IN THE HIGH COURT FOR THE STATE OF TELANGANA
::HYDERABAD::
*** * ***

CRIMINAL APPEAL No.946 of 2024

Between:

Colonel Rishi Sharma.

Appellant

VERSUS

The State of Telangana,
Rep. by its Public Prosecutor,
High Court of Telangana at Hyderabad.

Respondent

JUDGMENT PRONOUNCED ON: 01.05.2025

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

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P.SAM KOSHY, J

_____
N.TUKARAMJI, J

*** THE HONOURABLE SRI JUSTICE P.SAM KOSHY**

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

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! Counsel for Appellant :: Mr. E.Uma Maheshwar Rao
Mr. Enuganti Sudhanshu
Mr.Nikhil Chainani
Ms.Anishka Vaishnav

^Counsel for respondent :: Mr. M.Ramachandra Reddy, learned
Additional Public Prosecutor.

<GIST:

> HEAD NOTE:

? Cases referred

1) (2003) 3 SCC 175
2) (2011) 7 SCC 130
3) (2012) 7 SCC 171
4) (2008) 15 SCC 133
5) (2012) 8 SCC 21
6) (2020) 3 SCC 443
7) 2025 SCC OnLine SC 78
8) 1993 SCC (Cri) 860
9) (1984) 4 SCC 116
10) (2013) 7 SCC 192
11) (1952) 2 SCC 71
12) 1989 Supp (2) SCC 706
13) (1996) 10 SCC 193
14) (2006) 10 SCC 172
15) (2008) 3 SCC 210
16) (2010) 8 SCC 593
17) (2015) 7 SCC 178

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

CRIMINAL APPEAL No.946 of 2024

JUDGMENT: *(per the Hon'ble Sri Justice P.Sam Koshy)*

Heard Mr. E.Uma Maheshwar Rao, learned counsel for the appellant - accused and Mr. M.Ramachandra Reddy, learned Additional Public Prosecutor for the respondent - State.

2. The instant is an appeal under Section 374(2) of Cr.P.C. filed by the appellant challenging the judgment of conviction dated 11.09.2024, in S.C.No.132 of 2019, passed by the Spl. Sessions Judge for Fast Tracking the Cases Relating to Atrocities Against Women-cum-XIII Addl. District and Sessions Judge, R.R. District at L.B. Nagar.

3. *Vide* the impugned judgment, the Trial Court found the appellant guilty for the offence punishable under Section 376(2)(f)(n) of Indian Penal Code, 1860 (for short, 'IPC') and sentenced him to undergo rigorous imprisonment for life with fine of Rs.5,000/-, and in default of payment of fine, to undergo simple imprisonment for a period of six months. The appellant was also found guilty for the offence punishable under Section 506 of IPC and was sentenced to undergo rigorous imprisonment for a period of one year with fine of Rs.100/-, and in

default of payment of fine, to undergo simple imprisonment for a period of period of one month.

4. The case of the prosecution as per the charge-sheet is that PW.1, the *de-facto* complainant, filed a complaint on 25.04.2017 at about 21:40 hours stating that she resided with her divorced mother-PW.2. The appellant Colonel Rishi Sharma who was serving as an administrative officer at D.R.D.O. Shameerpet was reportedly a close friend of PW.2, the victim's mother and had been a regular visitor to their residence since May, 2016. The appellant is also said to have developed a friendly relationship with the victim PW.1 and her brother PW.12, showing particular interest in PW.1. The appellant used to take the PW.1 out in his BMW car and Harley Davidson motorcycle by gaining trust of PW2. In January, 2017, PW.2 went on official tour to Kavali at Nellore as well as Tirupathi. Before PW.2 leaving for tour asked the appellant to stay at their house to look after her children PW.1 and PW.12 under his care, protection and guardianship. The appellant stayed at PW.2's house at night. During midnight the appellant entered PW.1's room and coerced her into sexual relation and also repeated the same the following morning. Thereafter, the appellant threatened PW.1 with dire consequences against revealing these incidents to anyone. Later, the appellant promised PW.1 to

marry her. It is said that the victim did not disclose the offence to any person and somewhere in April, 2017 she went to her father's house.

