R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF MARCH 2026

PRESENT

THE HON'BLE MR. JUSTICE G BASAVARAJA

**CRIMINAL APPEAL No. 824 OF 2023**

BETWEEN:

1. MOHAN NAIK
S/O GOVINDA NAIK,
NOW AGED ABOUT 23 YEARS,
R/O AMMANAPURA,
AVVERAHALLI POST,
KAILANCH HOBLI,
RAMANAGARA TALUK.
RAMANAGARA DISTRICT-562159
[Now in Judicial Custody]

2. APPU NAIK
S/O VINOD KUMAR,
NOW AGED ABOUT 23 YEARS,
R/O AMMANAPURA,
AVVERAHALLI POST,
KAILANCH HOBLI,
RAMANAGARA TALUK.
RAMANAGARA DISTRICT-562159
[Now in Judicial Custody]

...APPELLANTS

(BY SRI K.A. CHANDRASHEKARA, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY RAMANAGARA WOMEN POLICE STATION

RAMANAGARA-562159.
REPTD BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560001.

2. M/S. GOWRI BAI
W/O MANJU NAIK
R/O AMMANAPURA
AVVVERAHALLI POST
KAILANCH HOBLI,
RAMANAGARA TALUK.
RAMANAGARA DISTRICT-562159

AMENDED AS PER ORDER DATED 29.07.2025

…RESPONDENT

(BY SRI B. LAKSHMAN, HCGP FOR R1;
R2 SERVED, UNREPRESETED)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER OF CONVICTION AND SENTENCE DATED 28-03-2023/31-03-2023 PASSED IN S.C. NO.26/2022 BY THE III ADDL., DISTRICT AND SESSIONS JUDGE RAMANAGARA CONVICTING THE APPELLANTS HEREIN FOR THE OFFENCE PUNISHABLE UNDER SECTIONS 376-D IPC; AND ETC.

THIS CRIMINAL APPEAL HAVING BEEN HEARD AND RESERVED ON 18.02.2026, COMING ON FOR **'PRONOUNCEMENT OF ORDERS,** THIS DAY, THE COURT, DELIVERED THE FOLLOWING:

## CAV JUDGMENT

1. The appellants prefer this appeal under Section 374(2) of the Code of Criminal Procedure, aggrieved by the judgment of conviction and order on sentence dated 28th/31st March, 2023,

passed in SC No.26 of 2022 by the III Additional District and Sessions Judge, Ramanagara convicting the appellants for the offence under sections 376-D IPC and sentenced them to undergo 25 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- each in default of payment of fine, to undergo simple imprisonment for one year.

2. In the present judgment, I would like to withhold the name of the victim lady in view of the provisions of Section 228A IPC and in pursuance of the observations of Hon'ble Supreme Court in STATE OF HIMACHAL PRADESH v. SHREE KANTH SHEKARI (AIR 2004 SC 4404). The prosecutrix hereinafter referred to as "the victim".

3. The facts, as unfolded by the prosecution, in short conspectus, is that on 16.06.2021 at about 5.30 p.m., the accused Nos.1 and 2 are alleged to have visited the house of C.W.1, the victim. It is the case of the prosecution that the accused were under the influence of alcohol at the relevant point of time, immediately upon entering the house, they are stated to have bolted the main door from inside and closed the windows, thereby

preventing any possibility of outside intervention. Both the accused, having common intention, committed forcible sexual intercourse upon the victim one after the other, thereby attracting the offence punishable under Section 376D of the Indian Penal Code. Further, the accused attempted to strangulate the victim, thereby causing injuries and committing an act amounting to an offence punishable under Section 307 of the Indian Penal Code.

4. During the course of investigation, the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure before the jurisdictional Magistrate on 21.06.2021. The accused were apprehended and remanded to judicial custody. Upon completion of investigation, the Investigating Officer laid the charge sheet before the Court of the Principal Senior Civil Judge and Chief Judicial Magistrate, Ramanagara, which, after taking cognizance of the offences, committed the matter to the Court of Sessions by order dated 08.02.2022. Upon receipt of the committal records, the Sessions Court secured the presence of the accused and, after hearing both sides, framed charges against accused Nos.1 and 2 for the offences punishable under Sections

376D and 307 of the Indian Penal Code on 17.11.2022. The accused pleaded not guilty and claimed to be tried.

