



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Appeal (DB) No. 187/2020

[REDACTED] s,  
 [REDACTED]  
 [REDACTED]

----Appellant

Versus

State, Through Pp

----Respondent

For Appellant(s) : Mr. Vineet Jain, Sr. Advocate with Mr. Praveen Vyas

For Respondent(s) : Mr. Rajesh Bhati, PP  
Mr. NL Joshi  
Ms. Kirti Pareek for the complainant

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR  
HON'BLE MR. JUSTICE CHANDRA SHEKHAR SHARMA**

**Reportable**

**Judgment**

1.	Date of conclusion of argument	30.01.2026
2.	Date on which the judgment was reserved	30.01.2026
3.	Whether the full judgment or only operative part is pronounced	Full Judgment
4.	Date of Pronouncement	04.02.2026

**BY THE COURT: (PER HON'BLE MR. JUSTICE VINIT KUMAR MATHUR)**

1. The Apex Court in **Birbal Kumar Nishad Vs. State of Chhattisgarh**: in SLP (Crl) No.4540/2021 decided on 30.06.2021 has made observations as to the necessity of anonymisation of the names of victims and considering the provisions of Section 228A of the IPC and Section 23 of the POCSO Act, 2012, this Court deems it appropriate that the name of victim in the present judgment be noted as "prosecutrix" and/or "C".



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2. The present Criminal Appeal has been preferred under Section 374 (2) Cr.P.C. by the accused-appellant Lajendra Singh @ Lali son of Shri Boga Singh, assailing the validity of judgment dated 02.12.2020 passed by the learned Sessions Judge, P.O.C.S.O. Act Cases & The Commissions for Protection of Child Rights Act, 2005 No. 1, Sri Ganganagar (hereinafter referred to as the learned trial court), in Sessions Case No. 126/2018, whereby the accused-appellant has been convicted for the offence under Sections 376 (2) (n) of the IPC and 5 (L) / 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced for the aggravated offence under Section 376(2)(n) of IPC as under:-

376(2)(n) IPC	Rigorous imprisonment for life with a Fine of Rs. 50,000/-.
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3. As per prosecution case, on 12.05.2016, the complainant, mother of the victim, appeared at the police station along with the victim and submitted a written report stating that her daughter, aged about 17 years, had been taken by the accused-Lajendra Singh Brar, a former Sarpanch, from Sri Ganganagar to Sikar on 09.05.2016 at about 8:30 PM on the pretext of getting her passport prepared and sending her abroad. It was alleged that the accused had booked a double sleeper berth in a Virat Travels bus and, during the night journey; the accused-appellant molested the victim and committed sexual assault upon her in the sleeper berth. When the victim attempted to raise an alarm, the accused



allegedly covered her mouth and threatened to kill her father if she disclosed the incident. After reaching Sikar, the accused allegedly booked a hotel room and kept the victim there throughout the day, where he repeatedly subjected her to sexual assault. The victim attempted to escape, but she was prevented from doing so, and the accused continued to threaten her. On 10.05.2016, the accused took the victim to the passport office and, thereafter, brought her back to Sri Ganganagar by a double sleeper bus at about 11:00 PM. The accused-appellant telephonically informed the family members that the victim was standing at the bus stand and asked them to take her home. Thereupon, the complainant's husband brought the victim home on his motorcycle. Upon reaching home, the victim fell asleep and appeared to be under the influence of some intoxicating substance. Later in the evening, when she woke up, the victim started crying and narrated the entire incident to the complainant. She alleged that the accused had raped her multiple times and had also abused her with caste-based slurs, claiming superiority of caste and asserting that no one could harm him. The victim stated that the accused had sexually assaulted her four times. On the basis of these allegations, the written report had been given to concern police station.

4. On the basis of the above written report, a formal FIR No. 96/16 (Ex.P-06) was registered at Mahila Police Station, Sri Ganganagar against the accused-appellant for the offences under Section 376 of IPC, Section 5 (L) / 6 of the Protection of Children





from Sexual Offences Act, 2012 and Section 3 of SC/ST (Prevention of Atrocities) Act, 1989.

5. After completion of investigation, Police filed a charge-sheet against the accused-appellant for the offences under Section 376 (2)(f)(n) of IPC, Section 5 (L) / 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989.