5. However, PW.1 informed to her father / PW.3 about missing her monthly periods as the stomach ache and when PW.3 took her to a nearby Medical Laboratory for medical examination it was detected that she is carrying 12 weeks of pregnancy and the same was conveyed to PW.2. Later, PW.1 informed about her pregnancy to the appellant who gave two options i.e. either to keep the child and live with him or to undergo an abortion. Further, PW.1 stated that the appellant had showed no remorse or responsibility while continuously expressing his love and desire for PW.1. Immediately thereafter, on 25.04.2017, PW.1 along with PW.2 and PW.3 lodged a complaint against the appellant for multiple instances of rape. Thereafter, an FIR was registered against the appellant and the matter was put to trial before the Spl. Sessions Judge for Fast Tracking the Cases Relating to Atrocities against Women-cum-XIII Addl. District and Sessions Judge, R.R. District at L.B. Nagar, *vide* S.C.No.132 of 2019.

6. In all, the prosecution examined thirteen witnesses PWs.1 to 13, marked twelve Exhibits Exs.P1 to P12 and marked four Material Objects M.Os.1 to 4. On the other hand, the defence examined only one witness DW.1 and marked four Exhibits Exs.D1 to D4. The Trial Court after recording the statement of the appellant under Section 313

of Cr.P.C. finally passed the impugned judgment of conviction which is under challenge in the present appeal.

7. Learned counsel for the appellant primarily contended that perusal of the impugned judgment would reveal that there is complete absence of essential ingredient required to establish the offence under Section 376(2)(f)(n) and Section 506 of IPC. Moreover, the inordinate and unexplained delay in filing a complaint without justifiable reasons casts serious doubts on the veracity of the allegations also impacting the credibility of the prosecution's case.

8. Learned counsel for the appellant further contended that the conviction is based on unreliable testimony with glaring contradictions in the evidence of prosecution witnesses where the prosecution has failed to establish the exact date on which PW.2 has travelled on official tour. There are also contradictions in the testimonies regarding the locations of PW.2 for the alleged official tour. PW.1 in her statement under Section 164 of Cr.P.C. stated that PW.2 had visited Cheepurupally (Vizianagaram District, Andhra Pradesh) and whereas in her deposition PW.1 stated that PW.2 had visited Tirupati, Andhra Pradesh in January, 2017 and the same are separated by 850 KM which severely damages the prosecution's statement. Additionally PW.2's own testimony fails to corroborate any out of station travel during the relevant period.

9. Learned counsel for the appellant further emphasized that the Trial Court erroneously concluded on the depositions of PW.2, PW.3 and PW.12 on corroborated version of PW.1 when in fact the case rests solely on PW.1's testimony which itself is inconsistent across various statements made under Section 161 and 164 Cr.P.C.

10. Learned counsel for the appellant strongly contended that the pregnancy of PW.1 is highly doubtful; particularly in light of the sterilization certificate (Ex.D1) dated 02.09.2005 issued by the Government of India which definitively proves the appellant had undergone vasectomy operation on 30.06.2005, which shows his inability to cause pregnancy. Also the appellant is drawing family planning allowances. Further, the prosecution's case also suffers from critical evidentiary gaps as they failed to produce any crucial medical documentation regarding PW.1's alleged pregnancy and subsequent abortion such as no pregnancy test reports, ultrasound scans or medical records from any authorized medical facility under the Medical Termination of Pregnancy Act, 1971 to substantiate their claims. Furthermore, the Doctor who allegedly performed the abortion was neither cited nor examined as a witness, raising serious concerns about the veracity of the prosecution's case. Most critically, there are significant gaps in the chain of custody of the foetal sample - no evidence has been produced regarding who collected the sample, what

are the methods employed for its preservation, the duration and conditions of storage and the identity of the person who transported it for examination. These cumulative deficiencies in medical documentation and procedural compliance cast serious doubts on the prosecution's version of events.

11. Learned counsel for the appellant further contended that prosecution had failed to prove its case from DNA analysis report connecting the alleged foetus of PW.1 to the appellant. Moreover, the prosecution had failed to collect and send the product of conception (foetus) sample if any to FSL promptly. However, the conception (foetus) sample sent to the FSL itself was highly putrefied to perform the DNA analysis report. This by itself would establish the appellant's innocence.