5. In order to bring home the guilt of the accused, the prosecution examined in all 20 witnesses as PWs1 to 20, marked Exs.P1 to P30 and eight material objects as MOs.1 to 8. After closure of the prosecution evidence, the statements of the accused under Section 313 of the Code of Criminal Procedure were recorded, wherein the incriminating circumstances appearing against them in the evidence of the prosecution witnesses were put to them. The accused denied all such circumstances as false. Further the accused No.1 has stated that, ನಮ್ಮ ಮನೆಯಲ್ಲಿ ಯಾರೂ ಬಾಡಿಗೆಗೆ ಇಲ್ಲ. ನಾನು ಊರಿನಲ್ಲಿದ್ದಾಗ ಪೋಲೀರು ಕರೆದುಕೊಂಡು ಹೋಗಿ ಹೊಡೆದರು. 7–8 ಪೇಪರಿನಲ್ಲಿ ಸಹಿ ಹಾಕಿಸಿಕೊಂಡರು. ನಾನು ಯಾರ ಮೇಲೆಯೂ ಕಂಪ್ಲೆಂಟ್ ಕೊಟ್ಟಿಲ್ಲ. The accused No.2 has stated that, ನಮ್ಮ ಮನೆಯಲ್ಲಿದ್ದಾಗ ಪೋಲೀಸರು ಕರೆದುಕೊಂಡು ಹೋಗಿ 2 ದಿವಸ ಹೊಡೆದರು, ಖಾಲಿ ಪೇಪರ್ ಮೇಲೆ ಸಹಿ ಹಾಕಿಸಿಕೊಂಡರು. They did not choose to adduce any defence evidence.

6. The trial court, after hearing learned counsel for the parties and after scrutinizing and assessing the evidence on record, convicted and sentenced the appellants herein for the offence punishable under Section 376-D IPC and sentenced them to undergo 25 years rigorous imprisonment and to pay a fine of Rs.1,00,000/- each, in default of payment of fine to undergo simple imprisonment for one year and has acquitted for the offence punishable under Section 307 IPC. Being aggrieved by the impugned judgment of conviction and order on sentence, the appellants have preferred this appeal.

**Submissions of Counsel for the Accused/Appellants:**

7. Sri Veeranna G. Tigadi, learned counsel appearing for the appellants vehemently contended that the impugned judgment of conviction and sentence passed by the learned Trial Court is contrary to law, facts and probabilities of the case. It is submitted that the Trial Court has failed to properly appreciate the evidence on record in its proper perspective and has erroneously convicted the appellants under Section 376-D IPC.

8. It is further submitted that the conviction is primarily based on the solitary testimony of PW4-victim, whose evidence, according to the learned counsel, is riddled with material contradictions and inconsistencies. Though it is a settled principle that conviction can be based on the sole testimony of the prosecutrix, the same must be of sterling quality and must inspire confidence. In the present case, the evidence of PW-4 does not meet that standard.

9. The learned counsel would draw the attention of this Court to the material admissions elicited in the cross-examination of PW-4, wherein victim has stated that victim does not know the accused. Victim has further deposed that victim is aged about 50–60 years, married, having three married sons and grandchildren. More importantly, victim has admitted that victim had not seen the faces of the persons who allegedly committed the offence and has even stated that the persons present before the Court are not the persons who committed rape on her. These admissions, according to the learned counsel, strike at the root of the prosecution case and demolish the identification of the accused.

10. It is also contended that though PW-4 stated that her statement was recorded in the police station, Ex.P-3 reflects that written information was submitted; however, victim has not affixed her LTM on the said document. This discrepancy creates serious doubt about the very genesis of the complaint.

11. The learned counsel further submits that the prosecution examined as many as 20 witnesses to prove its case. Out of them, PWs3, 9, 10, 14 and 15 were cited as independent witnesses to corroborate the testimony of PW-4. However, all these material witnesses have not supported the prosecution case. In the absence of corroboration from independent witnesses, the conviction solely on the shaky testimony of PW-4 is unsustainable.

12. With regard to the medical evidence, it is contended that PW-13, the Doctor, has deposed that the history given was of "misbehavior by two persons with hands." On examination, no external injuries were found on the body of PW-4; there was no disfigurement on her face and no signs indicative of forcible sexual intercourse. The learned counsel would submit that the medical evidence does not corroborate the allegation of gang rape. Even

the FSL report does not support the prosecution case. There is also inconsistency regarding who accompanied PW-4 to the hospital, as the version of PW-13 is not in consonance with that of PW-12.

13. It is further contended that the essential ingredients of Section 375 IPC have not been established, and much less the additional requirement under Section 376-D IPC of common intention and participation of more than one accused in the commission of gang rape. Mere use of the expression "rape" by PW4, without proof of the foundational facts constituting the offence, is not sufficient to sustain a conviction under Section 376-D IPC. At the highest, the allegations, even if taken at face value, may attract an offence under Section 354 IPC, but certainly not the offence of gang rape.