6. Learned Trial Court framed, read over and explained the charges under Section 376 (2)(f)(n) of IPC, Section 5 (L) / 6 of the Protection of Children from Sexual Offences Act, 2012 and under Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act, 1989 to the accused-appellant, who denied the charges and sought trial.

7. During the trial, the prosecution examined as many as 20 witnesses. In support of its case, the prosecution also produced documentary evidence, Exhibits P-01 to P-36.

8. The accused-appellant was examined under Section 313 Cr.P.C., during which he denied the prosecution evidence in its entirety and claimed innocence. He stated that the case had been falsely registered against him due to political rivalry and collusion with the opposite party. He further stated that he was kept at the police station for a period of four days and was thereafter, taken to the Mahila Police Station on 16.05.2016, where he was formally arrested. In defence, the accused-appellant produced





documentary evidence as Exhibits D-1 to D-10 and examined witnesses-DW-1 Vijaypal and DW-2 Lakhwinder Singh.

9. Learned Trial Court, after hearing the arguments advanced on behalf of both sides, upon appreciation of the oral and documentary evidence brought on record, convicted and sentenced the accused-appellant as aforesaid vide its judgment dated 02.12.2020.

10. Hence the present appeal.

**Submissions on behalf of the accused-appellant:**

11. Mr. Vineet Jain learned Senior Counsel appearing on behalf of the accused-appellant submitted that the learned trial court has failed to properly appreciate the evidence led by the prosecution with regard to the age of the prosecutrix. The evidence on record is inconsistent and attended with concealment of material facts, and **therefore the conclusion that at the time of commission of offence, the prosecutrix was a minor is wholly unsustainable.**

12. Learned Senior Counsel further submitted that PW-1 Rajaram, father of the prosecutrix, feigned ignorance regarding the date of birth of his daughter as reflected in various government documents such as "the Ration Card" and "Bhamasha Card". This conduct clearly indicates an attempt to wriggle out of the recorded date of birth of prosecutrix. The witness admitted that the Aadhar Card and Bhamasha Card of the victim were prepared at her instance. He further admitted that his daughter 'C'





was first admitted to a school at 1-B Bavriyo Ki Dhani; however, admittedly, **no document from the school she first attended was produced by the prosecution.**



13. It was also submitted that similarly, PW-5, the mother of the prosecutrix, also feigned ignorance regarding the date of birth mentioned in government records, though she specifically admitted that the prosecutrix was first admitted to the school at 1-B Bavriyo Ki Dhani. The prosecutrix Mst. 'C' (PW-6) admitted that she herself got her Aadhar Card prepared, but denied preparing the Bhamasha Card. She relied upon the Secondary Board mark-sheet showing her date of birth as "20.02.1999".

14. Learned Senior Counsel submitted that the Investigating Officer PW-18 Hazari Ram admitted that neither he investigated the school first attended by the prosecutrix nor did he attempt to secure any documents therefrom. Likewise, the other Investigating Officer (PW-20 Bachhan Singh) admitted that he neither obtained documents nor conducted any inquiry from the first school. A specific suggestion was put to him that these documents were withheld as they were adverse to the prosecution story and discloses the age of the prosecutrix as "19 years".

15. Learned Senior Counsel for the accused-appellant submitted that it is apparent that the prosecution wilfully concealed the most relevant documents concerning age, namely the admission record of the first school attended, which contained the earliest declaration of date of birth by the parents. Though the Secondary



Board mark-sheet is a relevant document, in the face of apparent contradictions between the mark-sheet and other government documents authored by the prosecutrix herself, **it was incumbent upon the investigating agency to secure and produce the first admission record. Suppression of such vital evidence renders the mark-sheet inconclusive.**

16. It is further submitted that the appellant has consistently taken the plea of false implication. Even assuming, though not admitting, that the prosecutrix was a minor, the plea of false implication stands probabilized from the material on record.