12. Learned counsel for the appellant lastly contended that there are serious discrepancies in the MLC report and FSL findings. While the MLC report documented sent only four material items to FSL (nail clippings, pubic hair, two glass slides with dried smear, and reddish turbid liquid), the FSL report mysteriously included a fifth item - a brownish turbid liquid described as a highly putrefied product of conception. The learned counsel emphasized that there is no explanation or evidence regarding the origin of this fifth item, who submitted it to FSL, or how it was preserved. Furthermore, if the

pregnancy was indeed aborted by PW.6, there is no evidence or medical report corroborating her statement. Most critically, there is no conclusive determination whether this putrefied material was of human origin, thus, creating a significant doubt about its evidentiary value and the integrity of the investigation process.

13. Thus, for all the aforesaid reasons, the learned counsel for the appellant prayed that the impugned judgment of conviction may be set aside and the instant appeal be allowed.

14. *Per contra*, the learned Additional Public Prosecutor appearing for the respondent - State, vehemently opposed the contentions regarding the delay in filing the complaint. The learned Additional Public Prosecutor argued that this delay was thoroughly explained and justified by the prosecution's evidence which established that the appellant had specifically threatened PW.1, warning her that if she revealed the incident to anyone, he would kill her brother. This threat instilled genuine fear in the victim's mind, effectively preventing her from immediately reporting the incident. The learned Additional Public Prosecutor emphasized that such delays are not uncommon in cases involving threats and coercion, particularly when the threats are directed at harming family members. This explanation for the delay is both plausible and supported by the evidence on record,

demonstrating that the delay was neither unexplained nor unreasonable under the circumstances.

15. Learned Additional Public Prosecutor strongly relied on the testimony of PW.1 throughout the proceedings emphasizing her statement that the appellant who held a position of trust as a friend of her mother (PW.2) committed the offence. The medical examination confirmed PW.1 is in 10th week of pregnancy. However, the Doctor categorically stated that "sexual assault cannot be ruled out" which strongly corroborates the PW.1's statement.

16. The learned Additional Public Prosecutor further contended that the various evidences such as the medical report, FSL findings, BMW car (MO.4) and the statement of various witnesses (PW.1 to PW.13) provided circumstantial evidence to prove the guilt of the appellant. However, technical aspects of DNA test proved inconclusive due to no amplifiable DNA yield which does not diminish the strength of other evidence, particularly the PW.1's testimony and PW.6's medical report of pregnancy which collectively establish the guilt of the appellant beyond reasonable doubt under Section 376(2)(f)(n) and Section 506 of IPC.

17. Lastly, the learned Additional Public Prosecutor contended that why woulda victim of sexual assault falsely implicate an innocent

person, especially considering the social context and values prevailing in the Country. He emphasized that the victim's testimony need not necessarily be corroborated if it inspires confidence, and in the present case, PW.1's testimony was both consistent and trustworthy.

18. Having considered the submissions advanced by the counsel appearing on either side and on perusal of the records, it would clearly show the following material evidence available before the Trial Court:

I. The appellant has undergone the vasectomy operation and the sterilization certificate (Ex.D1) dated 02.08.2005 issued by the Government of India, and Vasectomy Certificate issued by the Military Hospital, Khadakwala, Pune explains the appellant's physical inability that could cause pregnancy. This medical certificate serves a strong *prima facie* piece of evidence to prove appellant's physical condition.

II. This Bench observed several critical questions regarding the inconsistencies and gaps in the medical evidence presented by the prosecution. Meticulous examination of PW.1's testimony reveals a sequence of events that demands thorough scrutiny i.e.

1. According to PW.1's deposition, she initially discovered her pregnancy when she missed her periods and subsequently informed PW.2. She claims to have undergone a medical

examination confirming a 12-week pregnancy. However, this Bench finds the following *prima facie* discrepancies and lacunas:

a) Where is the documentary evidence of this initial pregnancy test and medical examination before filing complaint?

b) Why has the prosecution failed to produce any medical records from the local laboratory facility where this initial confirmation of pregnancy was obtained?

c) If such a medical examination was indeed conducted, why wasn't the examining doctor called as a witness?