14. The learned counsel would also place reliance on Exhibits P-30 and P31 to contend that accused No.1 had earlier lodged a complaint in Crime No.121/2021 before Ramanagara Rural Police against PWs 14 and 15 for offences under Sections 324, 504 and 506 read with Section 34 IPC. It is submitted that due to prior

enmity and ill-will, the appellants have been falsely implicated in the present case, and this aspect has not been properly appreciated by the learned Sessions Judge.

15. It is further argued that the Trial Court has acquitted the appellants of the charge under Section 307 IPC, holding that the prosecution failed to prove the said offence. Having disbelieved the prosecution case in respect of one serious charge, the learned Judge ought to have exercised similar caution while appreciating the evidence for the charge under Section 376-D IPC.

16. The learned counsel submits that the entire prosecution case is doubtful from its inception and appears to be an afterthought, possibly the result of deliberation and previous animosity. The learned Trial Judge, without extending the benefit of doubt to the appellants, has proceeded on presumptions and has misapplied the legal principles governing criminal jurisprudence.

17. It is finally contended that in criminal law, the burden is always on the prosecution to prove its case beyond all reasonable doubt. In the present case, the prosecution has miserably failed to

discharge that burden. Therefore, the appellants are entitled to the benefit of doubt and consequent acquittal.

**Submissions on behalf of the respondent-State:**

18. Per contra, Sri B. Lakshman, learned High Court Government Pleader appearing for the respondent-State, would stoutly support the impugned judgment of conviction and order on sentence and contend that the same is legal, proper and based on sound appreciation of oral and documentary evidence on record.

19. It is submitted that the learned Sessions Judge has meticulously examined the entire material placed before the Court and has rightly come to the conclusion that the prosecution has proved the guilt of the appellants beyond all reasonable doubt for the offence punishable under Section 376-D IPC.

20. He would further contend that the evidence of PW-4, the victim, is natural, cogent and trustworthy. It is a settled principle of law that the testimony of the prosecutrix stands on par with that of an injured witness and, if found reliable, can form the sole basis for conviction without the necessity of corroboration. In the

present case, PW-4 has clearly narrated the manner in which the accused came to her house and committed the offence. Nothing substantial has been elicited in her cross-examination to discredit her core version regarding the commission of the offence.

21. It is further submitted that minor discrepancies or omissions in the evidence of a rustic witness cannot be magnified to discard the entire prosecution case. The learned Trial Judge has rightly observed that trivial contradictions, which do not go to the root of the matter, cannot be made a ground to extend benefit of doubt to the accused.

22. With regard to the contention that certain independent witnesses have not supported the prosecution, the learned High Court Government Pleader would submit that merely because some witnesses have turned hostile, the prosecution case does not fail, particularly when the testimony of the victim is clear and consistent. The evidence of a hostile witness need not be rejected in toto and can be relied upon to the extent it supports the prosecution case.

23. As regards the medical evidence, it is submitted that absence of external injuries is not fatal to the case of the prosecution in an offence of rape, especially when the victim is a grown-up woman. The medical evidence in the present case does not rule out sexual assault. The history noted by the Doctor and the findings on examination are consistent with the version of PW-4. It is well settled that medical evidence is corroborative in nature and when the ocular testimony of the victim is trustworthy, minor inconsistencies in medical evidence do not discredit the prosecution case.

24. It is further contended that the ingredients of Section 376-D IPC are clearly made out from the evidence on record. The victim has specifically deposed about the involvement of more than one accused acting in furtherance of their common intention. The learned Trial Judge, after proper analysis of the evidence, has rightly recorded a finding that the offence of gang rape stands proved.

25. With regard to the alleged prior complaint filed by accused No.1, it is submitted that the same has no bearing on the present

case. The defence theory of false implication on account of prior enmity is a mere bald suggestion without any substantive evidence. The learned Trial Court has rightly rejected the said defence as an afterthought.

26. It is also contended that the acquittal of the appellants for the offence under Section 307 IPC does not in any manner dilute the prosecution case with regard to the offence under Section 376-D IPC. Each charge has to be independently assessed on the basis of evidence available, and the learned Sessions Judge has done so in accordance with law.

27. Finally, he submitted that the impugned judgment reflects proper appreciation of evidence and correct application of legal principles. The findings recorded by the Trial Court are neither perverse nor contrary to the material on record so as to warrant interference by this Court in an appeal against conviction. Accordingly, sought for dismissal of the appeal.

28. Upon hearing the rival contentions urged by the learned counsel for the appellants and the learned HCGP for the State, and

upon perusal of the oral and documentary evidence available on record, the following points arise for consideration in this appeal:

(i) Whether appellants/accused have made out a case to interfere with the impugned judgment conviction and order on sentence passed by the trial Court?