17. Learned Senior Counsel submitted that PW-1 Raja Ram admitted that he received the prosecutrix at about 6:00 AM on 11.05.2016 at bus stand and, thereafter, went to his work, and **thus he is not a witness to the alleged first disclosure.**

Learned Senior Counsel further submitted that PW-5, the mother of the victim, claimed to be the first recipient of disclosure; however, in cross-examination she admitted that the written report (Ex.P-5) was authored by her nephew Rajendra, who was not examined. Both PW-1 and PW-5 claimed long familiarity with the appellant-accused and alleged that he offered to arrange a passport so the prosecutrix could go abroad like his daughter, who was already in Canada. **Yet both witnesses admitted that they had never seen or even knew the name of the appellant's daughter. This assertion is inherently improbable and undermines the prosecution story.**





18. Learned Senior Counsel further submitted that the prosecutrix herself admitted that she had never seen or known the appellant's daughter. Consequently, the prosecution's substratum that the appellant induced the family under the pretext of passport formalities collapses on its face as no daughter of the accused-appellant resides at Canada.

19. Learned Senior Counsel further submitted that there is an unexplained delay in lodging the FIR. The prosecutrix was with her parents from the morning of 11.05.2016, yet the FIR was registered only on 12.05.2016 at 10:45 AM. The explanation that she was intoxicated is inconsistent and contradicted by the testimony of PW-5 and PW-6 (mother and the prosecutrix herself).

**This delay assumes significance in light of the admitted proximity of the prosecutrix to her parents during that period.**

20. It was submitted that the daily diary entries further cast serious doubt. As per Ex.P-29, (statement of father) that telephonic information was given that her daughter had been ravished, but the name of the alleged assaulter was not disclosed. Ex.P-36 reveals that the appellant was detained prior to registration of the FIR. This lends credence to the defence allegation that the **FIR was subsequently engineered due to political enmity**. PW-1 remained conspicuously silent about these crucial facts, suggesting deliberate concealment. Importantly, S.I. Krishan Kumar and Constable Pooja Vishnoi — the first responders and witnesses to the earliest disclosure —





**were not examined.** Withholding such material witnesses warrants an adverse inference against the prosecution story.

21. Learned Senior Counsel further submitted that the prosecution case regarding arrest is equally suspicious. Though the appellant was allegedly arrested on 16.05.2016, it is admitted that he had earlier been detained and purportedly escaped from police custody, yet no FIR for absconding was registered and no action was taken against the responsible officers.

22. Learned Senior Counsel submitted that the investigating officers (PW-18 Hazari Ram & PW-20 Bachhan Singh) admitted that no CCTV footage was secured from the hotel or passport office, which was **the best available evidence** of the alleged presence of the accused appellant with the prosecutrix. The appellant, on the contrary, produced documentary proof (Ex.D-6) of his **independent appearance** before the passport office. No inquiry was conducted by both the Investigating Officers from co-passengers of the buses allegedly travelled on relevant dates.

23. Learned senior counsel further submitted that the Satveer Singh, Manager of Hotel Shiv Palace (PW-7) was declared hostile. The hotel register (Ex.P-13) where victim stayed does not contain the name of the appellant. The evidence on record indicates that another boy was accompanying the prosecutrix; however, no meaningful investigation was carried out by either of the investigating officers to ascertain the identity of the said boy. This





omission lends support to the defence version and renders the prosecution case doubtful.

24. Learned senior counsel for the accused-appellant submitted that the defence evidence on record clearly establishes the independent and lawful presence of the accused-appellant at Sikar, wholly inconsistent with the prosecution story. He submitted that the accused-appellant had travelled to Sikar along with his brother Lakhwinder Singh (DW-2) and stayed at Hotel Spark, Sikar. Vijay Pal (DW-1), the hotel manager, categorically deposed that Lajendra Singh Brar along with another man stayed at Hotel Spark, and the hotel register (Ex.D-07), at serial No. 508, specifically records the name of the accused-appellant, thereby corroborating the defence version.

25. Learned senior counsel further submitted that Lakhwinder Singh (DW-2), in his sworn testimony, stated that he and his brother Lajendra Singh Brar left Sri Ganganagar by Virat Travels bus at about 8:30 PM and reached Sikar at around 4:10 AM. Thereafter, both of them proceeded to Hotel Spark, where the accused-appellant had already booked a room. The accused-appellant duly registered himself in the hotel register Ex.D-07 and furnished his Aadhaar Card as proof of identity. Both brothers stayed together in Room No.202. DW-2 further deposed that in the morning, after having breakfast, both of them went to the passport office, as the accused-appellant had to renew his passport. This testimony, coupled with the documentary evidence,





was submitted to be natural, cogent, and free from embellishment.