2. PW.1's testimony further states that upon informing the appellant about the pregnancy, he presented her with two options: either to live with him along with the child or to undergo abortion. This Bench finds it pertinent to question:

a) If PW.1 opted for abortion following this alleged ultimatum, where are the medical records of this procedure?

b) Why hasn't the prosecution produced any documentation from the medical facility where this abortion was supposedly performed?

c) What explains the complete absence of mandatory documentation required under the Medical Termination of Pregnancy Act for such procedures?

3. Most crucially, the only medical evidence presented by the prosecution is a single report by PW.6-Dr. A. Sujatha marked as Ex-P3 Medical examination report regarding pregnancy test and abortion. This raises further questions, i.e.,

a) How can the prosecution establish the timeline and circumstances of the alleged pregnancy without contemporary medical records?

b) Why is there such a stark absence of medical documentation that would naturally exist in the normal course of events as described by PW.1?

c) Why there is no ultrasound scans presented to determine fetal age which is mandatory under the MTP Act?

d) The prosecution also failed in proper collection, preservation and prompt analysis of the product of conception for DNA testing; and

e) Conception (foetus) sample sent to the FSL itself was highly putrefied making DNA analysis impossible. The question is

who collected the conception (foetus) sample, from where, when and whom. Secondly where was the sample kept and under whose custody it was sent for the DNA analysis?

This Bench finds these *prima facie* lapse in medical evidence which punched the hole in prosecution's case.

19. The natural course of events as described by PW.1 would necessarily generate a trail of medical documentation - from initial pregnancy confirmation to the abortion procedure. The inexplicable absence of the crucial medical records, coupled with the prosecution's failure to produce or explain their absence, creates serious doubts about PW.1's allegations. Further, this Bench observed that there is an inconsistency in the testimonies of the witnesses, which reads thus:

a) Inconsistence in the statement of PW.1 about the date and the location of the alleged tour of PW.2 on the day of alleged offence.

b) Additionally, PW.2 has failed to corroborate any out of station travel during January, 2017 despite being a verifiable fact through PW.2's official tour record.

c) This Bench also observed the glaring inconsistencies in PW.1's statements regarding her mother's whereabouts on

the day of the incident. The victim has provided four distinctly different versions - in her initial complaint she claimed her mother PW.2 was away on official duty; in her Section 161 Cr.P.C. statement, she stated PW.2 had gone to Kavali in Nellore district; in her Section 164 Cr.P.C. statement, she mentioned PW.2 visited Chipurupally for personal work; and finally, in her deposition, she testified that PW.2 had gone to Tirupathi. Such material contradictions regarding a crucial aspect of the case - the absence of PW.2 from the house during the alleged incident severely undermines the credibility of the prosecution's narrative and raises serious doubts about the truthfulness of PW.1's testimony.

d) The prosecutrix's conduct also *prima facie* raises significant doubts as she being an educated individual failed to report the incident promptly or confide in family members, friends or her brother who was present at the residence on the night of the alleged forced sexual assault which appears to be contrary to natural human behavior. The unexplained and considerable delay in filing the complaint without any justifiable reason severely undermines the prosecution's

case and casts serious doubts on the truthfulness of the allegations.

e) The Trial Court has erroneously concluded that PW.2, PW.3, and PW.12 corroborated PW.1's version, when in fact, the case rests solely on PW.1's testimony.

20. Further, this Bench also observes a significant discrepancy in the timeline of events after the pregnancy discovery. As per PW.1's testimony, she stayed at PW.4's residence on 14.04.2017 and when she was suffering from fever, PW.4 (father) took her to the hospital on 17.04.2017 and subsequently the pregnancy was discovered. However, PW.1 only filed the complaint on 25.04.2017. The prosecution has failed to provide any satisfactory explanation for this delay of 7 days between the discovery of pregnancy and the filing of the complaint raising additional doubts about the credibility of the prosecution's case.

21. This Bench also observes that there is a close intimate friendship/relationship between the appellant and PW.2/mother of victim. This in itself creates a strong doubt about the veracity of the prosecution's case as it seems implausible for someone who is otherwise so close to the mother of the victim would go beyond to risk their social standing and relationship by committing such an offense against the daughter of his close friend.

