fiance, 'S' with a country made firearm. He forced them to undress and filmed a video of the two, in that nude state. Thereafter, 'S' was made to wear his clothes and leave the 'apartment'. Thereafter, the accused committed rape on 'X'. She lost her consciousness. When she regained her consciousness, she found herself lying at Nainpura in Jalaun. She managed to get back home. There, she narrated the story to her mother. At last, she stated that there pre-existed some quarrel with the accused. That statement is Ex. Ka-9 at the trial. On 15.09.2016, a medico legal examination of 'X' was conducted by Dr. Seema Gupta (P.W.-3 at the trial). It is Ex. Ka-3 at the trial. On the same date/15.09.2016, medical examination report was prepared, upon due examination of the accused, by Dr. Seema Gupta. In that, following injuries were noted:

> *"(i) Brown colour abrasion present both side of neck. 3 cm x 1.5 cm right side. 8 cm below right ear.*
> *(ii) 3 cm x 2.5 cm left side of neck 7.5 cm below (illegible) left ear.*
> *(iii) 6 cm x 3.5 cm Brown's color abrasion present at right buttock 9 cm away from middle."*

5. Further, the following observation was made by the doctor upon medical examination of the 'X' :

> *“Sign of struggle present, injuries seen over neck and buttock. (illegible) video graphy present. PSA not confirmed. Pathological and DNA report is awaited.*

6. The said report is also Exhibited at the trial. She was also subjected to other examination such as Ultrasound, X-ray etc. However, findings on those tests remained inconclusive. A serological report was also prepared. It did not suggest the presence of spermatozoa-dead or alive. However, it may noted here itself, that sample was drawn on 15.09.2016 i.e. more than 3 days after the occurrence.

7. Thereafter, on 24.09.2016, the statement of the victim was recorded under Section 164 Cr.P.C. In that, she reiterated her earlier statement except that she did not make any disclosure of any pre-existing quarrel with the accused. Also, she added, when she regained consciousness at Nainpura, Sunil and Chhotu, both brothers of the accused were present at that place. That statement is Ex. Ka-1 at the trial.

8. Upon the case being committed for trial by the Court of Sessions, following charges were framed :

> *“1– यह कि दिनांक 11.09.2016 को समय करीब 1.30 बजे व स्थान ब्लाक xxxxxx औरैया में अभियुक्त द्वारा वादी xxxxxx के घर में घुसकर गृह–अतिचार किया। इस प्रकार आपने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 452 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।*
>
> *2– यह कि दिनांक 11.09.2016 को समय करीब 1.30 बजे व स्थान xxxxxx औरैया में अभियुक्त द्वारा वादी xxxxxx के घर में घुसकर वादी xxxxxx की बहिन को कमरे में ले जाकर उसे तमंचा दिखाकर उसके कपडे उतार उसके साथ जबरन बलात्कार किया । इस प्रकार आपने ऐसा कार्य किया जो भारतीय दण्ड संहिता की धारा 376 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।*
>
> *3– यह कि उपरोक्त तिथि समय व स्थान पर अभियुक्त द्वारा वादी की xxxxxx की बहिन को जान से मारने की धमकी दिया। इस प्रकार आपने ऐसा कार्य किया जो*

भारतीय दण्ड संहिता की धारा 506 के अधीन दण्डनीय अपराध है और इस न्यायालय के प्रसंज्ञान में है।"

9. At the trial, besides the above documentary evidence and other documents, the prosecution led oral evidence. In that, first, the victim ‘X’ was examined as P.W.-1. During her examination-in-chief, she proved, she was a student of Intermediate and resident of village Badua. The occurrence took place on 11.9.2016, at about 01:30 p.m. when she was present at the 'apartment' along with her younger brother ‘R’ and her fiance 'S'. At that time, the accused forcibly entered that 'apartment' and pushed out her minor brother. He then commanded ‘X’ and 'S' to undress. He threatened to kill them if they did not obey his command. He filmed them and made a video. Thereafter, he asked 'S' wear his clothes and forced him to leave. While ‘X’ was getting dressed, the accused forced himself on her and thus committed rape. She could not let out any cry for help as the accused covered her mouth with his hand. Upon such occurrence, she was disoriented. The accused further threatened to kill her if she dared to tell her family or police about the occurrence. Having caused such occurrence, the accused then forced 'X' to accompany him on a motorcycle to be dropped to her village. Initially, ‘X’ did not cooperate. On that, the accused threatened to push her from the third floor of that building. She complied and thus accompanied the accused on a motorcycle with another person riding pillion on the same motor-cycle, seated behind her. She was thus left at Nainapurva village under a *'Peepal'* tree. She lost her consciousness. When she gained her consciousness, she found a crowd had gathered, including Amit Pal and Sunil brothers of the present accused. From there, she travelled to her home at Badua village with the help of a passerby who gave her lift.

10. Upon reaching home, she found, neither her mother nor her

father were present. From a mobile phone of a stranger, she talked to her elder brother 'S-1' (P.W.-2) and informed him about the entire occurrence. During her cross-examination, 'X' admitted, she knew the accused from before. He used to live two houses away. She specifically stated that her family and family of the present accused were not on terms. Neither they had any animosity nor they were on talking terms. She denied suggestion of having attended the marriage of the sister of the present accused or of the accused having offered any help in any treatment that may have been given to her, earlier. As to her fiance 'S', she disclosed he was a Medical Representative. Though earlier engaged to him, upon the occurrence being caused, her marriage was called off. On being further questioned, she specifically stated, she had earlier complained to her family about vulgar utterances/vulgar songs of the appellant, directed at her. On such occurrence, her family members had met the family members of the accused who had assured that they would offer appropriate reprimand to the accused. On being further questioned, she specified, her parents had complained to the uncle and *'Amma'* of the accused. During her cross-examination, she was shown her photographs (produced by the defence). She denied the knowledge of the same.

11. Thereafter, on 31.01.2018, she was further examined. On that date she further disclosed that she got married on 18.6.2016 to one 'S-2'. She denied all suggestions thrown to her of knowledge about prior events in the life of the present accused. Thus, she denied any acquaintance with the accused. At that stage, she further stated, at the time of the occurrence, four persons had entered her 'apartment' (including the present accused). They had beaten 'R' and thus forced him out of the 'apartment'. She again reiterated that the accused held a country made pistol on her temple, at the time of the occurrence being caused. She further explained the external injuries

suffered by him. She denied the suggestion that she had formed a consensual relationship with the accused.

12. Next, ‘S-1’, the elder brother of ‘X’ was examined as P.W.-2. During his examination-in-chief, he proved, earlier the accused had made vulgar utterances at ‘X’-described as singing of vulgar songs, directed at ‘X’. Then, he proved the F.I.R. narration. At the same time, it is an admitted case of the prosecution that he is not an eye-witness. He proved the version as narrated to him by 'X'. During his cross-examination, he admitted that he is an illiterate person and that he had not seen the occurrence. He had got the Written Report typed as was submitted to the police. As to the age of his younger brother ‘R’ at the time of occurrence, he proved the same to be about 10-11 years. On being questioned he explained, he learnt of the occurrence at about 1.30 p.m. on 11.09.2016 through a telephonic call made by 'R'. At that time his father was not home. He neither disclosed the occurrence to his mother nor he visited the house of the accused at that time though it was near to his place. At the same time, he first disclosed the occurrence to his uncle 'L' (not examined at the trial) at about 2.00 p.m. On that, six people travelled on motorcycles to the 'apartment'. They reached before sundown. At that time, 'X' was not found there, though the 'apartment' was lying open. They travelled on three different motorcycles in three different directions in search of 'X'. They could not locate 'X'. After returning to the 'apartment', he received a phone call from another person described as 'C.P.' from Jalaun crossing. Then, 'X' was found at Nainapur village under a *'Peepal'* tree, about 200 meters, from the nearest habitation. After again returning to the 'apartment', he found 'X' and 'R' had reached back. By that time, the sun had also set.

13. At that time, he called one Dr. Som Singh (not examined at

the trial) to examine 'X'. For reason of trauma suffered, 'X' was unable to speak. She narrated the entire occurrence to P.W.-1, the next morning. On the third day, he lodged the F.I.R. and the police investigation started. He disclosed that his next younger brother got the Written Report typed. He also reiterated that the marriage between 'X' and 'S' could not be solemnized. Later, 'X' married with 'S-2' (not examined at the trial).

14. Thereafter, Dr. Seema Gupta was examined as P.W.-3. She proved the injuries noted by her in the medical examination of 'X'. She also proved that at the time of her medical examination, 'X' had complained of pain in her private parts. It may be noted, no internal injury had been noted. As to external injuries, she proved three injuries described (by the doctor), to be signs of possible struggle. She explained that such injuries may have been suffered by 'X' while offering resistance to rape. However, she clarified that all injuries were simple in nature and there were no internal injuries. Hymen was old torn and healed with no fresh injuries noted. As to absence of DNA sample, she admitted that DNA report would have been relevant but that it was not received by her. During her cross examination, she was again questioned as to the possibility of external injuries suffered by 'X' in resisting rape. She admitted the possibility of such occurrence.

15. Thereafter, the Investigating Officer Ratan Singh was examined as P.W.-4. He proved the investigation. Lady constable Mohita Verma was examined as P.W.-5. She proved the registration of the case and the GD entries etc.