26. Learned senior counsel finally submitted that the medical evidence does not corroborate the allegation of forcible sexual intercourse. The rape report (Ex.P-22), proved by PW-15 Dr. Surendra and PW-17 Dr. Salu records the absence of any internal or external injuries, which would ordinarily be expected in a case of forcible or first intercourse. **The report further notes that the prosecutrix specifically disclosed having engaged in sexual intercourse about four weeks prior to the examination a fact not alleged in the FIR or during trial.**

This circumstance materially weakens the prosecution case.

27. Learned senior counsel further placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Nirmal Premkumar and Others vs. State represented by Inspector of Police***, decided on **11.03.2024**, reported as **2024 INSC 193**, to contend that where the prosecution evidence suffers from material contradictions and discrepancies, the conviction cannot be sustained. In the said case, the Hon'ble Supreme Court, upon noticing several inconsistencies in the oral testimonies of the prosecution witnesses, interfered with the judgment of the Madras High Court, which had dismissed the convicts' appeal under Section 374(2) of the Code of Criminal Procedure, 1973, against the decision of the Special Court convicting accused No.1 under Section 12 of the Protection of Children from Sexual Offences Act, 2012 and accused No.2 under Section 506 of the Indian Penal





Code, 1860. Consequently, the Hon'ble Supreme Court allowed the appeal, set aside the conviction and sentence imposed upon accused Nos.1 and 2, as affirmed by the High Court, and directed their immediate release.

28. Learned Senior Counsel thus submitted that in view of the cumulative inconsistencies, concealment of material evidence, investigative lapses, and lack of medical corroboration, the prosecution has failed to prove its case beyond reasonable doubt. The appeal therefore deserves to be allowed and the appellant is entitled to acquittal.

#### **Submissions on behalf of the complainant**

29. Per contra, Mr. Niranjan Lal joshi learned counsel appearing for the complainant submitted that the conviction recorded by the learned trial court is well-founded and based on cogent and reliable evidence, particularly the consistent testimony of the prosecutrix and her parents.

30. Learned counsel for the complainant submitted that the statement of the prosecutrix inspires full confidence and is duly corroborated by PW-1 Rajaram, and PW-5, Saroj. The prosecutrix has consistently narrated the incident and withstood cross-examination without any material contradiction affecting the core of the prosecution case. PW-1, her father, and PW-5, her mother have supported the prosecution version regarding the circumstances in which the prosecutrix returned home and





disclosed the incident. Their evidence lends natural corroboration to the testimony of the victim.

31. Learned counsel further submitted that minor discrepancies, if any, in the statements of witnesses are natural and do not go to the root of the matter. It is well settled that conviction cannot be set aside on trivial inconsistencies when the substratum of the prosecution case remains intact. The allegation of rape stands clearly established, and **it is inconceivable that parents would falsely implicate a person at the cost of the dignity and future of their own daughter.**

32. As regards the delay in lodging the FIR, it is submitted that the delay is neither inordinate nor fatal. The prosecutrix was under fear, trauma, and intimidation. **In cases of sexual assault, some delay in reporting is natural and does not by itself discredit the prosecution case.**

33. Learned counsel submitted that the statement under Section 161 Cr.P.C. of Sukhveer Singh (Ex.P-4) supports the prosecution version, as he stated that the **accused appellant and the prosecutrix both alighted at Sikar.** This circumstance corroborates the presence of the appellant with the prosecutrix during the relevant period. Reliance is also placed on Ex.P-12 the statement under Section 161 Cr.P.C. of Satveer Singh, Manager of Hotel Shiv Palace, **who saw the accused appellant and the prosecutrix together at the hotel.** This evidence further





strengthens the prosecution case regarding the movements of the accused and the prosecutrix.

