



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 5TH DAY OF JUNE, 2025

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MRS JUSTICE K.S. HEMALEKHA

CRIMINAL APPEAL NO.1050 OF 2017

BETWEEN:

... APPELLANT



(BY SRI P.N. HEGDE, ADVOCATE)

AND:

1. STATE OF KARNATAKA
REPRESENTED BY
HIGH GROUNDS POLICE STATION,
BY THE STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE-560001.
- 2.



... RESPONDENTS

(BY SRI VIJAYA KUMAR MAJAGE, SPP-II FOR R-1;
SRI S. MAHESH, ADVOCATE FOR R-2)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 372 CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF ACQUITTAL IN SPL.C.C.NO.178/2013 ON THE FILE OF L ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE DATED 19.04.2017 FOR THE OFFENCE P/U/S 376(2)(f) AND 377 OF IPC AND FURTHER BE PLEASED TO CONVICT THE RESPONDENTS FOR THE OFFENCES CHARGED.

Date on which the appeal was reserved for Judgment	17.04.2025
Date on which the Judgment was pronounced	05.06.2025

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
and
HON'BLE MRS JUSTICE K.S. HEMALEKHA

**CAV JUDGMENT**

(PER: HON'BLE MRS JUSTICE K.S. HEMALEKHA)

Assailing the judgment of acquittal dated 19.04.2017 in Spl.C.C. No.178/2013 on the file of L Addl. City Civil and Sessions Judge, Bangalore (hereinafter referred to as 'trial court' for short), the first informant is before this Court in this Criminal Appeal.

2. The case was registered against the accused for the offences punishable under Sections 376(2)(f) and 377 of IPC.

3. PW.4-the first informant, lodged report under Ex.P.4 stating that the accused had committed sexual assault on their minor child in the month of April, 2010; and again in the last week of May, 2012 and on 13th June, 2012 at which time the child was 3 years and 10 months old.

4. The prosecution examined 26 witnesses as PW.1 to PW.26, marked documents at Exs.P1 to P.29 and



the material objects as per MOs.1 to 10. The accused did not choose to lead evidence, but marked documents at Exs.D1 to D15.

5. The trial court concluded that the case stemmed from a misunderstanding between husband and wife. It noted that PW.4 instead of seeking immediate medical treatment for the victim (child) when the latter experienced pain, first approached NGO and then the doctor. The Court further observed that the doctor (PW.17), who examined the child, clearly deposed that the child was suffering from bacterial infection and in light of this diagnosis, the trial court opined that there was no necessity for PW.4 to consult Dr.Shaibya Saldana, thereby casting doubt on the credibility of PW.4. Regarding the incident dated 13.06.2012, the trial court took note of the statement of the housemaid-Geeta (who was not examined in the Court) that the accused was caring for the children and there were no any wrongdoings. Additionally, the Court found that PW.4's intent appeared not to be for



the welfare of the child or reconciliation with her husband, but rather to implicate the accused. It was observed that she used the child as a means to prevent the accused from leaving the country, taking assistance of individuals connected to NGOs including financial and other support. The trial court gave a finding that PW.4 had begun collecting the evidence even before lodging the complaint. On a comprehensive assessment of entire oral and documentary evidence, the court observed that the prosecution failed to establish the charges against the accused beyond reasonable doubt and accordingly acquitted.

6. Heard the learned counsel for the appellant Sri P.N. Hegde for the appellant, Sri Vijaya Kumar Majage, learned SPP-II for respondent No.1 and Sri S. Mahesh, learned counsel for respondent No.2. Sri P.N. Hegde, learned counsel submitted his written argument also.



7. Learned counsel for the appellant would submit that the trial court findings that the complainant began collecting the evidence prior to the case registration reflected a misconstruction of her intent and a lack of sensitivity to the circumstances. Given that, the initial suspect was her husband-victim's father it was but quite natural for the complainant to act cautiously. Her decision to take necessary steps, rather than immediately approaching the police, was a reasonable step to clarify her doubts, not a sign of malice or fabrication. It is argued that the accused sexually abused his minor child on multiple occasions, including a specific incident on 13.06.2012 and the abuse came to light through the victim's statement and physical symptoms (such as genital redness and pain). The clear and cogent evidence of the child (PW.23) establishing the guilt of the accused was not properly appreciated by the trial court. Furthermore, the reliable medical evidence from ENFOLD Trust and Baptist Hospital where the victim was examined by Dr. Shaibya