16. 'R', youngest brother was examined as P.W.-6. He narrated that the accused alongwith 3-4 other persons had forced their entry into the 'apartment' where he alongwith 'X' and 'S' were present, before the occurrence. He also narrated that the accused had asked

'X' and 'S' to undress. On that, 'R' claimed to have questioned the accused. The accused and others responded and beat him. He was forced out of the 'apartment'. On being thus forced out, he left for his home. In the evening, 'X' disclosed, after 'R' left, the accused filmed 'X' and 'S' without clothes and thereafter 'S' was forced out of the 'apartment' and 'X' raped by the accused. He identified the accused as one of the persons who had forced his entry into the 'apartment', armed with a country made firearm. During his extensive cross examination, he stood by his original stand and no discrepancy was offered by him.

17. Thereafter, lady constable Maya Devi was examined as P.W.-7. She proved the fact of 'X' being taken for medical examination. She also proved preparation of certain test slips etc. Thereafter, S.I. Balraj Shahi was examined as P.W.-8. He proved the fact that the accused surrendered and that his statement was recorded during the investigation.

18. Upon conclusion of prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C.. Amongst others, specific question was put to him with respect to three external injuries received by 'X', by way of question No. 4. Other than bald denial, he did not make any other statement. As to the reason why such accusation may have emerged against him, he only stated, there was old animosity between the parties and that he was innocent. No defence evidence was led. Thereupon, the learned trial Court has heard the parties and made the order of acquittal, impugned in the present appeal.

19. Learned A.G.A. would submit, parameters for such an appeal though limited, are well defined. To the extent the learned trial Court has reached a conclusion of innocence of the accused *dehors* the evidence and in fact wholly conflicted to the consistent

evidence led by the prosecution-that the accused had caused such occurrence, the finding recorded by the learned trial Court, is perverse. In that, he has heavily relied on the testimony of the victim 'X' (P.W.-2 at the trial). Besides the minor discrepancy i.e. whether the accused alone or the accused alongwith 3-4 other persons had forced their entry into the 'apartment' of 'X', there is absolutely no other discrepancy as to the occurrence disclosed by 'X' as also 'R' who was present just prior to the occurrence and who upon resistance offered (by him), was beaten and forced out of the 'apartment', at that time. In that, both witness of fact consistently narrated that the accused had forced his entry into the 'apartment' by threatening the inmates with a country made firearm. He commanded 'X' and her fiance 'S' to undress, under such threat and compulsion. After filming 'X' and her fiance 'S' in that nude state, he forced 'S' to leave the place. After 'S' left and as 'X' was getting dressed, the accused forced himself on her and committed rape, despite resistance offered by her. That narration offered by P.W.-2-the victim, stands on the footing of evidence of an injured witness. It remained unimpeached, at the trial. The conclusion drawn by the learned trial Court to the contrary, is not based on any evidence or material on record.

20. While such finding of fact suffers from perversity, what makes the case fall within the parameters of appeal against acquittal is the remarkable feature that the learned trial Court has not disbelieved or discredited the evidence of the victim 'X'. Though it has noted in detail the evidence led at the trial, it has not offered any material consideration to that vital evidence.

21. Then, the further finding recorded by the learned trial Court to disbelieve the prosecution story are also described to be perverse and based on extraneous consideration. The fact that there

was delay of three day in lodging the F.I.R., has been given undue weight. It is settled law that delay in lodging the F.I.R. alone may not be relevant to disbelieve the prosecution story based on strong and cogent direct evidence. While it may have remained with the learned trial court to consider that issue if facts had otherwise given rise to any doubt in the prosecution story, in the proven facts of the present case where the occurrence was proven beyond reasonable doubt, delay of three days in lodging the F.I.R. in the circumstances proven on record, was inconsequential.

22. At the relevant time, 'X' was engaged to 'S'. She was in his company at her 'apartment', when the accused barged into that accommodation. Forced objectionable video to be shot of the two and thereafter forced 'S' to leave the premises. The marriage engagement between 'X' and 'S' broke down upon that occurrence. It took the parties half a day to search out 'X' and for her to reach back home. She was disoriented by the occurrence. It took time for the parties to reconcile the tragic situation in which they had landed. They responded within reasonable time. Therefore, the ocular evidence as corroborated by medical evidence may not have been thrown out on a simple noting of three days' time taken to lodge the F.I.R.

23. As to the medical evidence, it has been submitted again, it is not the rule of law that rape must be established on the strength of medical evidence. In the first place where credible ocular evidence of the victim exists, no corroboration is required. Even if some corroboration is required, in the present facts, that was clearly shown to exist in the shape of three external injuries suffered by 'X'. Both during her examination-in-chief as also during her cross-examination, Dr. Seema Gupta (P.W.-3) established that such injuries may be received by the victim while resisting commission

of rape.

24. The finding recorded by the learned trial Court that there were pre-existing bad relations between the parties is plainly perverse. A stray sentence appearing in the statement recorded under Section 161 Cr.P.C. has been given undue weight by the learned trial Court that too wholly contrary to the scheme and manner in which a witness may be contradicted. At no stage of her cross-examination, P.W.-2 was ever confronted with any her previous statement. Therefore, it never became open to the learned trial Court to refer to those statements in the reasoning offered by it, to reach a conclusion that there pre-existed bad relations between the parties. The approach adopted by the learned trial Court is not permissible/recognized in law.

25. In such circumstances, reliance has been placed on a recent decision of the Supreme Court in **Constable 907 Surendra Singh and another, 2025 SCC Online SC 176**.

26. On the other hand Sri V.P. Srivastava learned Senior Counsel assisted by Sri Mukesh Kumar Pandey learned counsel for the accused would submit that the learned trial Court has rightly made the order of acquittal. On merits, it has been submitted, the prosecution version was not wholly credible and consistent. The accused had no occasion to commit such occurrence merely because bad relations may have emerged between the parties. He has been falsely implicated. Reference has been made to the fact that the prosecution evidence is inconsistent as to the number of accused persons/accomplices who forced their entry into the 'apartment' of 'X'. Though the F.I.R. narrated only the accused and in the initial statement of 'X' also she named only the accused, later at the trial that story was changed to the accused along with 3-4 other unnamed persons.

27. Second, it has been submitted, prosecution story is not certain as to how the first informant (P.W.-1) came to know of the occurrence. At one place, he claimed to have been informed by the younger brother of victim 'X' namely 'R' (P.W.-6) and at another he claimed to have been informed by 'X' herself.

28. Third, it has been submitted, initially 'X' claimed she had a quarrel with the accused but later she claimed neutral relations.

29. Fourth, it has been submitted, there is absolutely no medical evidence to establish the occurrence of rape. In the nature of occurrence disclosed by the prosecution, it is unlikely that the victim would not have suffered both-external and internal injuries. Absence of such injuries establishes that no such occurrence took place. In that regard, reliance has been placed on the fact that neither any dead nor live spermatozoa were detected in the vaginal swab test.

30. Fifth, it has also been alleged that it is wholly unlikely that in such an occurrence neither 'S' nor 'R' called for help any sooner. In fact, 'S' neither called anybody for help nor he has been examined at the trial. It clearly proves that the occurrence was otherwise.

31. In such circumstances, heavy reliance has been placed on the following decisions to submit, no interference is warranted in the present appeal against acquittal :

(i) Sheo Swarup and others *v.* Emperor, 1935 VOL 1 CRLJ 786.

(ii) Dhanna *v.* State of M.P., 1996 VOL 10 SCC 79.

(iii) Shailendra Pratap and another *v.* State of U.P., 2003 VOL 2 CRLJ 1270.

(iv) Samghaji Haniba Patil *v.* State of Karnataka, 2007 VOL 1 SCC Crl. 113.

(v) Suryakant Dadasahab Bitale *v.* Dilip Bajranj Kale and others, 2014 VOL 5. SCC Crl. 728.

32. Having heard learned counsel for the parties and having perused the record, in the first place as to the principle in law at which interference may be offered by the High Court in appeal against acquittal, there is no quarrel. In **Sheo Swarup (supra)**, in the context of similar statutory provision, the Privy Council observed as under :

> *"But in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses."*

33. Then, in **Dhanna (supra)**, it was observed as under :

> *"Though the Code does not make any distinction between an appeal from acquittal and an appeal from conviction so far as powers of the appellate court are concerned, certain unwritten rules of adjudication have consistently been followed by Judges while dealing with appeals against acquittal. No doubt, the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. But while dealing with an appeal against acquittal the appellate court has to bear in mind: first, that there is a general presumption in favour of the ignorance of the person accused in criminal cases that presumption is only strengthened by the acquittal. The second is, every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him. He would retain that benefit in the appellate court also. Thus, appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to the interfered with or disturbed. (Durgacharan Naik and ors. v. State of Orissa, AIR 1966 SC 1775, Caetand Piedade Fernandes & Anr. v. Union Terriroty of Goa, Daman & Diu, Panaji. Goa, AIR 1977 SC 135, Tota Singh and Anr. v. State of Punjab, AIR 1987 SC 1083, Awadhesh and Anr. v. State of M.P., AIR 1988 SC 1158, Ashok Kumar v. State of Rajasthan, AIR 1990 SC 2134)."*

34. Next, in **Shailendra Pratap (supra)**, the Supreme Court observed as under :

> *"Having heard learned counsel appearing on behalf of the parties, we are of the opinion that the trial court was quite*

justified in acquitting the appellants of the charges as the view taken by it was reasonable one and the order of acquittal cannot be said to be perverse. It is well settled that appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity."