(ii) What Order?

29. My answer to the above points is as under:

Point No.1: in affirmative

Point No.2: as per final order

**Regarding Point No.1:**

30. I have given my anxious consideration to the arguments advanced by the learned counsel for the parties. I have carefully perused the entire oral and documentary evidence on record, including the original records secured from the Trial Court. Being an appellate Court under Section 374(2) of the Cr.PC, this Court is

duty-bound to re-appreciate the evidence in its entirety and arrive at an independent conclusion.

31. In order to attract Section 376-D IPC, the prosecution must establish not merely the commission of rape, but also the participation of more than one person acting in furtherance of a common intention. The statutory requirement is not satisfied by proving the act of sexual assault alone; it must be demonstrated through clear, cogent and convincing evidence that each accused was present and actively involved in the commission of the offence, sharing a common intention. The evidence on record must, therefore, unequivocally establish both the presence and participation of the accused in the alleged occurrence. Before adverting to the appreciation of evidence in the present case, it is necessary to revisit the settled principles laid down by the Hon'ble Supreme Court regarding the evidentiary value to be attached to the testimony of a prosecutrix in cases of sexual assault, particularly where the prosecution case rests substantially, if not entirely, on her evidence. It is well settled that the testimony of the victim of a sexual offence stands on a higher pedestal and, if

found to be trustworthy and credible, can form the sole basis for conviction without the necessity of corroboration. At the same time, such testimony must be evaluated with due care, caution and sensitivity, keeping in view the overall circumstances of the case.

32. The law is equally well settled that oral testimony may broadly be classified into three categories, namely: (i) wholly reliable; (ii) wholly unreliable; and (iii) neither wholly reliable nor wholly unreliable. In cases falling under the first category, the Court may safely base a conviction on the testimony of a single witness without corroboration. In cases falling under the second category, the testimony is to be rejected outright. However, it is in the third category—where the witness is neither wholly reliable nor wholly unreliable—that the Court must exercise greater circumspection. In such cases, as a rule of prudence, the Court looks for corroboration in material particulars, either through direct or circumstantial evidence, before recording a finding of guilt.

33. In RAI SANDEEP v. STATE (NCT OF DELHI) reported in (2012) 8 SCC 21, the Court found totally conflicting versions of the prosecutrix, from what was stated in the complaint and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Courtm at paragraph 22 of the judgment, has opined thus:

> *"22. In our considered opinion, the 'sterling witness' should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for*

*any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilt of the charge alleged."*

34. In KRISHAN KUMAR MALIK v. STATE OF HARYANA reported in (2011)7 SCC 130, the Hon'ble Supreme Court laid down that

although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

> *"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.*
>
> *32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the*

*public prosecutor on the ground that victim been won over by the appellant."*

35. The entire oral and documentary evidence on record has been re-appreciated, as is required in an appeal against conviction. The principal contention of the learned counsel for the appellants is that the conviction is based solely on the testimony of PW-4, the victim, and that her evidence is not of such quality as to inspire confidence. It is urged that material contradictions and admissions elicited in her cross-examination go to the root of the prosecution case, particularly with regard to identification of the accused. It is well settled that the testimony of a prosecutrix, if found credible and trustworthy, can form the sole basis of conviction and does not require corroboration as a matter of rule. The evidence of the victim stands on par with that of an injured witness. However, where the testimony suffers from inherent improbabilities, material inconsistencies or serious doubts regarding identification of the accused, the Court is duty-bound to scrutinize the same with greater circumspection.

36. In the present case, PW-4 has narrated in her examination-in-chief that accused Nos.1 and 2 entered her house, bolted the doors and windows, gagged her and committed forcible sexual intercourse one after the other. Victim has also spoken about an attempt to strangulate her. Her statement under Section 164 Cr.PC. marked as Ex.P-27, is stated to be consistent with her version before the Court. However, in the cross-examination, certain significant admissions have been elicited. Victim has stated that victim did not know the accused earlier. More importantly, it is brought on record that victim has deposed that victim had not seen the faces of the persons who allegedly committed the offence and that the persons present before the Court were not the persons who committed rape on her. Such an admission, if read in its plain terms, strikes at the very foundation of identification. Identification of the accused is a foundational fact in a criminal trial, and where the same is rendered doubtful, the entire prosecution case stands on a fragile footing.

37. The prosecution has examined as many as twenty witnesses. PWs3, 9, 10, 14 and 15, who were cited as

independent witnesses, have not supported the prosecution case. Though it is true that the evidence of hostile witnesses need not be rejected in toto, in the present case, their evidence does not lend any meaningful corroboration to the testimony of PW-4.