22. It would be relevant at this juncture to refer to a few decisions of the Hon'ble Supreme Court on the subject matter.

23. In the case of **Vimal Suresh Kamble vs. Chaluverapinake Apal S.P.**[1] the Hon'ble Supreme Court in paragraph No.21 held that a conviction cannot be solely based on prosecutrix evidence if it does not inspire confidence, which for ready reference is reproduced hereunder:

> "**21**. On an overall appreciation of the evidence of the prosecutrix and her conduct we have come to the conclusion that PW 1 is not a reliable witness. We, therefore, concur with the view of the High Court that a conviction cannot be safely based upon the evidence of the prosecutrix alone. It is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone is permissible, but that is in a case where the evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality, and there is no other evidence on record which may even lend some assurance, short of corroboration that she is making a truthful statement. We, therefore, find no reason to disagree with the finding of the High Court in an appeal against acquittal. The view taken by the High Court is a possible, reasonable view of the evidence on record and, therefore, warrants no interference. This appeal is dismissed."

24. Similarly in the case of **Krishan Kumar Malik vs. State of Haryana**[2] the Hon'ble Supreme Court observed the importance of DNA

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[1](2003) 3 SCC 175
[2](2011) 7 SCC 130

Test while convicting a rape accused and held in paragraph Nos.31, 32, 40, 43 and 44 as under, viz.,

> "**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 she has been won over by the appellant.
>
> **40.** The appellant was also examined by the doctor, who had found him capable of performing sexual intercourse. In the undergarments of the prosecutrix, male semen were found but these were not sent for analysis in the forensic laboratories which could have conclusively proved, beyond any shadow of doubt with regard to the commission of offence by the appellant. This lacuna on the part of the prosecution proves to be fatal and goes in favour of the appellant.

43. With regard to the matching of the semen, we find it from Taylor's Principles and Practice of Medical Jurisprudence, 2nd Edn. (1965) as under:

> "Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely defined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much as 5 days old. The detection of dead spermatozoa in stains may be made at long periods after emission, when the fluid has been allowed to dry. Sharpe found identifiable spermatozoa often after 12 months and once after a period of 5 years. Non-motile spermatozoa were found in the vagina after a lapse of time which must have been 3 and could have been 4 months."

Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant.

44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23-6-2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences."

25. Further, in the case of **Narender Kumar vs. State (NCT of Delhi)**[3] relying upon the decision in the case of **Vimal Suresh Kamble** (supra), the Hon'ble Supreme Court held in paragraph No.21 as under:

> "**21.** A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, *if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence*, direct or substantial (*sic* circumstantial), which may lend assurance to her testimony. (Vide *Vimal Suresh Kamble* v. *Chaluverapinake Apal S.P.* [(2003) 3 SCC 175 : 2003 SCC (Cri) 596 : AIR 2003 SC 818] and *Vishnu* v. *State of Maharashtra* [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217 : AIR 2006 SC 508] .)"

26. In the same judgment, in paragraph Nos.22, 24, 29 and 30 the Hon'ble Supreme Court held as under:

> "**22.** Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence.

[3](2012) 7 SCC 171

(Vide Suresh N. Bhusare v. State of Maharashtra [(1999) 1 SCC 220 : 1998 SCC (Cri) 1595] .)

24. In Raju v. State of M.P[4] this Court held : (SCC p. 141, para 10, 11)

> "10. … that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to beevaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary."
>
> "*11*. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication … there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. *However* great the suspicion against the accused and *however* strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the

[4](2008) 15 SCC 133

> accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide *Tukaram* v. *State of Maharashtra* [(1979) 2 SCC 143 : 1979 SCC (Cri) 381 : AIR 1979 SC 185] and *Uday* v. *State of Karnataka* [(2003) 4 SCC 46 : 2003 SCC (Cri) 775 : AIR 2003 SC 1639] .)
>
> **30.** The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

27. In the case of **Rai Sandeep vs. State (NCT of Delhi)**[5] the Hon'ble Supreme Court dealing with the importance of "sterling witness" held in paragraph No.22 as under:

> **22.** In our considered opinion, the "*sterling witness*" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes

[5](2012) 8 SCC 21

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 guilty of the charge alleged.