35. In **Samghaji Haniba Patil (supra)**, the Supreme Court observed as under :

> "*Had the High Court been the first court, probably its view could have been upheld, but it was dealing with a judgment of acquittal. We have taken notice of the depositions of the main prosecution witnesses only to show that the view of the learned Trial Judge cannot be said to be perverse or the same was not possible to be taken. While dealing with a case of acquittal, it is well known, the High Court shall not ordinarily overturn a judgment if two views are possible. accused had no axe to grind. The prosecution had not proved that he had any motive. He was only said to be the friend of accused No.1. If the accused had gone there with six others to assault the deceased and his family members, it is unlikely that accused would take with him for the said purpose, a hammer to an agricultural field. The hammer is not ordinarily used for agricultural operations. Even if we assume that accused No.1 had been nurturing any grudge against the deceased, it is unlikely that accused would be involved therein."*

36. Also, in **Suryakant Dadasahab Bitale (supra)**, the Supreme Court further observed as below :

> "*In the present case the Session Court has not ruled out any evidence which was admissible. Both the dying declarations were considered in proper prospect. The material evidence has not been overlooked by the Sessions Court, as apparent from the discussions made by Sessions Judge and quoted above. In these circumstances, the High Court was not justified in interfering with the order of acquittal in a revision."*

37. In **Constable 907 Surendra Singh (supra)**, the Supreme Court again revisited the law in point and observed as under :

> "***11.*** *Recently, in the case of Babu Sahebagouda Rudragoudar v. State of Karnataka, (2024) 8 SCC 149 a Bench of this Court to which one of us was a Member (B.R. Gavai, J.) had an occasion to consider the legal position with regard to the scope of interference in an appeal against acquittal. It was observed thus:*
>
> "***38.*** *First of all, we would like to reiterate the principles laid*

down by this Court governing the scope of interference by the High Court in an appeal filed by the State for challenging acquittal of the accused recorded by the trial court.

39. This Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] encapsulated the legal position covering the field after considering various earlier judgments and held as below : (SCC pp. 482-83, para 29)

"29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal in the following words : (Chandrappa case [Chandrappa v. State of Karnataka, (2007) 4 SCC 415 : (2007) 2 SCC (Cri) 325], SCC p. 432, para 42)

'42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.'"

40. Further, in H.D. Sundara v. State of Karnataka [H.D. Sundara v. State of Karnataka, (2023) 9 SCC 581 : (2023) 3 SCC (Cri) 748] this Court summarised the principles governing the exercise of appellate jurisdiction while dealing with an

appeal against acquittal under Section 378CrPC as follows : (SCC p. 584, para 8)

"8. … 8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible."

41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

***41.1.** That the judgment of acquittal suffers from patent perversity;*

***41.2.** That the same is based on a misreading/omission to consider material evidence on record; and*

***41.3.** That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

***12.** It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."*

38. Thus, as to the principle to be applied by the High Court while dealing with an appeal against acquittal, though there is a statutory appeal wherein the High Court by virtue of its power as an appeal Court, may reappraise the evidence and reach a different fact conclusion, at the same time, before that exercise is entered into,

the High Court must be satisfied that the finding recorded by the learned trial court suffer from the vice of perversity. That guard rail exists and must be followed in exercise of appeal jurisdiction, against an order of acquittal.

39. Once that satisfaction is reached, the High Court must further reappraise the evidence through a prism that may allow for a singular conclusion of guilt to arise, upon such reappraisal of evidence. It must also be strong enough to be described nearly absolute, as may not only discard the presumption of innocence that the accused enjoys at the beginning of the trial but as may dispel the confirmation of such innocence offered by the order of acquittal. Such conclusion must be free from any benefit of doubt that may arise to the accused on the strength of evidence led at the trial. By very nature of such exercise to be undertaken by the High Court, it may remain vigilant and slow in interfering with the findings recorded by the learned trial court.

40. As to what may be perversity, there is less or no doubt. Where a finding of fact may be recorded either *dehors* the evidence or contrary to the evidence or where conclusions may have been drawn contrary to the law, that finding and/or conclusion may be described perverse.

41. Seen in that light, in the context of trial on the charge of rape, other law settled in this regard may be noted first. In the first place, in **State of H.P. Vs. Raghubir Singh, (1993) 2 SCC 622**, dealing with the credibility and reliability of the victim of rape, it was observed as below :

> *"5. ... The High Court appears to have embarked upon a course to find some minor contradictions in the oral evidence with a view to disbelieve the prosecution version. In the opinion of the High Court, conviction on the basis of uncorroborated testimony of the prosecutrix was not safe. We cannot agree. There is no legal compulsion to look for corroboration of the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is*

> *absence of circumstances which militate against her veracity. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be looked for, though enough was available on the record. The medical evidence provided sufficient corroboration...."*
>
> *(emphasis supplied)*

42. Next, in **State of Punjab Vs. Gurmit Singh, (1996) 2 SCC 384**, it was further laid down that to seek corroboration of the version proven by the victim of the rape, is not the rule.

43. Here, the victim had offered a singular version of the occurrence. In that, she clearly narrated that she was present at the 'apartment' on 11.09.2016 along with her fiance 'S' and her younger brother 'R'. At that time, the accused forced his entry into that accommodation brandishing a firearm. He first asked the victim 'X' and her fiance 'S' to undress. On resistance being offered by 'R', he was assaulted and forced out of the accommodation. Thereafter, the victim and her fiance were forced to undress. They were filmed by the accused. Next, 'S' was made to dress and leave the accommodation. Thereafter, the accused committed rape on 'X' despite resistance offered by her. Further, how he came to leave that premises was also explained through a singular version wherein she disclosed that at first the accused asked her to accompany him. On her refusal, she was threatened with dire consequence of being pushed out from the third floor. She then accompanied the accused. Thereupon she was dropped at Nainpura. She was disoriented/partly conscious. She somehow traveled back to her home and narrated the occurrence to her family.

44. That narration of the occurrence has remained consistent from the stage of the F.I.R. being lodged, the statement being recorded by the police under Section 161 Cr.P.C. and statement being recorded under Section 164 Cr.P.C. by the learned Magistrate and also at the trial. At the trial, the victim 'X' was subjected to extensive cross-examination on many dates. She maintained her

stand. Therein, she also disclosed that in the meantime she got married to a third person as her marriage with 'S' broke, upon the occurrence being caused by the accused.

45. Seen in that light, the minor inconsistencies being pointed out by the learned counsel for the accused fade into insignificance. It is not the law that prosecution witness must maintain their consistent stand by way of an empirical truth, to establish the credibility of the prosecution witnesses or version. The settled principle in that regard is that evidence must carry a ring of truth. In that regard, in **State of U.P. *v.* M.K. Anthony, (1985) 1 SCC 505**, the Supreme Court observed as under:

> *"10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper-technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer."*
>
> *(emphasis supplied)*

46. Thus the law is settled that minor inconsistencies are not to be looked/amplified by the Courts but to be reconciled with the entire weight of evidence. The defence stance that 'X' and the

accused had quarreled as was claimed to have been stated by 'X' during her statement recorded under Section 161 Cr.P.C.), was never proven. The learned trial Court has fallen in error on two counts. In the first place, that discrepancy, if at all was never confronted to 'X' during her cross-examination. As to the manner of confrontation, the law is clear.

47. In **Tara Singh vs State of U.P., (1951) SCC OnLine SC 49**, two witnesses entered the witness box at the trial and made depositions contrary to their statements recorded earlier under Section 288 Cr.P.C. Yet, they were not confronted with that previous statements made by them. When asked about those previous statements (at the trial), they only replied that they were made under coercion. That reply was found to have not met the requirement of Section 145 of the Indian Evidence Act. In that regard, the Supreme Court observed as below:

> *41. Now, it is evident that one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court because until that evidence was contradicted and displaced, there was no room in this case for permitting the previous statements to be brought on record and used under Section 288. Therefore, as these statements were not put to these witnesses and as their attention was not drawn to them in the manner required by Section 145, Evidence Act, they were not admissible in evidence. The observations of the Privy Council in Bal Gangadhar Tilak v. Shriniwas Pandit [Bal Gangadhar Tilak v. Shriniwas Pandit, (1914-15) 42 IA 135 at p. 147 : 1915 SCC OnLine PC 16] are relevant here.*
>
> *(emphasis supplied)*

48. In **Rudder vs State, 1956 SCC OnLine All 141**, a co-ordinate bench of this Court opined, a deposition in Court can or cannot be reconciled with a statement made under Section 161 Cr.P.C. only after the alleged omission is brought to the notice of the witness and he is given an opportunity to explain the same. In that regard, it was observed as below:

> *"Desai, J. also went on to hold that if the statement under Sec. 162, Cr. P.C. can be reconciled with the deposition in court and can stand*

with it then there is absolutely no contradiction. The question whether the deposition in court can or cannot be reconciled with the statement recorded under Sec. 161, Cr. P.C. can only be settled after the omission has been brought to the notice of the witness and the witness has had an opportunity to give his explanation. If after the explanation it appears that the two are reconcilable, it would cease to be a contradiction. But that can happen not only in the case of an omission, but even in the case of an apparent contradiction of positive facts included in the deposition and the statement under Sec. 161, Cr. P.C. There may appear to be a contradiction between the deposition in court and the statement under Sec. 161, Cr. P.C. but when it is put to the witness, he may give an explanation which may reconcile them, whereupon the contradiction may cease to be a contradiction. The mere fact that he may possibly reconcile the two statements, cannot effect the applicability of the proviso to Sec. 162, Cr. P.C. in the case of an omission which is of such a nature that it can be held to be a contradiction."