34. Lastly, it is submitted that the mere fact that the prosecutrix did not raise an alarm in a public place does not imply consent. The evidence shows that she was under fear and threat. In such circumstances, silence or non-resistance cannot be construed as voluntary consent, particularly in a case of sexual assault or rape.

35. Learned counsel for the complainant placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **State of U.P. vs. Hari Mohan and Ors** decided on 07.11.2000, reported as **AIR 2001 SC 142** in para No.09 has held as under:

09.....However, the defective investigation cannot be made a basis for acquitting the accused if despite such defects and failures of the investigation, a case is made out against all the accused or anyone of them. It is unfortunate that no action can be taken against the IO at this stage who, in all probabilities, must have retired by now

36. The Hon'ble Supreme Court in the case of **State of U.P Vs. Chhoteylal** decided on **14.01.2011** reported in **AIR2011SC697** in para No.23 has held as under:-

23. We shall now examine the evidence of the prosecutrix. The prosecutrix at the relevant time was less than 18 years of age. She was removed from the lawful custody of her brother in the evening on September 19, 1989. She





was taken to a different village by two adult males under threat and kept in a rented room for many days where A-1 had forcible sexual intercourse with her. Whenever she asked A-1 for return to her village, she was threatened and her mouth was gagged. Although we find that there are certain contradictions and omissions in her testimony, but such omissions and contradictions are minor and on material aspects, her evidence is consistent. The prosecutrix being illiterate and rustic young woman, some contradictions and omissions are natural as her recollection, observance, memory and narration of chain of events may not be precise. Learned Counsel for the Respondent submitted that no alarm was raised by the prosecutrix at the bus stand or the other places where she was taken and that creates serious doubt about truthfulness of her evidence. This argument of the learned Counsel overlooks the situation in which the prosecutrix was placed. She had been kidnapped by two adult males, one of them - A-1 - wielded fire-arm and threatened her and she was taken away from her village. In the circumstances, it made sensible decision not to raise alarm. Any alarm at unknown place might have endangered her life. The absence of alarm by her at the public place cannot lead to an inference that she had willingly accompanied A-1 and A-2. The circumstances made her submissive victim and that does not mean that she was inclined and willing to intercourse with A-1. She had no free act of



the mind during her stay with A-1 as she was under constant fear.

37. The Hon'ble Supreme Court in the case of **State of Punjab**

**Vs. Gurmit Singh and Ors.** decided on **16.01.1996** reported in **AIR 1996 SC 1393** in para No.17, 22 &23 has held as under:-

17. We must express our strong disapproval of the approach of the trial court and its casting a stigma on the character of the prosecutrix. The observations lack sobriety expected of a Judge. Such like stigmas have the potential of not only discouraging an even otherwise reluctant victim of sexual assault to bring forth complaint for trial of criminals, thereby making the society to suffer by letting the criminal escape even a trial. The courts are expected to use self-restraint while recording such findings which have larger repercussions so far as the future of the victim of the sex crime is concerned and even wider implications on the society as a whole-where the victim of crime is discouraged the criminal encouraged and in turn crime gets rewarded! Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone.

Even if the prosecutrix, in a given case, has been promiscuous in her sexual behavior earlier, 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. No stigma, like the one as cast in the present case should be cast against such a witness by the Court, for after all it is the accused and not the victim of sex crime who is on trial in the Court.

22. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution





case. 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 cases involving sexual molestations.

23. There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the Court. While every latitude should be given to the





accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings, what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence.

38. The Hon'ble Bombay High Court (Nagpur Bench) in the case of **Dilip vs. The State of Maharashtra** decided on 30.11.2018 reported in **2019(2) Crimes 570 (Bom.)** in para No.24 has held as under:-

24. It will have to be noted here that from the line of the cross-examination of the prosecution witnesses and when the accused was examined by learned Judge of the Court under Section 313 of the Code of Criminal Procedure, it was defence of the accused that he is falsely implicated in the crime at the behest of one Shaikh Istar. According to the defence, this Shaikh Istar deals in scrap business and the accused is also involved in the said business and, therefore, to eliminate his business rivalry Shaikh Istar utilized the victim as a tool. This particular defence is required to be rejected for,





(i) there is nothing available on record to show that there was very close intimacy and/or relationship in the family of the victim with Shaikh Istar except that they belong to the same religion and (ii) it is really unbelievable that PW2, the father of the victim will put prestige of his family as well as future of his minor victim at stake for and on behalf of Shaikh Istar. Further, except suggestion there is no material available on record to show the business rivalry between Shaikh Istar and the accused.