38. The medical evidence also requires careful consideration. PW-13, the Doctor, has deposed that the history furnished was one of "misbehavior by two persons with hands." On examination, no external injuries were found on the body; there was no disfigurement and no definite signs suggestive of forcible sexual intercourse. While it is trite that absence of injuries is not by itself fatal to a prosecution for rape, especially in the case of a grown-up woman, the medical evidence must at least not contradict the ocular testimony. In the present case, the medical evidence does not positively corroborate the allegation of gang rape. The FSL report also does not provide any conclusive support to the prosecution version.

39. Another aspect that merits attention is the discrepancy relating to the lodging of the complaint. Though PW-4 has stated that her statement was recorded at the police station, Ex.P-3 is

shown as written information, and it is contended that victim has not affixed her LTM on the said document. The genesis of the complaint, therefore, assumes significance in the backdrop of the defence plea of false implication due to prior enmity.

40. The defence has also placed reliance upon Exs.P-30 and P-31 to demonstrate that accused No.1 had earlier lodged a complaint in Crime No.121/2021 against certain prosecution witnesses. Though prior enmity by itself cannot be a ground to discard the prosecution case, it assumes relevance where the prosecution evidence is otherwise shaky and doubtful. The learned Trial Judge has acquitted the appellants of the offence under Section 307 IPC on the ground that the prosecution failed to establish the same beyond reasonable doubt. While it is true that each charge must be independently assessed, the overall appreciation of evidence must be consistent and guided by the cardinal principle that the prosecution must prove its case beyond reasonable doubt.

41. On perusal of complaint-Ex.P3 dated 17.06.2021 registered in Crime No.64/2021 of Ramanagara Women Police Station, it is

seen that the complaint was lodged at about 11.45 am on 17.06.2021. Exhibit P21 is the First Information Report. In Exhibit P3, victim-PW4, has narrated that at about 5.30 p.m. on 16.06.2021, the accused came to her house, asked for food and, treating them like her children, victim served food. Thereafter, under the influence of alcohol, they allegedly molested her by touching her breasts and committed sexual assault. Victim has further stated that when she screamed, they attempted to strangulate her and at that time, one Jayasimha Naik (her uncle's son), rushed and rescued her, and subsequently Ramaswamy and Kumar assaulted the accused and saved her. Victim was taken to the hospital at midnight. She has also alleged that the accused were involved in illegal activities and sale of liquor and sought protection.

42. Ex.P5 is the statement recorded under Section 164 Cr.PC on 21.06.2021 before the learned Additional Civil Judge (Sr. Dn.) & JMFC, Ramanagara. Exhibit P14 indicates that FSL report was pending at the relevant time. Exhibit P20 is the FSL acknowledgment spoken to by PW17.

43. The appellants were charged for the offences under Sections 307 and 376-D IPC. Section 307 IPC contemplates an act done with such intention or knowledge and under such circumstances that, if death had been caused, the act would amount to murder. Section 376-D IPC requires proof that a woman was raped by one or more persons constituting a group or acting in furtherance of common intention.

44. The principal contention of the learned counsel for the appellants is that the very identity of the accused is doubtful. In paragraph No.15 of her cross-examination she has stated that ರೇಪ್ ಮಾಡಲು ಬಂದವರ ಮುಖವನ್ನು ಆ ದಿನವೂ ನೋಡಿಲ್ಲ, ಇವತ್ತೂ ನೋಡಿಲ್ಲ. ಅವರನ್ನು ಈ ದಿನ ನ್ಯಾಯಾಲಯಲ್ಲಿ ನೋಡಿರುತ್ತೀರೋ ಎಂದರೆ ಅವರು ಇವರಲ್ಲ ಎನ್ನುತ್ತಾರೆ. PW-4 has clearly stated that victim has not identified the accused either on the date of incident or before the Court. In paragraph No.17, victim has stated ಪೋಲೀಸರು ಏನು ಬರೆದುಕೊಂಡರೋ ಅದಕ್ಕೆ ನಾನು ಸಹಿ ಮಾಡಿದ್ದೆ ಎಂದರೆ ಸರಿ. The victim does not know the contents of Ex.P1-complaint. These admissions are material in nature. Identification of the accused is a foundational fact and

when the victim herself disowns identification, the substratum of the prosecution case becomes doubtful.

45. PW-13, the Doctor, examined the victim at 2.58 a.m. on 17.06.2021. He has deposed that the history given was of "misbehaviour by two of her relatives" and that no external injuries were found. PW-4 herself has stated that victim has not sustained any injuries. The absence of injuries, though not always fatal, assumes significance in the present case in view of the allegation of forcible gang rape and attempted strangulation.