49. In **Inder Deo & Anr. vs State, (1958) SCC OnLine All 175**, an issue arose if a statement recorded under Section 288 Cr.P.C. may be treated as evidence if it was not disclosed to the witness (at the time of such statement being recorded), that the Court may use the statement as evidence. While considering the issue, a coordinate bench of this Court noticed non-compliance of Section 145 of the Indian Evidence Act, 1875. Thereupon, relying on **Tara Singh vs State of U.P., (supra)**, a coordinate bench of the Court observed as below:

"There is, in the present case, yet another difficulty which we have found in the way of properly treating the statements of the two witnesses mentioned above as admissible, if we may use that expression, under Sec. 288, Cr. P.C. and the difficulty we find is that in respect of these statements compliance had not been made of the provisions of Sec. 145 of the Indian Evidence Act. Sec. 288 itself states that evidence was subject for all purposes to the provisions of the Indian Evidence Act. As we have pointed out earlier, specific passages or the particular portions on which the prosecution desired to contradict the witnesses were not read out to the witnesses and they were not afforded an opportunity of explaining those particular or specific passages. The entire statements were read out to the witnesses and they were asked to say what they had to in regard to the entire statements. In our opinion, this was not compliance with the provisions of Sec. 145 of the Indian Evidence Act. A proper compliance of these provisions can only be if the particular passages are put to the witnesses. We may here refer to the decision of their Lordships of the Supreme Court in Tara Singh v. The State [1951 A.L.J. 640 : A.I.R. S.C. 441.] wherein their Lordships at pages 446-447 said this:

> *"There is some difference of opinion regarding this matter in the High Courts. Sec. 288 Provides that the evidence recorded by the Committing Magistrate in the presence of the accused may, in the circumstances set out in the section, 'be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.' One line of reasoning is that Sec. 145, Evidence Act, is not attracted because that section relates to previous statements in writing which are to be used for the purpose of contradiction alone. Statements of that kind do not become substantive evidence and though the evidence given in the trial can be destroyed by a contradiction of that kind, the previous statements cannot be used as substantive evidence and no decision can be grounded on them. But under Sec. 288, Cr. P.C. the previous statement becomes evidence for all purposes and can form the basis of a conviction. Therefore, according to this line of reasoning Sec. 145, Evidence Act, is not attracted. Judges who hold that view consider that provisions of the Evidence Act referred to are those relating to hearsay and matters of that kind which touch substantive evidence."*
>
> *In my opinion the second line of reasoning is to be preferred. I see no reason why Sec. 145, Evidence Act, should be excluded when Sec. 288 states that the previous statements are to be 'subject to the provisions of the Indian Evidence Act.' Sec. 145 falls fairly and squarely within the plain meaning of these words. More than that this is a fair and proper vision and is in accord with sense of fair-play to which Courts are accustomed……..I hold that the evidence in the Committal Court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Sec. 145, Evidence Act…… but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under Sec. 288." (The decision of the Supreme Court was given, by Bose, J. and Fazl Ali, J., Patanjali Sastri, J., and Das, J., agreed with that decision.)"*
>
> *(emphasis supplied)*

50. In **Tahsildar Singh & Anr. vs State of U.P., (1959) SCC OnLine SC 17**, six-judge bench of the Supreme Court had the occasion to consider the changes made to Section 162 of the Cr.P.C. The Supreme Court recognized the object to incorporate the

amendment to Section 162 Cr.P.C. and Section 145 of the Indian Evidence Act - to protect the accused from any statement made by a witness only before any police authority and to protect the accused from any false statement deposition made at the trial. It was also recognized, such previous statement made to the police may be used by the accused person to bring out any contradiction that would be of help to the accused and/or to discredit the witness making any statement before the Court. In that regard, in paragraph 17 of the report, it has been observed as below:

> *"17. At the same time, it being the earliest record of the statement of a witness soon after the incident, any contradiction found therein would be of immense help to an accused to discredit the testimony of a witness making the statement. The section was, therefore, conceived in an attempt to find a happy via media, namely, while it enacts an absolute bar against the statement made before a police officer being used for any purpose whatsoever, it enables the accused to rely upon it for a limited purpose of contradicting a witness in the manner provided by Section 145 of the Evidence Act by drawing his attention to parts of the statement intended for contradiction. It cannot be used for corroboration of a prosecution or a defence witness or even a court witness. Nor can it be used for contradicting a defence or a court witness. Shortly stated, there is a general bar against its use subject to a limited exception in the interest of the accused, and the exception cannot obviously be used to cross the bar."*
>
> *(emphasis supplied)*

51. Then, in **State of U.P. vs Nahar Singh, (1998) 3 SCC 561**, the Supreme Court referred to and applied the following principle of law laid down by Lord Herschell, L.C. in Browne v. Dunn, [(1893) 6 R 67] wherein it was observed as below:

> *"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness*

unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

(emphasis supplied)

52. Then, in **Rammi vs State of M.P., (1999) 8 SCC 649**, the Supreme Court examined the scope of Section 155 of the Indian Evidence Act and held, the previous statement made by a witness (who later deposes before a Court), may be used to impeach his credibility, in accordance with the Section 155(3) of the Indian Evidence Act. In that, it observed as below:

"25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

> *155. Impeaching credit of witness.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—*
>
> *(1)-(2)****
>
> *(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"*

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness."

(emphasis supplied)

53. In **Karan Singh vs State of M.P., (2003) 12 SCC 587**, the

Supreme Court explained the object of Section 145 of the Indian Evidence Act – to give the witness a chance to explain the discrepancy or inconsistency or to clear up the point of ambiguity or dispute. In that, it observed as below:

> *"5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining the discrepancy or inconsistency and to clear up the particular point of ambiguity or dispute. In the instant case, Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW 1 Hari Singh, that is of no assistance to the appellants to prove their case of private defence."*
>
> *(emphasis supplied)*

54. Then, in **Munna Pandey vs State of Bihar, (2023) SCC OnLine SC 1103**, the three-judge bench of the Supreme Court had the occasion to consider the issue as to the credibility of the prosecution evidence led at the trial, in the absence of such evidence being tested on the anvil of Section 145 of the Indian Evidence Act, 1875-by contradicting the witness with their previous statement (recorded during investigation). Deprecating the practice on part of the prosecution in not doing so and further not appreciating the slackness on part of the defence in that regard, as also cautioning the Courts to remain vigilant, on that aspect, the Supreme Court observed as below:

> *41. It was the duty of the defence counsel to confront the witnesses with their police statements so as to prove the contradictions in the form of material omissions and bring them on record. We are sorry to say that the learned defence counsel had no idea how to contradict a witness with his or her police statements in accordance with Section 145 of the Evidence Act, 1872 (for short, 'Evidence Act').*
>
> *42. The lapse on the part of public prosecutor is also something very unfortunate. The public prosecutor knew that the witnesses were deposing something contrary to what they had stated*

before the police in their statements recorded under Section 161 of the CrPC. It was his duty to bring to the notice of the witnesses and confront them with the same even without declaring them as hostile.

43. The presiding officer of the Trial Court also remained a mute spectator. It was the duty of the presiding officer to put relevant questions to these witnesses in exercise of his powers under Section 165 of the Evidence Act. Section 162 of the CrPC does not prevent a Judge from looking into the record of the police investigation. Being a case of rape and murder and as the evidence was not free from doubt, the Trial Judge ought to have acquainted himself, in the interest of justice, with the important material and also with what the only important witnesses of the prosecution had said during the police investigation. Had he done so, he could without any impropriety have caught the discrepancies between the statements made by these witnesses to the investigating officer and their evidence at the trial, to be brought on the record by himself putting questions to the witnesses under Section 165 of the Evidence Act. There is, in our opinion, nothing in Section 162 CrPC to prevent a Trial Judge, as distinct from the prosecution or the defence, from putting to prosecution witnesses the questions otherwise permissible, if the justice obviously demands such a course. In the present case, we are strongly of the opinion that is what, in the interests of justice, the Trial Judge should have done but he did not look at the record of the police investigation until after the investigating officer had been examined and discharged as a witness. Even at this stage, the Trial Judge could have recalled the officer and other witnesses and questioned them in the manner provided by Section 165 of the Evidence Act. It is regrettable that he did not do so.

(emphasis supplied)

55. In **Birbal Nath vs State of Rajasthan & Ors., (2023) SCC OnLine SC 1396**, it has been observed as below:

"19. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a Court of Law as prescribed under Section 162 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are "previous statements" under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to "contradict" such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong."