Saldana (PW.5), Dr. Madhuri Murali (PW.6), Dr. Nalini (PW.8), Dr. Shobha Srinath (PW.19), was also not duly considered, despite the expertise of these professionals. It is further argued that, the presence of positive swab results and absence of the hymen indicates the possibility of sexual assault. The delay in lodging the report and initial approach to doctors and NGO's, rather than directly approaching the law and enforcement, is attributed to the apprehension of PW.4 arising from the accused's alleged financial and emotional dominance. Such conduct, it is submitted, reflects the first informant's constrained circumstances and cannot be construed as indicative of fabrication. It is contended that the trial court has failed to appreciate the medical and circumstantial evidence and wrongly placed emphasis on the lack of eye witnesses and non-examination of witnesses CW.20-Geeta (Maid), CW.19-Jyothi and CW.21-Charles. That the trial court has wrongly found fault with all those persons who have supported PW.4 either in the capacity of counselors,



doctors or advocates and consequently extended the benefit to the accused. Further it is submitted, the conclusion arrived by the trial court that PW.23 was not subjected to the sexual abuse in the absence of injuries is totally erroneous, as in law "sexual intercourse" term is held to mean the slightest degree of penetration on the vulva by the penis with or without a emission of semen and it is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. It is argued that the testimony of PW.4 and PW.23 is credible and consistent and forms the basis for conviction.

8. Learned counsel for respondent No.2 on the other hand would argue that the case of the prosecution rests on the circumstantial evidence and only if the entire link to the chain are connected and completed, then the prosecution would be said to have proved its case beyond reasonable doubt and even one link fails, the accused has to be acquitted. To prove the alleged commission of rape



HC-KAR

by the accused, the prosecution relies upon the testimony of PW.4, the sole direct witness. The relationship between the accused and PW.4 was not cordial. The accused was on the verge of breaking his marriage with PW.4 and in that context, the evidence of PW.4 has to be considered and to be corroborated by the evidence of other witnesses. Apart from the evidence of PW.4 which is even highly doubtful there is no other reliable evidence placed to support the case of the prosecution. It is argued that the first information is false and motivated by ongoing marital discord, particularly related to child custody and control. There is an inordinate and unexplained delay in giving first information since the alleged offence according to PW.4 was committed in the year 2010 and the first information was lodged in June, 2012. To the alleged incident on 13.06.2012, the eye witness is the son of the accused and the maid CW.20 - Geeta, who were present at home. The statement of Geeta though recorded, she was not examined and it gives rise to significant omission which



totally demolish the prosecution case about the occurrence of the incident as alleged on 13.06.2012. The medical evidence including treatment records from Fortis Hospital of Dr. Roshni P. Rao (PW.17) clearly establishes that the child was diagnosed with Urinary tract infection (UTI) in April, 2012. These symptoms, he argues, were wrongly attributed to abuse. The evidence of PWs.20 and 22-the Investigating Officers who spoke that Geeta was present on 13.06.2012 and she stated that she had put the clothes worn by the child on that day for washing and sent the child on 13.06.2012 with PW.4. From this evidence, it is clear that the clothes which were seized by the police at the instance of PW.4 and produced by the prosecution at M.Os.5 and 6 are not the clothes that were worn by the victim on the said day and supported by the DNA report at Exs.P.26 and P.29. Thus, the learned counsel submits that the seminal stains of the accused found on M.Os.3 to 6 clearly establishes that the same is smeared by PW.4 who had preserved the sperm of accused and the doctors have



clearly admitted that such smearing is possible to get the result as indicated in DNA report. Learned counsel submits that mere finding of seminal stain on the clothes no way would prove with regard to the commission of rape. Learned counsel further submits that there is no link established in the chain of circumstantial evidence, as the FIR is a concocted one, delay in filing the complaint is unexplained and PW.4 who is the sole witness is unreliable. The main link to the case of the prosecution would have been the maid and the son of the accused, who were allegedly present in the house on 13.06.2012 on which day the alleged incident had taken place, have not been examined. The other main link is the medical evidence which is not at all supportive to the case of prosecution since the DNA report unimpeachably exonerates the accused of the allegation. The physical examination and opinion of the doctors of Baptist Hospital cannot be considered since apart from being an interested witness, their evidence is not reliable and is contrary to



the evidence of the doctors from Bowring Hospital, especially in respect of the chemical analysis and nature of hymen of the child. He argues that the entire case is built on suspicion and retrospective interpretation of normal medical conditions. He submits that the trial court has rightly appreciated the inconsistencies, delay and lack of corroboration and the acquittal is based on sound reasoning. He argues that the presumption of innocence stands strengthened post-acquittal and cannot be overturned lightly.