28. In the case of **Santosh Prasad v. State of Bihar**[6], the Hon'ble Supreme Court held in paragraph Nos.5.2, 5.3, 5.5 and 6 as under:

> **5.2.** From the impugned judgments and orders passed by both the courts below, it appears that the appellant has been convicted solely relying upon the deposition of the prosecutrix (PW 5). Neither any independent witness nor even the medical evidence supports the case of the prosecution. From the deposition of PW 1, it has come on record that there was a land dispute going on between both the parties. Even in the cross-examination even PW 5, prosecutrix had admitted that she had an enmity with Santosh (accused). The prosecutrix was called for medical examination by Dr Renu Singh, Medical Officer and PW 7 Dr Renu Singh submitted injury report. In the injury report, no sperm as well as RBC and WBC were found. Dr Renu Singh, PW 7 Medical Officer in her deposition has specifically opined and stated that she did not find any violence marks on the body of the victim. She has also categorically stated that there is no physical or pathological evidence of rape. It is true that thereafter she has stated that possibility of rape cannot be ruled out (so stated in the examination-in-chief). However, in the cross-examination, she has stated that there was no physical or pathological evidence of rape.
>
> **5.3.** As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and

[6](2020) 3 SCC 443

circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

5.5. With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall the accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 o'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4.00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW 1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW 5, prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of “sterling witness”. There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the

> prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix, PW 5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and the accused is to be given the benefit of doubt.

29. Very recently, in the case of **State (NCT of Delhi) vs. Vipin**[7] the Hon'ble Supreme Court has held in paragraph No.10 as under:

> "**10.** Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well."

30. It would be also relevant at this juncture to take note of the judgments rendered by the Hon'ble Supreme Court on circumstantial evidence. In the case of **Sarbir Singh vs. State of Punjab**[8], dealing

[7] 2025 SCC OnLine SC 78
[8] 1993 SCC (Cri) 860

with the case of circumstantial evidence, the Hon'ble Supreme Court in paragraph Nos.5 to 7 has held as under:

> **5**. There is no dispute that the prosecution case is based solely on the circumstantial evidence. If at a trial the prosecution adduces direct evidence to prove the charge, the court is primarily concerned whether the witnesses who have testified about the role of the accused are reliable. Once the court is satisfied that the witnesses who are said to have seen the occurrence are trustworthy and inspire confidence, the finding of guilt has to be recorded, if otherwise, the accused has to be acquitted. But in a case based on circumstantial evidence neither the accused nor the manner of occurrence is known to the persons connected with the victim. The first information report is lodged only disclosing the offence, leaving to the investigating agency to find out the offender.
>
> **6**. It is said that men lie but circumstances do not. Under the circumstances prevailing in the society today, it is not true in many cases. Sometimes the circumstances which are sought to be proved against the accused for purpose of establishing the charge are planted by the elements hostile to the accused who find out witnesses to fill up the gaps in the chain of circumstances. In countries having sophisticated modes of investigation, every trace left behind by the culprit can be followed and pursued immediately. Unfortunately it is not available in many parts of this country. That is why courts have insisted (i) the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established; (ii) all the facts so established should be consistent only with the hypothesis of the guilty of the accused and should be such as to exclude every hypothesis but the one sought to be proved; (iii) the circumstances should be of a conclusive nature; and (iv) the chain of evidence should not have any

reasonable ground for a conclusion consistent with the innocence of the accused.

7. A note of caution has also been struck regarding the role of imagination. In the case of *Reg* v. *Hodge* [(1838) 2 Lewin CC 227], it was said:

> "The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

It has been impressed that suspicion and conjecture should not take the place of legal proof. It is true that the chain of events proved by the prosecution must show that within all human probability the offence has been committed by the accused, but the court is expected to consider the total cumulative effect of all the proved facts along with the motive suggested by the prosecution which induced the accused to follow a particular path. The existence of a motive is often an enlightening factor in a process of presumptive reasoning in cases depending on circumstantial evidence."