46. PW19-Dr. Geetha, has not examined the victim. Victim has merely identified the handwriting and signature of Dr. Mamatha, who allegedly examined the victim. Dr. Mamatha has not been examined. Thus, the medical evidence is not proved in accordance with law through the author of the document. This omission affects the evidentiary value of the medical records.

47. The final FSL opinion-Exhibit P19 indicates that seminal stains were detected on Item No.3 and that possibility of recent sexual intercourse could be concluded. However, the prosecution has not established that MOs1 to 8 (including undergarments)

belonged to the victim. PW-12 has deposed that victim procured eight objects from the victim and sealed them, but during the evidence of PW-4 and PW-12, M.O. Nos.1 to 8 were not shown. They were marked for the first time during the evidence of PW-18. This creates serious doubt about the proper identification and proof of material objects.

48. PW6-Dr. Syed Nadeem, examined accused No.1 and issued wound certificate Ex.P7. Though police records indicate arrest on 17.06.2021, Ex.P7 shows that accused No.1 was examined on 22.06.2021 and the injuries were noted as five days old. Column No.9 of Ex.P7 (history of injuries) is left blank. PW-6 has admitted that he has not mentioned the history of assault. This inconsistency in arrest and medical examination dates casts doubt on the prosecution version regarding arrest and alleged assault by public.

49. The order sheet of the committal Court reveals that accused No.2 was produced on 17.06.2021 and accused No.1 on 22.06.2021. However, PW-7 has deposed that he arrested both accused on 17.06.2021 and produced them before higher

authorities. The alleged arrest report is not produced. The Investigating Officer (PW-18) has not explained these discrepancies. Such inconsistencies in arrest and production before Court go to the root of the investigation. Another significant aspect is the discrepancy regarding the time of incident In Ex.P3 and Ex.P5 (Section 164 statement), the time of incident is stated as 5.30 p.m. However, certain witnesses and police records indicate the time as between 10.00 p.m. to 11.00 p.m. Such material contradiction regarding the time of occurrence affects the credibility of the prosecution case. As the Ex.P5 is the statement recorded under Section 164 Cr.P.C. on 21.06.2021 before the learned Additional Civil Judge (Sr. Dn.) & JMFC, Ramanagara, it is significant to notice that the alleged incident has happened on 16.06.2021 at about 5.30 p.m., by the accused Nos.1 and 2 , however the 164 statement was recorded on 21.06.2021,there is a delay in recording the statement of victim which is not explained by the prosecution.

50. The Hon'ble Supreme Court, in the case of STATE OF KARNATAKA BY NONAVINAKERE v. SHIVANNA @ TARKARI

SHIVANNA reported in AIR ONLINE 2014 SC 233, has issued guidelines, which are as follows:

> "*9. On considering the same, we have accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, we are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:*
>
> *(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.*
>
> *(ii) The Investigating Officer shall, as far as possible, take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.*
>
> *(iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.*

*(iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.*

*(v) Medical Examination of the victim: Section 164 A Cr.P.C. (inserted by Act 25 of 2005 in Cr.PC. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined.) A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C.*

*10. A copy of this order thus be circulated to all the Director Generals of Police of all the States/Commissioner of Police in Metropolitan cities / Commissioner of Police of Union Territories who are then directed to send a copy of this order to all the police stations in charge in their States/Union Territories for its compliance in cases which are registered on or after the receipt of a copy of these directions. Necessary instructions by the DGPs/ Commissioners of Police be also issued to all the police station incharge by the DGPs/Commissioner of Police incorporating the directions issued by us and recorded hereinbefore.*

*11. The matter be posted again after four weeks to ensure compliance of this order by the DGS & Commissioners of Police in the country before the appropriate Bench and also for such other further order or orders which may be considered necessary.*

The IO has not followed the mandatory guidelines and has handled the case in a very negligent manner by not explaining the delay in producing the victim before the Magistrate to record the statement under Section 164(5) of Cr.PC.