(emphasis supplied)

56. Recently, in **Alauddin & Ors. vs State of Assam & Anr., (2024) SCC OnLine SC 760**, the Supreme Court again considered the manner in which a prosecution witness may be cross-examined with the help of their prior statement. Referring to Section 162 of the Cr.P.C. and Section 145 of the Indian Evidence Act, the Supreme Court has observed as below:

> *"6.……*
>
> *The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved."*
>
> *(emphasis supplied)*

57. Specifically, with respect to Section 145 of the Indian Evidence Act, the Supreme Court observed as below:

> *"8.……*
>
> *The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the*

contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness."

(emphasis supplied)

58. Recently, in **Lavkush vs State of U.P., (2024) SCC OnLine All 7674**, a coordinate bench of this Court also had the occasion to consider the manner of confrontation of a witness with his previous statement, in accordance with the Section 145 of the Indian Evidence Act, 1875. In that, it was observed as below:

"37.……..

The basic principle incorporated in sub-Section (1) of Section 162 is that any statement made by a person to a police officer in the course of investigation, which is reduced in writing, cannot be used for any purpose except as provided in Section 162. The first exception incorporated in sub-Section (2) is of the statements covered by clause (1) of Section 32 of the Indian Evidence Act, 1872 (for short, 'Evidence Act'). Thus, what is provided in sub-Section (1) of Section 162 does not apply to a dying declaration. The second exception to the general rule provided in sub-Section (1) of Section 162 is that the accused can use the statement to contradict the witness in the manner provided by Section 145 of the Evidence Act. Even the

prosecution can use the statement to contradict a witness in the manner provided in Section 145 of the Evidence Act with the prior permission of the Court. The prosecution normally takes recourse to this provision when its witness does not support the prosecution case. There is one important condition for using the prior statement for contradiction. The condition is that the part of the statement used for contradiction must be duly proved.

38.When the two statements cannot stand together, they become contradictory statements. When a witness makes a statement in his evidence before the Court which is inconsistent with what he has stated in his statement recorded by the Police, there is a contradiction. When a prosecution witness whose statement under Section 161(1) or Section 164 of CrPC has been recorded states factual aspects before the Court which he has not stated in his prior statement recorded under Section 161(1) or Section 164 of CrPC, it is said that there is an omission. There will be an omission if the witness has omitted to state a fact in his statement recorded by the Police, which he states before the Court in his evidence. The explanation to Section 162 CrPC indicates that an omission may amount to a contradiction when it is significant and relevant. Thus, every omission is not a contradiction. It becomes a contradiction provided it satisfies the test laid down in the explanation under Section 162. Therefore, when an omission becomes a contradiction, the procedure provided in the proviso to sub-Section (1) of Section 162 must be followed for contradicting witnesses in the cross-examination.

39.……………………………………………………....

The Section operates in two parts. The first part provides that a witness can be cross-examined as to his previous statements made in writing without such writing being shown to him. Thus, for example, a witness can be cross-examined by asking whether his prior statement exists. The second part is regarding contradicting a witness. While confronting the witness with his prior statement to prove contradictions, the witness must be shown his prior statement. If there is a contradiction between the statement made by the witness before the Court and what is recorded in the statement recorded by the police, the witness's attention must be drawn to specific parts of his prior statement, which are to be used to contradict him. Section 145 provides that the relevant part can be put to the witness without the writing being proved. However, the previous statement used to contradict witnesses must be proved subsequently. Only if the contradictory part of his previous statement is proved the contradictions can be said to be proved. The usual practice is to mark the portion or part shown to the witness of his prior statement produced on record. Marking is done differently in different States. In some States, practice is to mark the beginning of the portion shown to the witness with an alphabet and the end by marking with the same alphabet. While recording the cross-examination, the Trial Court must record that a particular portion marked, for example, as AA was

shown to the witness. Which part of the prior statement is shown to the witness for contradicting him has to be recorded in the cross-examination. If the witness admits to having made such a prior statement, that portion can be treated as proved. If the witness does not admit the portion of his prior statement with which he is confronted, it can be proved through the Investigating Officer by asking whether the witness made a statement that was shown to the witness. Therefore, if the witness is intended to be confronted with his prior statement reduced into writing, that particular part of the statement, even before it is proved, must be specifically shown to the witness. After that, the part of the prior statement used to contradict the witness has to be proved. As indicated earlier, it can be treated as proved if the witness admits to having made such a statement, or it can be proved in the cross-examination of the concerned police officer. The object of this requirement in Section 145 of the Evidence Act of confronting the witness by showing him the relevant part of his prior statement is to give the witness a chance to explain the contradiction. Therefore, this is a rule of fairness.

40.……

It must be noted here that every contradiction or omission is not a ground to discredit the witness or to disbelieve his/her testimony. A minor or trifle omission or contradiction brought on record is not sufficient to disbelieve the witness's version. Only when there is a material contradiction or omission can the Court disbelieve the witness's version either fully or partially. What is a material contradiction or omission depends upon the facts of each case. Whether an omission is a contradiction also depends on the facts of each individual case."

59. In **Mayank Parasari *v.* State of U.P., Neutral Citation No. - 2025:AHC:23769-DB**, in relation to requirements of Section 145 Cr.P.C., this Court observed as below :

"47. Thus, though neither the prosecution nor the defence may rely by way of evidence - on any previous statement recorded under Section 161 Cr.P.C., at the same time, Sections 145 & 155 of the Indian Evidence Act and Section 162 Cr.P.C., allow the party adversely affected by a deposition made at a trial, to confront the witness (making such deposition), with their previous statement including that recorded under Section 161 Cr.P.C., to either impeach the credibility of the witness or to bring out a contraction. If that confrontation (with any previous statement) is not offered by that affected party, in the manner permitted under Section 145 and/or 155 of the Evidence Act or Section 162 Cr.P.C., then, the deposition made would have to be considered on its own weight, in the individual facts of each case and its correctness or truthfulness may not be doubted merely because it may be claimed (by the party affected by the depositions made by that witness), that there exists contrary to the deposition made a previous statement of the same witness,

that runs contrary to the depositions thus made."

60. Once the defence failed to confront 'X' with her alleged previous statement recorded under Section 161 Cr.P.C., it never became open to the learned trial court to either rely on that statement or to disbelieve or discredit the prosecution evidence. The right of the defence or the right of the parties to confront a witness with their previous statement is a right that vests with the parties. While it may remain open to the Court also to require confrontation of any witness with their previous statement, the stage for the same would be when the evidence was being recorded. Here, suffice to note, no confrontation was ever offered to 'X' with any previous statement. At the stage of hearing, it was neither open to the parties nor to the learned trial Court to look into the statement recorded under Section 161 Cr.P.C., to disbelieve the proven facts or to observe that there pre-existed a quarrel between the parties. Plainly, the findings recorded by the learned trial Court are perverse, to that extent.

61. Second, even if any discrepancy of the nature pointed out above, were to be cited, merely because there may have existed a dispute between the parties, it may not be a stand alone reason to discredit the prosecution story, that was otherwise duly proven. The nature of quarrel was neither specified nor it was shown to be such as may have, prompted 'X' and her family members to therefore rush to make a false accusation against the appellant. Neither the nature of the quarrel nor its date and time were proven. The F.I.R. against the accused is of a heinous offence of rape. Evidence exists both on the strength of ocular evidence offered by 'X' as also other material, in support of the prosecution story.

62. As to the absence of internal injuries or serious external injuries, there is no rule or law available that such injuries must be proved to establish the occurrence of rape. Once it has been proven

by the prosecution on the strength of ocular evidence of the victim that she was overpowered or subjugated to the point that her resistance stood broken down or negated, the proof of occurrence through injury would be a medieval construct, but not modern reality. In the first place, the threat practiced by the accused (on the strength of firearm) to cause fatal injury, was proven. Second, it was also proven that 'X' alongwith her fiance were filmed in nude, by the accused. On both counts, sufficient evidence was led by the prosecution that the resistance that may have otherwise been offered, stood neutralized by the accused before committing the above rape. Further, evidence was led by the prosecution to establish that the resistance had been neutralized by establishing that 'R' the younger brother of 'X' aged about 12 years was assaulted and forced out of the 'apartment' before 'X' was filmed nude and thereafter, her fiance, 'S' was forced out of the 'apartment' under the threat of a gun, before rape was committed on 'X'. Once the victim, who is 18 years of age, had been thus subjugated and overpowered mentally, psychologically and physically, to accept the submission that she must be shown to have suffered internal and external injuries, would be ridiculous.

63. As to the delay in lodging the F.I.R., the law again is clear. In **Lalai @ Dindoo and Another Vs. State of U.P. (1975) 3 SCC 273**, a three judge bench of the Supreme Court considered the issue and observed as below:

> *"6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names of the appellants were incorporated in the first information report as a result of any*

confabulation."

(emphasis supplied)

64. In **Tara Singh and Others Vs. State of Punjab 1991 Supp (1) SCC 536**, the Supreme Court considered the issue of delay in lodging of F.I.R. It was observed as below:

> *"4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these circumstances we are unable to agree with the learned counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by PW 2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 p.m. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 a.m. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross-examination. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way*

of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific overt acts are attributed to them as mentioned above. Therefore we see absolutely no grounds to interfere. The appeal is, therefore, dismissed."

(emphasis supplied)

65. Then in **Ravinder Kumar and Another Vs. State of Punjab (2001) 7 SCC 690**, there was delay of two days in lodging the F.I.R. In that, the Supreme Court made following pertinent observations:

"13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information

about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR. …..