9. Having considered the rival contentions urged by the learned counsel for the parties the point that arises for consideration is;

"whether the reasoning accorded by the trial court is legally sustainable and was it justified in acquitting the accused of charges under Sections 376 (2) (f) and 377 of IPC? and whether the same warrants any interference?"



10. The case of the prosecution is that the accused had subjected PW.4 to physical and emotional abuse from the year 2005 and that she had been a victim of domestic violence. From their marriage, PW.4 gave birth to three children, the details of which are as under:

(a)

(b)

(c)

Around April, 2010 while PW.4 was pregnant for her third child, her daughter (victim) made statements to the effect that she was being hurt by the accused on her genitals/private parts. Then, on a couple of occasions PW.4 discovered redness on the genitals of the victim and upon questioning, the accused would claim that the soreness/redness on the victim's genitals was attributable to the child playing on the slide. Since PW.4 was pregnant she did not pay attention to what her daughter was



saying. That, following the birth of her third child, while the victim was sleeping, she was picked up by the accused at which time the victim stated that she did not want to be hurt on her private parts. However, the accused brushed aside the PW.4's concern. In the last week of May, 2012, the victim, aged about 3 years 10 months complained of pain while passing urine and stools and she was shocked when the victim indicated through actions that the accused was sexually abusing her. Disturbed by the possibility of her husband sexually abusing their daughter, she turned to her friend Tarana Bhandari and Merryn for support and advice and they advised her to approach a psychologist and was referred to Dr. Mamatha Shetty, who in turn referred her to Dr. Shobha Managoli. On 01.06.2012 PW.4 met Dr. Shobha Managoli from an organization named, "SPACE" and shared with her the complaints of her daughter sharing that her father hurts her private parts. Since the office of Dr.Managoli was at a distance of PW.4's house, she was referred to a counselor at "SPARSH"



Sangeetha Unni (PW.18), who in turn referred her to ENFOLD Trust, where she met Dr. Shaibya Saldana (PW.5). Before meeting PW.5 she met Dr. Roshni P. Rao (PW.17), a pediatrician referred by Tarana, who saw the wounds and expressed that they were caused due to scratching, blisters with pus in the private parts. She prescribed medicine for worms and antiseptic cream for blisters and prescribed urine routine and culture. PW.5, the specialist from ENFOLD Trust provided a preliminary report indicating abuse by the accused and that the victim was emotionally disturbed by the abuse that was occurring and referred the victim to the child psychiatrist in NIMHANS. All incidents which have been narrated were before the incident that is said to have occurred on 13.06.2012. If we look at the complaint, it states that on 13.06.2012 the accused returned home for lunch at around 1.30 p.m. and PW.4 left the house at 2.00 p.m. to collect the report from the ENFOLD Trust. At that time, their younger son Joshua, victim and the maid Geeta were



at home. Upon returning around 5' o'clock, she noticed that her husband's lunch plate, still filled with food, was placed in the refrigerator. The maid informed her that after she left, the husband took the victim to one of the bedrooms used as a study, shut the door and remained inside until 3.15 p.m., then he left for work. It is stated that during that time, the maid reportedly heard the child crying. She immediately examined her daughter and observed redness around the genital area. When questioned, the victim stated that her father had hurt her. PW.4 contacted PW.5 who advised her to take the victim to the Collaborative Child Response Unit (CCRU) at Baptist Hospital. She arrived at the hospital around 6.30 p.m. where Dr. Madhuri Murali (PW.6 Pediatrician) and Dr. Nalini (PW.8 Gynecologist) examined the victim. They conducted physical examinations and collected vaginal swabs for laboratory testing. On 14.02.2012, she visited the doctors at the Baptist hospital to follow up on the medical examination conducted the previous day. She



was informed that the swab test results were positive, there were indications of possible assault, and that the victim's hymen was not intact. Based on this medical evidence and the circumstances described, PW.4 alleged that her husband had sexually abused their minor daughter, asserting that he had control and access to the victim and was therefore responsible for the abuse.

11. The prosecution examined 26 witnesses, the details of which are culled out as under:

- i. PW.1 and PW.3 are panch witnesses who have deposed about the seizure of the passports of the accused marked as MOs.1 and 2.
- ii. PW.2 is examined among others as a mahazar witness in the seizure of the clothes as well as the spot of the alleged incident in Ex.P.3, marked the bed sheets and blankets as MOs.3 and 4 and 5 and 6 are the clothes.