39. In view of the above, it is submitted that the prosecution has proved its case beyond reasonable doubt, and the conviction recorded by the learned trial court calls for no interference.

### **Submissions of Public Prosecutor:**

40. Learned Public Prosecutor Mr. Rajesh Bhati has opposed the submissions made by the Learned senior counsel for the appellant and has supported the prosecution case set out before the learned trial court and he submits that there is no infirmity in the judgment passed by the learned trial court convicting the appellant under Section 376(2) (n) IPC vide judgment dated 02.12.2020.

41. We have bestowed our anxious consideration to the submissions advanced at the Bar and have minutely scrutinized the oral and documentary evidence on record, including the



impugned judgment dated 02.12.2020. The appeal necessitates reappraisal of evidence in order to determine whether the prosecution has succeeded in establishing guilt beyond reasonable doubt, the golden thread that runs through criminal jurisprudence.

42. The principal submission raised on behalf of the accused-appellant relates to the age of the prosecutrix. The prosecution was under a legal obligation to establish beyond reasonable doubt that the prosecutrix was minor at the relevant time. The evidence on record reveals that PW-1, father of the prosecutrix, and PW-5, her mother, both admitted in cross-examination that the prosecutrix was first admitted in a school at 1-B Bavriyo Ki Dhani. However, no admission record of the school first attended was produced by the prosecution. **Both Investigating Officers, PW-18 and PW-20, candidly admitted that they neither made any inquiry from the said school nor attempted to secure the admission documents.** A specific suggestion was put to them that such documents disclosed the age of the prosecutrix as 19 years and were therefore withheld. The prosecution relied only upon the Secondary Board mark-sheet. While a school certificate is relevant, when contradictory material exists in government documents admittedly prepared at the instance of the prosecutrix herself, the earliest admission record assumes determinative significance. **Suppression of the best available evidence relating to age gives rise to an adverse inference against the prosecution.** In criminal jurisprudence, where two views are





possible, the one favourable to the accused must prevail. We are therefore unable to hold that the minority of the prosecutrix stands proved beyond reasonable doubt.

43. The credibility of the prosecution narrative also suffers from inherent improbabilities. The prosecution alleges inducement under the pretext of passport formalities linked to the appellant's daughter residing abroad. **However, the father, mother and prosecutrix all admitted that they neither knew nor had ever seen the accused-appellant's daughter, who resided at Canada.** This admission renders the prosecution story artificial and constructed. The written complaint was authored by a nephew who was not examined, thereby depriving the Court of a material witness. Furthermore, the father admitted that he was not present at the time of first disclosure. These circumstances cumulatively erode the naturalness and spontaneity expected in a genuine prosecution case.

44. The delay in lodging the FIR also assumes importance. The prosecutrix admittedly returned home on the morning of 11.05.2016 and remained with her parents throughout the day, yet the FIR came to be registered only on 12.05.2016 at 10:45 AM. The explanation that she was under intoxication is inconsistent and unsupported by medical evidence, and is contradicted by the testimony of the material witnesses themselves. While delay in reporting a sexual offence is not per se fatal, an unexplained delay coupled with contradictions and





surrounding suspicious circumstances affects the credibility of the prosecution case.

45. The daily diary entries further deepen the doubt. Ex.P-29 shows that telephonic information regarding the alleged ravishment was given prior to registration of the FIR, **yet the name of the appellant was not disclosed**. Ex.P-36 indicates that the appellant was detained even before formal registration of the FIR. PW-1 Rajaram, father of the prosecutrix remained silent about these material facts in his deposition. **The non-examination of S.I. Krishan Kumar and Constable Pooja Vishnoi, who were the first responders and witnesses to the earliest disclosure**, has resulted in withholding the first version of the incident from the Court. Such omission warrants an adverse inference against the prosecution and seriously impairs the reliability of its case.