…

16. In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman, placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay in lodging the FIR."

(emphasis supplied)

66. In an occurrence of this nature where it was proven as discussed above, it cannot be accepted that there was delay. Some reasonable time may always be consumed by the parties visited with such traumatic occurrences, to rationalize their situation and to chalk out their future course of action. Suffice to note, it is not as simple as it may sometimes appear why an F.I.R. was not lodged within a few hours of the occurrence. It takes conviction, courage, efforts and sometimes even reference, to lodge an F.I.R. To the extent, it was proven, in these facts that 'X' was disoriented and unable to think clearly till next morning and she first came to disclose to her family, on 12.09.2016, it would have taken time for her family as well to react by lodging the F.I.R. In the first place, the occurrence is disclosed to have taken place when the victim 'X' was enjoying the company of her fiance who was also assaulted by being first filmed in the nude and thereafter forced out of the accommodation by the accused. Eventually, that engagement of 'X'

broke down. That fact was also proven at the trial. The Court may therefore allow for a margin to exist to the informant side and it may not hold it accountable for every hour or day. To the extent, there is no inordinate delay in lodging the F.I.R., it was not for the learned trial Court to throw out the ocular evidence.

67. To the extent (noted above), the findings recorded by the learned trial Court are wholly perverse, occasion exists for the appeal jurisdiction to arise against the order of acquittal made by the learned trial Court.

68. As to the conclusion that may have been drawn, we again note that the learned trial Court has reached an unsustainable conclusion that the occurrence had not been caused-by referring to the delay, the absence of internal and external injuries and bad relations between the parties. As to the exact conclusion that was permissible in the facts proven, there is absolutely no doubt that the testimony/deposition of 'X' remained wholly consistent. She maintained her stand without a blemish.

69. As discussed above, not only her deposition was consistent but that was wholly supported by 'R' who was also present till before commission of rape. No doubt whatsoever emerged in that evidence. Again, as discussed above, the deposition of 'X' was sufficient to offer conviction since her deposition stands on the higher footing as of an injured witness. Unless any reasonable doubt emerged in her deposition, no other conclusion except that of guilt of the appellant, may have been reached by the learned trial Court. Minor discrepancies cited as to number of persons/accomplices, is also of no significance in the present case, inasmuch as it is not the prosecution story that any person other than the accused committed rape on 'X' or that there were accomplices in the commission of rape. Other persons were only described to be persons who were present alongwith the accused

before he committed rape on 'X'. Whether that would constitute offence or not and whether the prosecution may have erred in not seeking their conviction also, is an issue extraneous to the trial at hand. Therefore, the opinion of the learned trial Court may not have been colored or influenced by the fact that at some stage the prosecution witnesses had described that 3-4 accomplices were present with the accused before he caused the occurrence of rape. To the extent, they were never described to have caused that occurrence, the fact that they were not identified, tried or convicted remained extraneous.

70. Similarly, the fact that 'S', fiance of 'X' was not examined, is extraneous to the issue. At the cost of repetition, it may be noted, the trial may have been concluded solely on the strength of ocular evidence of 'X', the injured witness. In our considered view, no other conclusion except that of guilt was proven at the trial.

71. For the above reasons, we find, it is a fit case to offer interference with the order of acquittal. Accordingly, the government appeal is **allowed**. The judgment and order dated 08.12.2023 passed by the Court of A.S.J./F.T.C.-I/Special Judge, Gangster Act, Auraiya in S.T. No. 75 of 2017 (State of U.P. *v.* Pushpendra @ Gabbar), arising out of Case Crime No. 694 of 2016 acquitting the accused of the charge under Sections 452, 376, 506 I.P.C., Police Station Auraiya, District Auraiya is **set aside**. We hold the accused guilty of offence under Sections 376, 452 and 506 I.P.C.

72. Heard the learned counsel for the accused. On the issue of sentencing, learned counsel for the accused has prayed that minimum sentence be imposed on the accused since the accused has already undergone incarceration in jail for about 7 years during trial. We have duly considered the prayer made by the learned counsel for the accused. In view of the proven facts, we find, the

accused is liable to be sentenced for 7 years, a minimum sentence of simple imprisonment for the offence committed under Section 376 I.P.C. together with fine Rs. 45,000/-, in default thereof, he may suffer further simple imprisonment for 6 months; under Section 452 I.P.C., 2 years simple imprisonment together with fine Rs. 5000/-, in default thereof, 3 months simple imprisonment; under Section 506 I.P.C., 2 years simple imprisonment. All sentences are directed to run concurrently.

73. We are aware that the accused may have remained confined for 6 years 9 months and 11 days (actual). The accused would also remain entitled to remission under prison rules. For the purpose of giving effect to this order, first, period of undergone together with remission may be computed by the Jail Superintendent, District Jail, Etawah, U.P. where the accused was confined, pending trial. Due communication of the same may be made to the accused through trial Court within 30 days from today. The accused is on bail. If the accused is required to serve out any part of the remaining sentence, he may surrender on or before 30.07.2025, failing which the trial Court is directed to take coercive steps in accordance with law. Compliance report be also submitted by the trial Court.

74. The fine imposed by this Court, if deposited by the accused, be paid out to the victim 'X'.

75. Also, Criminal Appeal u/s 372 Cr.P.C. No. 83 of 2024 filed by the informant and victim is **allowed**.

76. Trial court record be returned to the Court concerned along with a copy of this order.

Order Date :- 23.4.2025
SA/prakhar/faraz/abhilash

(Sandeep Jain,J.) **(S.D. Singh, J.)**

Per:- Sandeep Jain,J. (concurring)

I have gone through the judgement drafted by my learned brother and I fully agree with the reasoning and conclusion drawn by my learned brother. **I am not repeating those facts and evidence which have been already mentioned by my learned brother in his judgement.**

1. The trial court has disbelieved the prosecution version on the following grounds:-

A) The alleged incident took place on 11.09.2016 at about 01:30 p.m, but the F.I.R was lodged on 14.09.2016 at 05:30 p.m. by the ‘X’'s brother P.W-2. The distance between the place of occurrence and Police Station was merely 2 k.m. The trial court has held that there is delay of three days in lodging the F.I.R. and the prosecution has failed to give any explanation for this delay.

B) The trial court has mentioned that the learned D.G.C. has given the reason of delay that due to fear, the ‘X’'s family members could not register the F.I.R.

C) That no motive of the alleged incident has been assigned by the prosecution.

D) The accused has been falsely implicated in this case due to enmity.

E) The accused used to sing vulgar songs in front of the ‘X’, but regarding this no complaint was lodged with the police and due to this, the accused has been falsely implicated.

F) At the time of alleged incident, the ‘X’’s fiance ‘S’ was also present with the ‘X’, but he has not been examined by the prosecution.

G) There is a contradiction in the testimony of the ‘X’ P.W.-1 and the informant P.W.-2, regarding literacy of P.W.-2.

H) There is a serious contradiction in the testimony of informant P.W. 2 and 'R' P.W. 6, in the manner, in which the information of the incident was given by phone after the alleged incident/occurrence.

I) There is a serious contradiction between the testimony of the witnesses, regarding how the ‘X’ P.W.-1 reached her house after the occurrence.

2. Now I, analyse the conclusions drawn by the learned trial court in detail.

3. The Hon'ble Apex Court in the Case of ***Satyapal v. State Of Haryana, (2009) 6 SCC 635*** has held that delay in lodging the first information report in a rape case is a normal phenomenon. Ordinarily the family of the ‘X’ would not intend to get a stigma attached to the ‘X’.

4. The Hon’ble Apex Court in the Case of ***State of Himachal Pradesh Vs. Prem Singh (2009) 1 SCC 420*** has held that the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition bound society prevalent in India, more particularly, rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the F.I.R.

5. The Hon’ble Apex Court in the Case of **Satpal Singh Vs. State of Haryana (2010) 8 SCC 714** has held that delay in lodging F.I.R. in sexual offences has to be considered with a different yardstick. In case of sexual offences, the criteria may be different altogether. As honour of the family is involved, its members have to decide whether to take the matter to the Court or not. In such a fact situation, near relations of the prosecutrix may take time as to what course of action should be adopted. Thus, delay is bound to occur.