- iii. PW.4 is the first informant, wife of the accused and mother of the victim girl.
- iv. PW.5 is Dr. Shaibya Saldana, who is the founder of NGO named 'ENFOLD' and forwarded the victim for further medical analysis to Baptist Hospital. Submitted the drawings at the time of counseling to the police as per Ex.P6.
- v. PW.6-Dr. Madhuri Murali, the Child Specialist, PW.7-Dr. Varsha, the Child Specialist, PW.8-Dr. Nalini, Gynecologist and PW.9-Dr. Dhanalakshmi, Child Specialist, are all doctors attached to Baptist Hospital who have examined the victim and given their opinion and marked Ex.P7 and P8-Case sheet and the provisional medical certificate of the victim, Exs.P.10 and 11 – Letter and report.
- vi. PW.11-Dr. Prathima, Assistant Professor, marked Medical examination report at Ex.P12, OPD card at Ex.P13 and Prescription Letter at Ex.P14. PW.12-



Dr. Vani Ravikumar, Pathologist, PW.14-Dr. K.V. Satish, Assistant Professor, gave the medical examination report of the accused at Ex.P15. PW.15-Dr. Latha .B, has given identification of DNA centre at Ex.P16. PW.16-Mohan Kumar, Lab Technician, are the doctors from Bowring and Lady Curzon Hospital, who have examined the victim and the accused have taken blood samples, sent vaginal and anal swabs of the victim and blood of the accused for DNA analysis.

- vii. PW.13 – R. Vimal Kumar from Baptist Hospital is a person who sealed the slides and tubes and handed them over to the police.
- viii. PW.17-Dr. Roshini P. Rao is a consultant and Pediatrician who owns a clinic and she treated the victim on 05.06.2012 and gave the prescription as per Ex.D.4.



- ix. PW.18-Sangeetha Unni, General Counselor is an NGO who has referred PW.4 to PW.5.
- x. PW.19-Dr. Shobha Srinath from NIMHANS and submitted a report as per Exs.P17 and 18.
- xi. PW.25 – Dr. Purushotam, Scientific Officer, PW.26-Vinod G. Lakkappa, Assistant Scientific Officer, DNA Office, submitted a report as per Exs.P.26 and 29.
- xii. PW.23-is the victim.
- xiii. PW.20-Hanumantharaya, Police Inspector, PW.21-Shobha .G, Police Inspector, High Ground Police Station, PW.22-D. Devaraj, ACP, Cubbon Park Sub-Division, PW.24-H.K. Venkataswamy, ACP, Cubbon Park Sub-Division (Investigating Officers).

12. PW.4, the wife of the accused and mother of the victim is 'a star witness' apart from the testimony of the victim-PW.23. The prosecution's case largely rests on



the sole testimony of PW.4 and PW.23. Her testimony is central to the prosecution's case and we have to evaluate her credibility with utmost scrutiny, especially when there are no eye witnesses or when there is no direct corroborative evidence. Her statement carries significant weight but must be consistent, reliable and free from major contradictions to sustain a conviction. In such a situation, Courts have consistently held that a conviction can be based on the sole testimony of the 'star witness', provided that it is credible, consistent and trustworthy. Before considering the testimony of PW.23, it is relevant to go through the evidence of PW.4. In her cross-examination, she has categorically admitted that the accused regularly took the family out for picnics and that during the last week of April 2012, he had taken her and their three children to Masinagudi and stayed at a resort. After returning from the trip, the victim fell ill. She was initially treated by a local doctor, who then referred her to Fortis Hospital, where it was indicated that the victim had



a urinary infection (Ex.D3). Along with the treatment details given by PW.17, Ex.D4-prescription indicates that the victim was suffering from Urinary Tract Infection in April 2012. PW.4 was portrayed during cross-examination as leading a wayward lifestyle. She categorically admitted to frequently attending parties with male and female friends, often against the wishes of the accused, which led to marital strain. PW.4 in her report stated that she had been subjected to physical and emotional abuse by the accused since 2005, claiming she was a victim of domestic violence. The admission by PW.4 such as the accused taking the family for outings, the victim's medical condition being diagnosed as urinary tract infection, and treatment by PW.17 raises doubt about the allegation of sexual abuse, particularly the medical records support an alternative, non-criminal explanation for the victim's symptoms.