51. The demeanor of the victim, as recorded by the Trial Court, also assumes relevance. It is noted that victim was murmuring to herself, was earning livelihood by begging, used to scream and was not properly dressed. Though demeanor alone cannot discredit testimony, when read along with the inconsistencies and admissions, it raises doubt regarding reliability. It is further observed that during cross-examination, the learned Trial Judge recorded certain observations, which are as under:

> *"28. ಘಟನೆ ಯಾವಾಗ ನಡೆಯಿತು ಎಂದು ನಿಖರವಾಗಿ ಹೇಳಲು ಬರುವುದಿಲ್ಲ ಎಂದರೆ ಸರಿ. ನನ್ನ ಮೈಮೇಲೆ ಒಂದು ಗೆರೆಯಷ್ಟು ಕೂಡ ಗಾಯ ಆಗಿಲ್ಲ ಎಂದರೆ ಸರಿ. ಯಾವುದೇ ಅತ್ಯಾಚಾರ ಮಾಡಿಲ್ಲ ಮತ್ತು ಸುಳ್ಳು ಹೇಳುತ್ತಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ನಾನು ಈಗ ಮಾತನಾಡಿರುವುದನ್ನು ಇನ್ನು 5 ನಿಮಿಷದಲ್ಲಿ ಮರೆಯುತ್ತೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. (ಸಾಕ್ಷಿದಾರಳು ತಮ್ಮಷ್ಟಕ್ಕೆ ತಾವೇ ಏನೇನೋ ಗೊಣಗಿಕೊಳ್ಳುತ್ತಾ ಇರುತ್ತಾರೆ ಎನ್ನುವುದನ್ನು ಈ ನ್ಯಾಯಾಲಯ ಗಮನಿಸಿದೆ.)"*

55. Section 165 of the Indian Evidence Act, 1872 confers very wide powers upon a trial Judge to put questions to any witness, in any form, at any stage of the proceedings, in order to discover or obtain proper proof of relevant facts. The provision expressly authorises the Judge to ask questions "in any form," which includes leading questions. Therefore, as a matter of law, a Judge can put leading questions even to a rape-victim during trial. This power operates notwithstanding the restrictions contained in Sections 141 to 143 of the Evidence Act relating to leading questions. However, though the power is extensive, it is not arbitrary or unregulated; it must be exercised judiciously, cautiously, and in furtherance of justice. In trials for offences under Section 376 of the Indian Penal Code, the recording of the victim's evidence carries additional sensitivity. Statutory safeguards such as the proviso to Section 146 of the Evidence Act, Section 53A of the Evidence Act, and Section 327(2) of the Code of Criminal Procedure mandate protection of the dignity and privacy of the prosecutrix. The Court is required to ensure that victim is not subjected to humiliating or irrelevant questioning and that the atmosphere of the courtroom does not become

intimidating. In this context, the Judge is not expected to remain a silent spectator; rather, the Judge may intervene to clarify ambiguities, to ensure that the testimony is properly understood, or to prevent confusion created during cross-examination.

*3. ಅವರಿಬ್ಬರೂ ರೇಪ್ ಮಾಡಲು ಬಂದರು. ಮುಖ್ಯ ವಿಚಾರಣೆ ದಾಖಲು ಮಾಡುತ್ತಿರುವ ಸಮಯದಲ್ಲಿ ಆರೋಪಿತರ ವಕೀಲರು ಪದೇ ಪದೇ ಮಧ್ಯ ಪ್ರವೇಶಿಸುತ್ತಿದ್ದು, ಆದ್ದರಿಂದ ನಾನೇ ಸ್ವತಃ ಸಾಕ್ಷಿದಾರರಿಗೆ ಆರೋಪಿತರು ನಿಮ್ಮ ಮೇಲೆ ರೇಪ್ ಮಾಡಿದ್ದಾರಾ ಎಂದು ಕೇಳಿದಾಗ ಆಕೆ ಸ್ಪಷ್ಟವಾಗಿ ರೇಪ್ ಮಾಡಿದ್ದಾರೆ ಎಂದು ಹೇಳಿರುತ್ತಾರೆ.)*

*4. ಪುನಃ ಆರೋಪಿತರ ವಕೀಲರ ಕೋರಿಕೆಯ ಮೇರೆಗೆ ಪುನಃ ಪ್ರಶ್ನಿಸಿದಾಗ ರೇಪ್ ಮಾಡಲು ಪ್ರಯತ್ನ ಪಟ್ಟರು ಎನ್ನುತ್ತಾರೆ."*

In the case on hand the trial court has interfered in the recording of evidence. The role of the judge while recording the evidence is to facilitate all the stake holders of the case, that too in the matters of offences against women. The adversial system of criminal jurisprudence expects the same.

52. The Supreme Court in STATE OF RAJASTHAN v. ANI, (1997)6 SCC 162, cautioned that judicial intervention must not appear to fill up lacunae in the prosecution case. These principles apply with equal force in rape trials. Thus, although a Judge may legally ask leading questions to a rape victim under Section 165,

such power must be exercised only for clarification and to obtain proper proof of relevant facts. The Judge cannot suggest answers, introduce material facts not already spoken to by the witness, or supply essential ingredients of the offence—such as penetration—if the witness herself has not deposed to them. Nor can the Judge neutralize contradictions brought out in cross-examination or repair weaknesses in the prosecution case. Any such intervention may give rise to an apprehension of bias and may affect the fairness of the trial, which is an integral component of Article 21 of the Constitution.