6. In the present case, the first information report regarding the incident has been lodged by the ‘X’’s brother, who has been examined as P.W.-2 in the trial court, who has stated in his examination-in-chief that due to fear of accused, he could not go to the police station on the date of occurrence. On 14.09.2016, finding opportunity he had gone to Auraiya and then had got typed an application and thereafter had given it to S.H.O., Auraiya, on the basis of which first information report was registered. In the cross-examination this witness has mentioned that on the date of the incident at 1:30 p.m. his brother had informed about the incident, by phone. At that time his father was not present but mother was present and he had not told his mother about the incident. He has further mentioned that he had first informed his uncle 'L' about the incident at about 2:00 p.m. on the same day and his uncle had directed him to go to Auraiya with 4-6 persons. Then on three motorcycles they had gone to Auraiya and had reached the place of occurrence but none was present there. Thereafter, they were not aware of the whereabouts of the ‘X’ and his younger brother. This witness has further mentioned that the ‘X’ was found in Nainapur village near a *Sheesham* tree, besides the road, and thereafter he had brought the ‘X’ to his house and by that time sunset had occurred. This witness has mentioned that at that time the ‘X’ was unconscious and thereafter he had got the ‘X’ treated by Doctor Som Singh and thereafter some medication was given to the ‘X’. At about 8-9 p.m. the ‘X’ became conscious but he had no talk with the ‘X’. He had a talk with the ‘X’ in the next morning and then the ‘X’ had told about the incident but on the next day he did not go to Auraiya for lodging the first information report. Third day after the incident had gone to Auraiya with Baba Ramji, mother, father along with ‘X’ and reached the police station at 5:30 p.m., then the police had got examined the ‘X’. The ‘X’ P.W.-1 has also mentioned in her

cross-examination that her engagement ceremony was performed with ‘S’ on 16.02.2016 but her marriage was not solemnized with him before and after the incident. It is the case of the prosecution that at the time of the incident ‘X’‘s fiance ‘S’ and her younger brother ‘R’ P.W.-6 were also present with the ‘X’ and then the accused had come armed with a country-made pistol along with his accomplices and had got the door forcibly opened.

7. From the above testimony of ‘X’ P.W.-1 and informant P.W.-2, it is evident that the informant came to know about the incident fully on the next day of the incident i.e. in the morning of 12.09.2016, but the ‘X’ and her family members took some time to deliberate, whether to get the first information report lodged or not? It is quite natural because at that time ‘X’ was engaged with ‘S’ and the honour of the ‘X’s and ‘S’’s family was involved, as such, the family deliberated and took time to take a decision to proceed further in this matter. The Hon’ble Apex Court has held that in rape cases generally there is a delay in lodging the first information report since the honour of the family is involved and in view of this, the delay in lodging first information report has to be considered with a different yardstick in such cases. In view of this, in my opinion, the delay of about three days in lodging first information report in this case is not fatal to the prosecution case and does not make the prosecution story unbelievable.

8. The trial court has come to the conclusion that the prosecution has failed to prove the motive of the incident. This conclusion of the trial court is wholly perverse because sexual offences are crimes of passion in which, there is no requirement to prove the motive of the offence on the part of the prosecution.

9. The trial court has recorded a finding that the accused has been falsely implicated due to enmity. The accused used to sing vulgar

songs in the presence of the ‘X’ but no complaint was got registered with the police regarding this act of the accused. To the contrary, the ‘X’ P.W.-1 has been suggested in her cross-examination that she had a very good friendship with the accused. The ‘X’ has specifically denied in her cross-examination that she had enmity with the accused. It has been further suggested to the ‘X’ that she used to talk day and night with the accused through mobile phone having a Vodafone S.I.M. No.7379629374, which she has denied. It has been further suggested that the accused was not accompanied by other accomplices and further the accused was not armed with a country-made pistol but she has denied these suggestions. It has been further suggested to the ‘X’ that the incident took place with her consent.

10. From the above testimony of the ‘X’ P.W.-1, it is apparent that according to the accused, the alleged incident occurred with the consent of the ‘X’, to which the ‘X’ has specifically denied. The ‘X’ in her previous statement under Sections 161 and 164 Cr.P.C. as well as in her examination-in-chief and cross-examination in the trial court has mentioned that the accused has committed rape upon her. The ‘X’ has also specifically denied that there was previous enmity and due to this, a false case has been got registered against the accused. On the one hand the accused is taking a stand that there was a deep friendship and physical consenting relationship between him and the ‘X’ and on the other hand a contrary stand has been taken that due to enmity he has been falsely implicated in this case. Both these stands taken by the accused are contradictory to one another. As such, the trial court has committed a patent illegality in recording a finding that the accused has been falsely implicated.

11. The trial court has come to the conclusion that since ‘X’’s fiance

‘S’ was present at the time of the occurrence, he must have been examined by the prosecution in the trial court and his absence from the trial has created serious doubts in the prosecution story. The ‘X’ P.W.-1 in her cross-examination has stated that prior to the incident she was engaged with ‘S’ on 16.02.2016 but her marriage with ‘S’ could not be solemnized because the accused had threatened her and ‘S’ with a country-made pistol in a public place. The ‘X’ has accepted that her marriage has been solemnized with ‘S-2’ on 18.06.2017 and she has not concealed anything from her in-laws regarding the incident. It is the case of the prosecution that at the time of the incident, the ‘X’ was present in her house along with her fiance ‘S’ and her younger brother ‘R’ P.W.-6 and at that time the accused had barged into the house, armed with country made pistol, and ordered the ‘X’ and his fiance ‘S’ to get undressed and threatened them with dire consequences, if they failed to do so. After getting them undressed, made a video film and thereafter the ‘X’’s fiance was forced out of the house and the accused had committed rape upon the ‘X’. ‘R’ P.W.-6 has mentioned in his examination-in-chief that accused arrived at the spot of occurrence on 11.09.2016 at about 1:30 p.m., at that time the door was closed, the accused was armed with country-made pistol, his 3-4 accomplices were also present and thereafter the accused had assaulted P.W.-6 and forced him out of the house.

12. From the above evidence, it is apparent that after the incident, the engagement of ‘X’ with ‘S’ had been broken and ‘X’ ’s marriage could not be solemnized with ‘S’. It can be inferred that due to this incident the honour of ‘S’ and his family had been tarnished because he was engaged with the ‘X’, as such, he could not be examined as a prosecution witness, but due to his non-examination prosecution story cannot be doubted. The trial court has committed a serious illegality in doubting the prosecution story

due to the non-examination of ‘S’ .

13. The trial court has recorded a finding that there is a contradiction in testimony regarding the literacy of informant P.W.-2 and the manner in which the information of the incident was given, after the incident. It is clear that both the above considerations are irrelevant. The literacy of P.W.-2 and the manner in which information of the incident was communicated to P.W.-2 has nothing to do with the actual incident itself. The trial court has seriously misdirected itself in considering the above irrelevant facts in disbelieving the prosecution story.

14. The trial Court has recorded a finding that the medical evidence of the ‘X’ does not corroborate the ‘X’’s testimony and the DNA report is also not available, which creates a doubt in the prosecution story.

15. The Hon’ble Apex Court in the case of **State of Rajasthan Vs. N.K. (2000) 5 SCC 30** (by three Judges), has held that the testimony of prosecutrix in a rape case should be appreciated on the basis of probabilities like testimony of any other witness and conviction can be based solely on such testimony but if court finds its difficult to accept her testimony, it may seek assurance to her testimony which may be short of corroboration from other evidence. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. It has been further held that whether the prosecutrix was a consenting party or not, evidence of the prosecutrix that she was forcibly subjected to sexual intercourse should normally be believed unless there is material leading to an inference of her consent. Absence of marks of external injuries on the person of the prosecutrix by itself

not sufficient to draw an inference of consent of the prosecutrix. Absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime.

16. The Hon'ble Apex Court in the case of ***State of Himachal Pradesh vs. Mango Ram, (2000) 7 SCC 224*** (by three Judges), has held that submission of body by prosecutrix under fear of terror does not amount to consent. Whether there was resistance by the prosecutrix depends upon relevant circumstances. Absence of marks of violence on the body of the prosecutrix as well as accused not of much significance when accused was examined three days after the incident. It was also held that consent for the purposes of Section 375 I.P.C. requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. It was also held that offence of rape being a serious one, Court should pay careful attention and show greater sensitivity, the evidence should be appreciated on broader probabilities.

17. The Hon'ble Apex Court in the case of ***State of Orissa vs. Thakara Besra, (2002) 9 SCC 86***, has held that if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with case

involving sexual molestations.

18. The Hon'ble Apex Court in the case of ***Dastagir Sab vs. State of Karnataka, (2004) 3 SCC 106***, has held that absence of injuries in private parts would not rule out being subjected to rape.

19. The Hon'ble Apex Court in the case of ***Prithi Chand vs. State of Himachal Pradesh, AIR 1989 SC 702*** and ***Narayanamma Vs. State of Karnataka, (1994) 5 SCC 728***, has held that mere absence of spermatozoa in vaginal smear cannot cast a doubt on the correctness of the prosecution case.

20. The Hon'ble Apex Court in the case of ***State of Rajasthan vs. Noore Khan, 2000 (3) Supreme Law Today 389*** and ***State of Punjab vs. Ramdev Singh, (2004) 1 SCC 421***, has held that if 'X' was accustomed to sexual intercourse, did not and cannot in law gave licence to any person to rape her. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the 'X' .

21. The Hon'ble Apex Court in the case of ***Mohd. Imran Khan vs. State of NCT of Delhi, 2012 (1) SCC (Crl) 240***, has held that if no other witness has seen the commission of offence, hence non-examination of other witnesses is immaterial. Sole testimony of 'X' is sufficient, if inspires confidence and is found to be reliable. No corroboration is required.

22. The Hon'ble Apex Court in the case of ***Suresh N. Bhusare and others vs. State of Maharashtra (1999) 1 SCC 220***, has held that where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence..

23. The Hon'ble Apex Court in the case of ***Tameezuddin @ Tammu vs State (NCT Of Delhi) (2009) 15 SCC 566,*** has held that it is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter.