13. PW.4 admitted further in her cross-examination that she met multiple NGOs and Professionals between 1st



and 12th June 2012, including Parivarthana, SPACE, and ENFOLD Trust, consulting counselors, psychologists, and doctors like PWs.2, 5, 18. She acknowledged contacting PW.18 urgently, citing the accused's upcoming transfer to South Africa. She admitted that she had met Advocates associated with ENFOLD Trust, to understand the rights of the child, who may have been sexually abused. She also admitted that PW.5 had referred her to advocate, who helped to draft the complaint. Further she admitted that the accused had planned to divorce her and leave India with children by 31.08.2012. The evidence suggests that Ex.P4 was legally drafted with assistance from NGO linked advocates after PW.4 consulted a range of Professionals, including doctors, lawyers, and NGO workers prior to lodging it. This portion of the cross-examination highlights that PW.4 was actively involved with multiple NGOs, including ENFOLD, Parivarthan, Fedina and was referred to these organizations by individuals like PW.5, PW.18 of ENFOLD, who first met on 05.06.2012, played a central



role in initiating medical referrals including to Baptist Hospital CCRU, and later to NIMHANS Dr. Shobha Srinath (PW.19). PW.2-Kushi Khushalappa of ENFOLD accompanied PW.4 and PW.5 to the police station on 13.06.2012 and again on 14.06.2012. Though reaching out to NGO first can indicate genuine distress or lack of access to immediate help especially in domestic violence cases. However, this coordination shows a pre-litigation consultative process by PW.4 involving legal and medical professionals *via* NGOs. While such steps may be consistent with concern for child welfare, the sequence involving repeated consultation, delayed police reporting, and referrals largely controlled by NGO-linked personnel suggests a well orchestrated build-up rather than immediate, reactive reporting thus raising doubt about spontaneity and credibility. The fact that PW.4 met various NGOs, doctors and legal professionals before the alleged triggering incident on 13.06.2012 raises a serious question about the credibility of the report she filed on 14.06.2012.



This timing suggests that she has been preparing to initiate legal action or build a case regardless of any specific incident on that day. The delayed complaint (from alleged incident in April 2010 to filing in June 2012) and the victim's prior medical history of genital infection further raises a doubt about the credibility and timing of the allegation.

14. PW.4 admitted in her cross-examination that she took the victim to PW.17 (pediatrician) for treatment, examination revealed small pustules around anus and perineum, as well as small laceration near vaginal. The Doctor prescribed T-Bact cream and medication for worms. Further, she admitted that Dr. Nalini (PW.8), who examined the child, noted redness and Erythema around the anal margin with tenderness. PW.17 noted scratch marks and pustules on the victim's private part in identifying pinworms and prescribed appropriate medicine. Dr. Prathima (PW.11) also examined the victim and found Erythema around the genital area, indicating a vaginal



infection due to Escherichia Coli (E-Coli). The medical evidence presented by the independent doctors including Dr. Roshini P. Rao (PW.17), Dr. Madhuri Murali (PW.6), Dr. Nalini (PW.8) states that there were no clear signs of sexual abuse on the child, redness and scratch marks were observed, but are not conclusive evidence of sexual abuse. Additionally, they stated that the absence of hymen could be explained by factors like riding or swimming not necessarily sexual activity. The DNA evidence from Exs.P26 and P29 represent significant inconsistency that would weaken the prosecution's case. A summary table based on DNA evidence is described below:

Item No.	Material	Accused's DNA	Child's DNA
1	MO3 - Cloth	Present	Not Present
2	MO4 - Cloth	Present	Not Present
3	MO5 - Bedspread	Present	Not Present
4	MO6 - Bedspread	Present	Not Present
5	Subcloth 1 (Baptist swab)	Not Present	Not Present
6	Subcloth 2 (Baptist swab)	Not Present	Not Present
7	Swab (Bowring Hospital)	Not Present	Present



8	Swab (Bowring Hospital)	Not Present	Present
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15. PW.4 claims that the child was abused while wearing certain clothes, yet the accused's DNA is found on those items, but the victim's DNA is absent from those same items. This creates a significant evidentiary contradiction. If the victim wore the clothes during the alleged assault, her DNA (such as epithelial cells, sweat or blood should be reasonably present). The DNA findings raise concern that the clothes have not been worn by the victim at that time and the items were tampered intentionally or otherwise to implicate the accused.