46. The evidence regarding the alleged stay at the hotel is equally unsatisfactory. PW-7, Satveer Singh, Manager of Hotel Shiv Palace, was declared hostile and the hotel register (Ex.P-13) does not contain the name of the appellant. The record suggests that another boy accompanied the prosecutrix. Despite this crucial circumstance, no meaningful investigation was conducted to ascertain the identity of that person. The passenger lists of the relevant travel records also do not contain the appellant's name. These omissions are not trivial; they go to the root of the prosecution case and probabilize the defence version.





47. The defence evidence adduced by the accused-appellant is credible and creates a serious dent in the prosecution case. DW-1, Vijay pal, Manager of Hotel Spark, Sikar, proved the hotel register (Ex.D-07), wherein at serial No.508 the name of the accused-appellant is recorded. The said entry is a contemporaneous business record maintained in the ordinary course of affairs and its genuineness has not been effectively discarded by the prosecution. DW-2 Lakhwinder Singh, brother of the accused, gave a consistent and natural account of their travel from Sri Ganganagar to Sikar, their stay together at Hotel Spark in Room No.202, and their visit to the passport office for renewal of passport. His testimony stands corroborated by Ex.D-07 (hotel Spark's register) and nothing material was elicited in cross-examination to discredit him. Significantly, the investigating agency made no effort to verify or falsify this defence version by collecting CCTV footage from the hotel or the passport office, though such evidence was the best available. The defence is not required to prove its case beyond reasonable doubt; it is sufficient if it probabilizes its version. The evidence of DW-1 (Vijaypal, Manager, Hotel Spark) and DW-2 (Lakhwinder Singh), read with Ex.D-07 (hotel Spark's register), clearly does so and raises a reasonable doubt about the prosecution story, thereby lending support to the plea of false implication.

48. The investigating officers (PW-18 Hazari Ram & PW-20 Bachhan Singh) further admitted that no CCTV footage was secured from the hotel or passport office, though such footage





would have been the **best available corroborative evidence**.

No inquiry was conducted from co-passengers who allegedly travelled with the prosecutrix. These serious lapses in investigation deprive the Court of independent corroboration and add to the cumulative doubt. Criminal trials cannot be founded upon incomplete investigation when decisive evidence was readily available but ignored.

49. The medical evidence also fails to lend support to the prosecution story. The **rape report records absence of internal or external injuries ordinarily expected in a case of forcible or repeated sexual assault**. It further notes that the **prosecutrix disclosed prior sexual intercourse four weeks earlier, a fact conspicuously absent from the FIR and her testimony**. While absence of injuries is not conclusive, in the present factual matrix it assumes significance and weakens the allegation of repeated forcible intercourse.

50. When the evidence is appreciated cumulatively, it becomes evident that the prosecution case is riddled with inconsistencies, omissions, and investigative deficiencies. **Proof beyond reasonable doubt is not a mere slogan; it is a constitutional safeguard protecting liberty**. The minority of the prosecutrix is not conclusively established; the foundational story is improbable; the delay in FIR is unexplained; the earliest version is withheld; independent corroborative evidence is absent; and the medical evidence does not support the prosecution narrative. Criminal conviction cannot rest on suspicion or conjecture. **The**





**prosecution must prove its case beyond reasonable doubt,  
and the benefit of every reasonable doubt must enure to  
the accused.**



51. From an overall assessment of the evidence available on record, this Court finds that the prosecutrix (PW-6) has stated that she had been subjected to sexual intercourse about four weeks prior to the date of her medical examination. Significantly, this allegation does not find mention in any of her earlier statements, nor was any action taken by PW-1 and PW-5, the father and mother of the prosecutrix, in respect thereof. Such omission is material and creates a serious doubt about the prosecution version. It is highly improbable that if a person had committed rape upon a minor girl, she would thereafter voluntarily accompany him to another place for the purpose of passport formalities. Equally improbable is the prosecution case that the prosecutrix was raped in a sleeper bus during the night and, despite alighting at a public place, continued to accompany with that person to a hotel. There was no apparent impediment preventing her from raising an alarm or seeking protection either at the bus stand or atleast at the hotel. The conduct attributed to the prosecutrix, viewed in the aforesaid factual matrix, appears wholly unnatural and inconsistent with ordinary human behaviour. In these circumstances, the defence version appears to be more probable. At the very least, the allegations levelled against the accused-appellant are not proved beyond reasonable doubt because there is also a defence evidence on behalf of the accused-



appellant that even he alongwith his brother had stayed at different hotel and the same was testified by the hotel manager verifying that no girl was accompany with the accused-appellant, thereby entitling him to the benefit of doubt.