31. The Hon'ble Supreme Court in the case of **Sharad Birdhi Chand Sarda vs. State of Maharashtra**[9] laying down the basic principles of circumstantial evidence held at paragraph Nos.153 and 154 as under:

[9](1984) 4 SCC 116

"**153.** A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and

> must show that in all human probability the act must have been done by the accused.
>
> **154.** These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."

32. Further, the Hon'ble Supreme Court in the case of **Majenderan Langeswaran vs. State (NCT of Delhi)**[10] considering the case of conviction based on circumstantial evidence held as under:

> "The legal issue under consideration was whether the circumstantial evidence presented in the case was enough to sustain the conviction.
>
> The court made clear that in cases where the evidence is of a circumstantial nature, certain rules must be adhered to. Firstly, the circumstances from which the conclusion of guilt is drawn must be fully established. This means that each fact that points to the guilt of the accused must be proven individually and beyond a reasonable doubt.
>
> Further, the court emphasized that the proven circumstances should be consistent only with the hypothesis of the accused's guilt. This means that the facts established should point towards the guilt of the accused and no one else. Moreover, these circumstances should be of such a conclusive nature and tendency that they exclude every other hypothesis but the one proposed to be proved.
>
> In this context, the court cited several past judgments. For instance, in the case of *Hanumant Govind Nargundkar v. State*

[10](2013) 7 SCC 192

of M.P[11]., the court observed that there must be a chain of evidence so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused.

The court also referred to the case of *Padala Veera Reddy v. State of A.P*[12]., where it was stated that circumstantial evidence, in order to sustain conviction, must be complete, conclusive, and incapable of explanation of any other hypothesis than that of the guilt of the accused.

This key principle was reinforced in a series of other cases, such as *C. Chenga Reddy v. State of A.P*[13]., *Ramreddy Rajesh Khanna Reddy v. State of A.P*[14]., *and Sattatiya v. State of Maharashtra*[15].

In the case of *G. Parshwanath v. State of Karnataka*[16], the court went a step further and explained that while dealing with circumstantial evidence, a distinction must be made between primary or basic facts and inferences of facts to be drawn from them. This means that the court must not only evaluate whether a fact is proven, but also whether that fact leads to an inference of the accused's guilt."

33. In the case of **Tomaso Bruno v. State of U.P**[17], Hon'ble Supreme Court held at paragraph No.42 as under:

"**42.** By and large, this Court will not interfere with the concurrent findings recorded by the courts below. But where the evidence has not been properly appreciated, material

[11](1952) 2 SCC 71
[12]1989 Supp (2) SCC 706
[13](1996) 10 SCC 193
[14](2006) 10 SCC 172
[15](2008) 3 SCC 210
[16](2010) 8 SCC 593
[17](2015) 7 SCC 178

> aspects have been ignored and the findings are perverse under Article 136 of the Constitution, this Court would certainly interfere with the findings of the courts below though concurrent. In a case based on circumstantial evidence, circumstances from which inference of guilt is sought to be drawn should be fully proved and such circumstances must be of conclusive nature pointing to the guilt of the accused. There shall be no gap in such chain of circumstances. In the present case, the courts below have not properly appreciated the evidence and the gap in the chain of circumstances sought to be established by the prosecution. The courts below have ignored the importance of best evidence i.e. CCTV camera in the instant case and also have not noticed the absence of symptoms of strangulation in the medical reports. Upon consideration of the facts and circumstances of the case, we are of the view that the circumstances and the evidence adduced by the prosecution do not form a complete chain pointing to the guilt of the accused and the benefit of doubt is to be given to the accused and the conviction of the appellants is liable to be set aside."

34. After careful consideration of the facts, evidence and catena of judgments, this Bench finds that the prosecution has failed to establish the charges beyond reasonable doubt, with material inconsistencies in key witness testimonies and overlooked documentary evidence that supports the appellant's case. Following the principles laid down in various Supreme Court judgments regarding the standard of proof required in criminal cases, we find that the impugned judgment of conviction passed by the Trial Court cannot be sustained. Therefore, this Court deems it appropriate to set aside the same. The appellant

stands acquitted of all the charges leveled against him and if he is not required in any other case, he shall be released from the jail forthwith.