24. The Hon'ble Apex Court in the case of ***State of Maharashtra and another vs Madhukar Narayan Mardikar, AIR 1991 SC 207, State of Punjab vs. Gurmit Singh and others, AIR 1996 SC 1393 and State of U.P. vs. Pappu @ Yunus and another, AIR 2005 SC 1248,*** has held that even in cases where there is some material to show that the 'X' was habituated to sexual intercourse, no inference of the 'X' being a woman of "easy virtues" or a woman of "loose moral character" can be drawn. Such a woman has a right to protect her dignity and cannot be subjected to rape only for that reason. She has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Merely because a woman is of easy virtue, her evidence cannot be discarded on that ground alone rather it is to be cautiously appreciated.

25. The Hon'ble Apex Court in the case of ***Narender Kumar vs. State (NCT of Delhi) AIR 2012 SC 2281,*** has held that prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance to her testimony. However, in case the court has reason not to accept the

version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecution is found to be improbable, the prosecution case becomes liable to be rejected.

26. From the above principles laid down by Hon'ble Apex Court, it is evident that where the evidence of the ‘X’/ prosecutrix is trustworthy, credible and inspires confidence then conviction can be based on her sole testimony, however in case, the Court has reason not to accept the version of the prosecutrix on its' face value, it may look for corroboration and in case, the evidence is read in it's totality and if the story projected by the prosecution is found to be improbable, then the prosecutrix's case becomes liable to be rejected. It is also evident that in a rape case the ‘X’ is not an accomplice but is an injured witness, whose evidence has to be given due credit.

27. It is also evident that absence of injury on private parts of the ‘X’, absence of spermatozoa in vaginal smear does not make the prosecution case doubtful. It is also evident that if the ‘X’ is accustomed to sexual intercourse, even then she cannot be raped. It is also evident that where there is no other witness of the commission of offence, then non-examination of other witnesses is immaterial and the sole testimony of the ‘X’ is sufficient, if it inspires confidence and is found to be reliable.

28. In this case, the ‘X’ P.W.-1 has consistently stated in her previous statement recorded under Sections 161 and 164 Cr.P.C. and in her examination-in-chief and cross-examination in trial court, that the incident took place on 11.09.2016 at about 01:30 p.m., when she was inside her house alongwith his younger brother 'R' P.W.-06 and her fiance ‘S’ then the accused alongwith his accomplices forced his entry into the house and he forced 'R' out of

the house. The accused was armed with a country made weapon, who ordered the ‘X’ and her fiance ‘S’ to get undressed and when they refused, they were forcibly undressed, thereafter the accused made a video clip of them and ‘S’ was allowed to dress and was forced out of the house, thereafter the accused raped the ‘X’. The ‘X’ has specifically mentioned that she was semi -conscious after the incident. The accused had threatened the ‘X’ not to disclose about the incident to anyone, failing which she would suffer dire consequences. After the rape, the accused forcibly took the ‘X’ by a motorcycle and dropped her near village- Nainapur, where the ‘X’ became unconscious.

29. There is no material in-consistency or improvement in the previous statements and the substantive evidence given by the ‘X’ in the Court, so as to make the testimony of ‘X’ untrustworthy.

30. The ‘X’ was medically examined on 15.09.2016 at 11:30 a.m. by Dr. Seema Gupta P.W.-03. The following injuries were found on the body of ‘X’:-

> *a) Brown colour abrasion was present on both sides of neck.*
>
> *b) 3 X 1.5 c.m. abrasion on right side of the neck, 8 c.m. below right ear.*
>
> *c) 3 X 2.5 c.m. abrasion on left side of neck, 7.5 c.m. below left ear.*
>
> *d) 6 X 3.5 c.m. brown colour abrasion was present at right buttock, 9 c.m. away from middle.*

31. The ‘X’'s hymen was found old torn and healed. No spermatozoa was found in the vaginal swab of the ‘X’ . The medico legal report mentions that signs of struggle was present on the body of the ‘X’.

32. Dr. Seema Gupta P.W.-3 has stated in her examination-in-chief that there were signs of struggle on the ‘X’'s body, which could have occurred at the time of rape. In the cross-examination P.W. 3

has mentioned that all the injuries sustained by the ‘X’ were simple in nature, no internal injuries were found on the body of ‘X’. Hymen was old torned. This witness has mentioned that by way of D.N.A. test, it could have been confirmed whether rape has been committed or not, but she has not received the D.N.A. report. She has also mentioned that the injuries sustained by the ‘X’ could have been inflicted in self-defence.

33. The trial court has specifically mentioned that the medical report of the ‘X’ does not support the prosecution story, which is a perverse finding. It is evident, that the ‘X’ has sustained simple injuries on her neck and right buttock, which according to the doctor P.W.-3, are signs of struggle, which could have occurred when ‘X’ tried to defend herself. The hymen of the ‘X’ has been found to be old torned and healed. Besides this, absence of spermatozoa in the ‘X’'s vaginal swab also does not make the prosecution story false.

34. It is also evident that D.N.A. sample of the ‘X’ was not taken by the Investigating Officer S.I. Ratan Singh P.W.- 4. He has also accepted in his cross-examination that he has not collected forensic evidence from the spot. It is well settled that if any lapse is conducted by the I.O. during the investigation, then its' benefits could not be given to the accused. In view of this, in my opinion, non-collection of the forensic material from the spot and D.N.A. sample from the ‘X’, does not make the prosecution story untrustworthy.

35. The ‘X’ P.W.-1 has been extensively cross-examined and she has been suggested in her cross examination that she had a very good friendship with the accused. The ‘X’ has stated that there was no enmity with the accused. The ‘X’ has been further suggested that she used to talk with the accused day and night through her

Vodafone mobile phone SIM No. 7379629374 and on the date of the incident, she had invited the accused on the above Vodafone mobile phone. She has been further suggested in her cross-examination that when the accused reached her house then on seeing the accused, ‘S’ left the ‘X’ 's house immediately. She has been further suggested that when the accused reached her house, she was alone with ‘S’. She has been further suggested that the accused came alone at her house and the accused was not armed with a country made weapon, but she has denied all these suggestions.

36. The trial court has also recorded the demeanor of the ‘X’ during the cross-examination. At one point of time, during her cross examination, the ‘X’ was weeping in the court room. The ‘X’ has been further suggested in her cross-examination that the incident occurred due to her consent.

37. The ‘X’'s younger brother 'R' P.W.-6 has also corroborated the evidence of the ‘X’ P.W.-1. P.W.-6 has mentioned in his examination-in-chief that on 11.09.2016 at 01:30 p.m. he, ‘X’ and ‘S’ were present in their house then accused alongwith his 3 - 4 accomplices came, the accused was armed with country made weapon, the accused got the ‘X’ and ‘S’ undressed and when P.W.-6 objected, he was assaulted and forced out of his home. Thereafter, the ‘X’ had told P.W.-6 that after getting her and ‘S’ undressed, the accused had made a video clip, ‘S’ was forced out of the room and thereafter, the accused had committed rape.

38. It is true that ‘R’ P.W.-6 has not witnessed the offence of rape, but P.W.-6 has specifically mentioned that the accused, who was armed with a country made weapon came to the ‘X’ 's house and in his presence, the accused had ordered the ‘X’ and ‘S’ to undress. P.W.-6, has specifically mentioned that when he objected then he

was slapped and was forced out of the house.

39. It is true that 'R' P.W.-6 is not a witness of the rape, but his testimony corroborates the testimony of 'X' P.W.-1 on the point that the accused came to the house of the 'X' on the date of occurrence, the accused was armed with a country made weapon and the accused ordered the 'X' and 'S' to get undressed.

40. Learned counsel for the accused-respondent has vehemently argued that the accused has been falsely implicated in the present case, but from the above analysis, it is evident that the 'X' P.W.-1 has consistently stated that she has been raped by the accused and even in the cross-examination, the 'X' has been suggested that she was a consenting party in this incident, to which the 'X' has denied. There is no material inconsistency or material contradiction in the testimony of the 'X', so as to make her testimony unreliable. The 'X' has sustained simple injuries in the incident, which has been proved by the doctor P.W.-3. The suggestions given to the 'X' P.W.-1 in her cross-examination also prove that the accused was present at the relevant time of occurrence. According to the accused, the incident occurred with the consent of the 'X', which she has denied. The trial court has not analysed, the evidence of the 'X' and has no-where held that 'X' is untrustworthy. The trial court has only disbelieved the prosecution case, on the ground that there is previous enmity between the accused and the informant, the F.I.R. has been registered with inordinate delay and the medical report of the 'X' does not support the offence/incident of rape, which are wholly perverse findings, as has been analysed by me in this judgement herein before.

41. It is evident that, in view of the above analysis, only one conclusion is possible that the accused has committed rape of the 'X', but the trial court has misread the evidence and has

misdirected itself, which has caused a serious miscarriage of justice. It is a perfect case requiring interference by the appellate court, in exercise of its appellate jurisdiction.

42. Heard learned counsel for the accused- respondent on the quantum of sentence to be imposed on the convicted accused.

43. I fully agree with the punishment imposed by my learned brother.

44. The accused is given two months' time to surrender before the trial court concerned to undergo the remaining sentence, if any. Any period undergone by the accused during trial in jail, be adjusted from the sentence imposed.

Order dated:- 23.4.2025
Vinod/Jitendra

(Sandeep Jain,J.)