53. In essence, the role of the trial Judge in recording the evidence of a rape victim is to strike a careful balance between sensitivity and neutrality. The Court must protect the dignity of the victim and ensure that her testimony is clearly and properly recorded, but it must not abandon its impartial position or assume the mantle of the prosecuting agency. The power under Section 165 of Indian Evidence Act is meant to advance the cause of justice and discovery of truth, not to tilt the balance in favour of either party. In the present case the Trial court has put leading

question as to the directly commission of alleged offences by the accused persons which has prompted the victim to say affirmatively, however when the same question was putforth the victim has answered that the accused have attempted to commit rape, which is against to the jurisprudence of role of judges during trial of sexual assault cases.

54. No doubt, it is a settled principle of law that conviction for the offence of rape can be based on the sole testimony of the prosecutrix, provided her evidence inspires confidence and is found to be wholly reliable and trustworthy. It is equally settled that no rule of law requires corroboration in every case. However, this principle applies only when the testimony of the prosecutrix is clear, consistent and free from material contradictions. In the present case, on careful scrutiny of the evidence, it is seen that the testimony of the prosecutrix suffers from several material inconsistencies and omissions, as already discussed above. These infirmities are not minor discrepancies but go to the root of the prosecution case. Therefore, victim's evidence cannot be said to be of such ***sterling quality*** so as to form the sole basis for

conviction without corroboration. A comparison of victim's statement under Section 164 CrPC, the contents of the FIR and victim's deposition before the Court reveals substantial variations on material particulars. These contradictions relate to important aspects of the alleged incident and affect the credibility of victim's version. In such circumstances, it would not be safe to rely solely upon victim's testimony. As a matter of prudence, independent corroboration on material particulars was necessary before recording a finding of guilt against the appellant.

55. In the present case, in view of the serious doubt regarding identification and the absence of convincing corroboration from medical and independent evidence, this Court is of the considered opinion that the prosecution has not succeeded in establishing the guilt of the appellants beyond all reasonable doubt for the offence punishable under Section 376-D IPC. Criminal jurisprudence mandates that suspicion, however strong, cannot take the place of proof. Where two views are possible on the evidence on record, the view favourable to the accused must be adopted. The benefit of doubt must necessarily enure to the accused.

56. Upon a comprehensive re-appreciation of the entire evidence on record, this Court finds that the prosecution has failed to establish its case beyond reasonable doubt. The evidence does not disclose clear and consistent identification of the accused by PW-4; the medical evidence does not cogently prove forcible sexual intercourse; the seizure, custody and proof of material objects suffer from serious infirmities; the arrest and production of the accused are clouded by discrepancies; and the independent witnesses have not furnished unimpeachable corroboration. The cumulative effect of the non-identification by the victim, contradictions regarding the time of incident, absence of injuries, defective proof of medical evidence, inconsistencies in the arrest procedure, improper marking of material objects, and lack of reliable corroboration, creates a substantial and reasonable doubt as to the guilt of the appellants under Section 376-D IPC. It is a cardinal principle of criminal jurisprudence that the burden lies entirely on the prosecution to prove its case beyond reasonable doubt, and suspicion, however strong, cannot take the place of proof. In the present case, the benefit of such doubt must necessarily enure to the appellants.

57. Accordingly, this Court is of the considered opinion that the prosecution has failed to prove the guilt of the appellants beyond all reasonable doubt. The appellants are therefore entitled to acquittal by extending the benefit of doubt. Accordingly, I answer Point No.1 in the affirmative, holding that the appellants have made out a case for interference with the impugned judgment of conviction and order on sentence.

**Regarding point No.2:**

For the reasons aforestated, I proceed to pass the following:

**O R D E R**

(i) The appeal is allowed;

(ii) The judgment of conviction and order on sentence dated 28th/31st March, 2023 passed in SC No.26 of 2022 by the III Additional District and Sessions Judge, Ramanagara, convicting the appellants for the offence punishable under Section 376-D IPC, is hereby set aside;

(iii) The appellants are acquitted of the offence punishable under Section 376-D IPC;

(iv) The Registrar (Judicial) shall communicate this order forthwith to the concerned jail authority through e-mail and the appellants shall be set at liberty, if they are not required in any other case;

Registry to send the copy of the judgment along with trial Court records to the concerned Court.

**Sd/-**
**(G. BASAVARAJA)**
**JUDGE**

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