35. In the result, the instant appeal stands allowed.

(Per The Hon'ble Sri Justice N.Tukaramji):

36. I am in full agreement with the view, opinion and the decision arrived at by my brother Judge. However, I would only like to add a few lines in continuation.

37. Although, we have adjudicated the appeal and parting with the judgment, this Bench regrets to note the grand failure of the investigation in the present case.

38. The investigation is bedrock of the criminal justice administration. The fact finding and collection of evidentiary materials by the investigating agency makes this stage imperative and imposes a greater obligation on the investigating agency in meeting the fundamental right of every citizen to have fair investigation.

39. In the matter at hand, while considering the evidence brought onto record, we could discern failure in collecting clinching material to substantiate essential facts and negligent handling of the scientific/medical evidence from the stage of collection of sample, safe

chain of custody and drawing conclusions in regard to culpability and into manifestation of incomplete and lackadaisical investigation.

40. These aspects prompted us to deduce paradoxical consequences, firstly, regardless of available material evidence the investigating agency invented a case in support of the police report, may be with emotional bias or extraneous influence; secondly, the evidence brought onto record to deliberately present a superficial investigation to favour the accused.

41. In either case, the greatest victim is the criminal justice administration. The aftermath may result in wrongful conviction of the innocent or letting the real culprits go scot-free, which transforms the actual perpetrator into an ongoing threat. Additionally, flawed investigation leads to prolonged trial, retrials, appeal and many more legal challenges resulting in wastage of resources, delays in the justice delivery, in turn affects citizen's faith in the criminal justice system.

42. Further, a manufactured criminal case not only undermines justice administration, but also actively destroys the individual's dignity infringes upon rights and erodes opportunities, often without accountability for those responsible for the false accusations.

43. To prevent such far-reaching consequences, the investigation agency must abandon the tunnel vision approach, where prematurely

centers on the projected suspect without adequately exploring the other relevant aspects and must conduct proceedings strictly in accordance with the prescribed procedures of investigation. Furthermore, it is imperative that the investigating agency maintains an open and unbiased approach throughout the inquiry ensuring that all potential evidence and witnesses are thoroughly examined. Such comprehensive methodology not only upholds the principles of natural justice but also strengthens the credibility and reliability of the investigation. Any premature conclusions or procedural lapses could jeopardize the integrity of the case and potentially lead to miscarriage of justice. Thus, the investigating agency shall act with caution to prevent abuse and must be resolute in defending individual rights and preserving the integrity of investigation and administrative of justice.

44. We recognize that the investigations are conducted by the police officers who also attend to numerous other responsibilities and this situation would degrade the quality. Therefore, maintaining a dedicated team with sufficient number of trained and designated personnel specifically for conducting investigations on defined fields and clearly fixing responsibility on the investigating officer assigned to a case is crucial.

45. When an officer is entrusted with a case he or she should be accountable for the thoroughness and quality of the investigation

conducted. Instituting a performance evaluation system that rates the efficiency and effectiveness of the investigating officers based on adherence to produce and the outcomes in the cases they handle, will encourage greater diligence and professionalism. Moreover linking such performance assessments to the officers' career progression and opportunities for advancement would motivate the officers to prioritize investigative excellence. This approach encourages specialization, fosters a culture of accountability and ensures that investigations are conducted with the highest standards of integrity and competence.

46. In addition, regular and rigorous training programs tailored to investigative skills, forensic techniques and legal procedures must be institutionalized. Continuous professional development will equip officers to handle complex cases more effectively and adapt to evolving challenges in the criminal investigations.

47. Finally, establishing an independent supervising mechanism to monitor investigation quality and provide constructive feedback can further enhance the transparency and public confidence in the criminal justice system.

48. This Bench is of the considered view that these measures would significantly enhance standards and outcomes of police investigations. Thus the appropriate governments shall consider recognizing the

investigating institutions with defined goals, for securing the fundamental rights of the citizen for fair, impartial and prompt investigations for achieving more effective and just legal system.

49. We say this to bring these aspects to attention with an expectation of proactive engagement and affirmative and decisive action from all involved in the investigating agencies.

Pending miscellaneous applications, if any, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 01.05.2025

Note: LR Copy to be marked.
(B/o)GSD