16. The Investigating Officer-PW.2 has specifically stated that on 21.07.2012, he recorded the statement of Geeta. Failure to produce Geeta, a crucial independent witness, casts a shadow on the prosecution's intent and creates a material gap in evidence. This omission assumes greater importance in cases where the conviction is sought mainly on the testimony of an interested witness



(PW.4). The prosecution has offered no explanation for its failure to examine Geeta. On the contrary, the evidence provided by the Investigating Officer gives an inclination to draw an inference that Geeta knew the truth which the prosecution did not want to be brought on record. Thus, the non-examination of the maid undermines the prosecution's burden to establish guilt beyond reasonable doubt and supports the defence argument that the trial court rightly acquitted the accused for lack of corroborative and independent evidence.

17. Now let us examine the testimony of PW-23. Her testimony raises a serious doubt about reliability and credibility and her statements appear to be inconsistent and lacking coherence-she recalls events unrelated to the complaint (example vomiting salad, being hit with the stick) and fails to recall parts of early childhood, including her school, friends or travels. Importantly, she admitted being coached by her mother (PW.4), with promises of chocolate and picnic in exchange for giving certain



answers in Court. This testimony supports the arguments of the accused that tutored or influenced testimony significantly undermined the prosecution's case, especially since the victim's clear recollection of the core allegation is absent.

18. The appellant relies on judgments of the Apex court in the case of ***Sakshi Vs. Union of India and others***¹ (*Sakshi*), ***Sham Singh Vs. State of Haryana***² (*Sham Singh*) and ***State of Rajasthan Vs. Ani Alias Hanif and others***³ (*Ani @ Hanif*) which emphasizes that testimony of the victim in sexual offence cases must be treated with utmost seriousness and can form the sole basis for conviction if found credible and consistent. These decisions recognise that delay in lodging a complaint and lack of corroborative medical evidence should not weaken prosecution's case where the victim's statement is natural, truthful and inspires confidence.

¹ (2004) 5 SCC 518

² (2018) 18 SCC 34

³ (1997) 6 SCC 162



19. The other judgments referred by learned counsel for appellant are ***Ranjit Hazarika Vs. State of Assam***⁴ (*Ranjit Hazarika*), ***Ganesan Vs. State Represented by its Inspector of Police***⁵ (*Ganesan*) the Apex court emphasized that while the victim testimony is important, it must be scrutinized in light of entire evidence including medical reports and circumstances of the case. Where the victim's testimony is inconsistent, influenced by external tutoring or where medical evidence fails to corroborate the allegations, the benefit of doubt must go to the accused. In the present case, the child's memory gaps, admitted coaching by mother, lack of conclusive medical evidence of sexual assault, and DNA reports creates serious doubts on the prosecution's case. While the legal proposition laid down by the Apex court in the above referred decisions is undoubtedly authoritative, however the facts and circumstances of the present case

⁴ (1998) 8 SCC 635

⁵ (2020) 10 SCC 573



are clearly distinguishable and are not applicable to the present case.

20. The Courts have time and again held that between "*may be true*" and "*must be true*", there is a long distance to travel which must be covered by clear, cogent unimpeachable evidence by the prosecution before an accused is condemned as a convict. Thus, on examining the testimony of witnesses and the material evidence, we hold that PW.4's conduct to lodge a report appears prepared and strategically framed. PW.23 lacked memory of key events, contradicting her own statement, admitted of being tutored by PW.4. The non-examination of the material witnesses raises a reasonable doubt about the suppression of the key evidence. No final or conclusive medical report substantiating the allegation of sexual abuse. Only provisional reports are available, non conforming abuse. Presence of E-Coli Bacterial, Erythema, Pustules, itching, and pinworms, such symptoms are consistent with non-sexual infection and do not prove



abuse. There is no medical evidence of hymen condition, doctors including Roshini P. Rao (PW.17) confirms that hymen ruptures are caused by non-sexual factors (example hygiene, physical activities). Psychological report based on third party interviews (not examined) and PW.5 based her findings on her drawings Ex.P.6 not forensic evaluation. DNA of accused found on clothes and bed sheets, but on items directly linking to abuse (that is internal swabs), victim's DNA was not found on most relevant materials. In view of the totality of medical, psychological and testimonial evidence, we find that the prosecution has failed to appreciate the guilt of the accused beyond reasonable doubt. The medical findings do not support the charge and the testimonies are riddled with inconsistencies and procedural lapses.

21. For the foregoing reasons, we hold that the trial court was justified in acquitting the accused and we find no reasons to interfere with the order of the trial court,



accordingly, we answer the point for consideration in the affirmative and we pass the following:

ORDER

Criminal appeal is hereby ***dismissed.***

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(K.S. HEMALEKHA)
JUDGE

Ykl/MBM