52. In so far as the judgments relied upon by learned counsel for the complainant in the case of State of U.P. v. Hari Mohan, State of U.P. v. Chhotey Lal, State of Punjab v. Gurmit Singh and Dilip v. State of Maharashtra (supra) are concerned, the principles laid down therein may be summarized to the effect that: (i) a defective investigation by itself cannot be a ground for acquittal; (ii) failure of the victim to raise an alarm at a public place cannot necessarily lead to an inference that she was a consenting party; (iii) minor discrepancies or contradictions in the testimony of the victim, attributable to trauma, shame, nervousness or confusion, are not sufficient to discard her evidence; and (iv) a plea of false implication on account of political rivalry, by itself, is not a ground for acquittal. The Judgment relied upon by learned counsel of the complainant are having no application in the present case as the present case stands on a materially different footing. **Firstly**, the prosecution has failed to establish that the prosecutrix was a minor at the time of the alleged incident. **Secondly**, the prosecution has failed to prove that the daughter of the accused-appellant was residing abroad or that the prosecutrix was taken on the assurance that she would be sent abroad for that purpose of obtaining a passport. **Thirdly**, no CCTV footage from the passport office or the hotel, which constituted the best available evidence,





was collected or produced. **Fourthly**, the first responders and material witnesses, namely S.I. Krishna Kumar and Constable Pooja Vishnoi, were not examined by the prosecution without any plausible explanation. **Fifthly**, the medical evidence reveals that the prosecutrix disclosed having engaged in sexual intercourse about four weeks prior to her medical examination, yet no allegation or action in that regard was ever taken, and no explanation has been forthcoming to show the existence of any continuing threat or coercion. **Sixthly**, accused-appellant had travelled to Sikar along with his brother Lakhwinder Singh (DW-2) and stayed at Hotel Spark, Sikar. Vijay Pal (DW-1), the hotel manager, categorically deposed that Lajendra Singh Brar along with another man stayed at Hotel Spark, and the hotel register (Ex.D-07), at serial No. 508, specifically records the name of the accused-appellant, thereby corroborating the defence version. **Seventhly**, it is highly improbable that a girl, having been ravished by a person, would thereafter voluntarily accompany the same person to another city in a sleeper bus. Equally improbable is the prosecution version that, after allegedly being raped in a sleeper bus during the night, the victim would continue to accompany the accused to a hotel after alighting at the bus stand, which is admittedly a public place. In view of these cumulative and substantive deficiencies, the factual matrix of the present case is clearly distinguishable from the judgments relied upon by the learned counsel for the complainant, and the ratios laid down therein do not advance the prosecution case in the facts and circumstances of the present case.



53. In our considered view, the prosecution has failed to discharge its burden. The conviction recorded by the learned trial court cannot be sustained. The appeal deserves to be allowed.

54. Accordingly, the appeal is allowed. The judgment of conviction and sentence dated 02.12.2020 passed by the learned Sessions Judge, POCSO Cases No.1; Sri Ganganagar in Sessions Case No.126/2018 is set aside. The appellant is acquitted of all charges. The accused-appellant's sentence was suspended by this Court and therefore, he is on bail. He is not required to surrender, if not required in any other case.

55. Keeping in view, however, the provisions of Section 437A Cr.P.C. the accused appellant is directed to forthwith furnish a personal bond in the sum of Rs.50,000/- and a surety bond in the like amount, before the learned trial court, which shall be effective for a period of six months to the effect that in the event of filing of Special Leave Petition against the judgment or for grant of leave, the appellant, on receipt of notice thereof, shall appear before Hon'ble the Supreme Court.

56. Office is directed to send the record of the trial court forthwith.

**CHANDRA SHEKHAR SHARMA),J**

**(VINIT KUMAR MATHUR),J**

62-Kartik Dave/C.P. Goyal/-