*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.07.2026
Pronounced on: 02.09.2026

 # CNR No: DLHC011535302010

\+ CRL.A. 584/2011

STATE .....Appellant

Through: Mr. Aman Usman, APP with Mr. Manvendra Yadav, Adv. Insp.O.P.Vishnoi,P.S.Najafgarh

versus

MUNNA KUMAR .....Respondent

Through: None has appeared.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

RAVINDER DUDEJA, J.

1. The State takes exception to the impugned judgment dated 29th April, 2010, passed by the learned Additional Sessions Judge/ Special Judge (NDPS), in SC no. 16/1/10, in case FIR no. 454/2008 registered under Section 376(2)(f) of the Indian Penal Code, 1860 ("**IPC**") at Police Station [**"PS"**] Najafgarh, whereby, the respondent Munna Kumar has been acquitted of charge under Section 376 IPC and was convicted only under Section 354 IPC.

FACTUAL MATRIX:

2. The brief facts of the case, as per the charge sheet are that on 11th August, 2008, an information was received at PS Maya Puri that prosecutrix 'N' (*name withheld*), aged about 4 ½ years, was admitted in DDU Hospital by her father with the alleged history of rape. Such information was recorded *vide* DD No. 27 (Ex. PW-12/A). On receipt

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of Ex. PW-12/A, SI Zile Singh (PW-1) along with Constable Prem Prakash (PW-6) went to DDU Hospital and obtained the MLC of the minor child. She was declared 'unfit' for statement. The statement of her father, that is, complainant 'X' (*name withheld*) was recorded (Ex. PW-1/A), which was to the effect that he was residing at the house of Ramesh, son of Kulbir near (complete address withheld) on rent and that Munna, son of Paras Nath, aged about 20-21 years was residing in the same house in the opposite room. His daughter, that is, the prosecutrix, aged about 4 ½ years, used to visit his room for tuition. On 10th August, 2008, at about 7:00 pm, she went for tuition and returned back home at 11:30 pm. She complained of pain. Her mother (PW-7) noticed that she was bleeding from her private part and there was blood on her legs and underwear. Upon hearing the same, the complainant went to the room of the respondent, but the same was found locked. He then, along with his wife, took the prosecutrix to Gandhi Nursing Home, Om Vihar, where the lady doctor examined her and advised them to remove the child to DDU Hospital. Next day, they brou*ght* their daughter at DDU Hospital.

3. On the aforesaid statement of the complainant, FIR No. 454/08, under Section 376 IPC (Ex. PW-5/A) was registered. Further investigation was taken over by WASI Kamlesh (PW-13). Respondent was arrested on 11th August, 2008 from Mansa Ram Park, Uttam Nagar, *vide* Arrest Memo (Ex. PW-4/B), on the pointing out of the complainant. On interrogation, he gave disclosure statement (Ex. PW-13/A). He was then taken to his house, from where, at his instance, a towel, one bed sheet and one red colour cloth were recovered, which

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were seized *vide* separate memos Ex. PW-6/A to Ex. PW-6/C. The site plan Ex. PW-13/B of the place of occurrence was prepared by PW-13.

4. Respondent was got medically examined at RTRM Hospital. After medical examination, the doctor handed over the sealed *pullandas*, which were taken into possession *vide* seizure memo Ex. PW-13/C.

5. On 13th August, 2008, the father of the prosecutrix handed over the underwears of the prosecutrix, which were seized *vide* memo Ex. PW-4/A.

6. On 19th August, 2008, the statement of prosecutrix was recorded by the learned Metropolitan Magistrate under Section 164 Cr.P.C (Ex. PW-14/A).

7. On 22nd August, 2008, the exhibits were sent to FSL through PW-10/Ct. Pratap and upon completion of the investigation, charge sheet under Section 376 IPC was prepared and the respondent was sent to Court for trial.

8. The learned Trial Court, on 27th March, 2009, framed charge under Section 376 (2)(f) IPC against the respondent. He pleaded not guilty and claimed trial.

9. In order to bring home the guilt of the respondent, prosecution examined 14 witnesses, including prosecutrix 'N' (PW-2), her parents (PW-4 & PW-7), the medical witnesses (PW-8, PW-9 & PW-11) and the IOs, namely, SI Zile Singh (PW-1) and ASI Kamlesh (PW-13).

10. After the completion of prosecution evidence, the statement of respondent was recorded under Section 313 Cr. PC, wherein, he denied all the incriminating circumstances on record against him.

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However, he admitted that on the relevant date, he was residing opposite the victim's house, working as a tailor, used to teach the prosecutrix and that she often used to play in his house. Respondent claimed that he had given Rs. 50,000/- to the mother of the prosecutrix for safe keeping, and when he asked for the return of the money, she denied and threatened to falsely implicate him in a criminal case for demanding back the money. According to him, on 10th August, 2008, when he again demanded the money from her, she got him falsely implicated in the present case and did not return the money. Respondent did not lead any evidence in his defence.

11. The learned Trial Court, *vide* the impugned judgment dated 29th April, 2010, acquitted the respondent of the charge under Section 376 (2)(f) IPC but convicted him under Section 354 IPC and *vide* order on sentence dated 29th April 2010, the respondent was sentenced with Rigorous Imprisonment for a period of one year and six months under Section 354 IPC.

12. The learned Trial Court was of the view that the prosecution has failed to prove its case against the respondent beyond reasonable doubt under Section 376 IPC. The relevant paragraphs of the impugned judgment read as under:-

> *"34. Applying the aforesaid principal to the facts and circumstances of the present case, the prosecution has failed to prove the case against the accused beyond reasonable doubt u/s 376 IPC . As neither the prosecutirx has testified as to how she had suffered pain at the instance of the accused after he removed her underwear and his pant. No doubt the prosecutrix did testify that accused lied her on Bichauna before giving pain to her however at*

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the same time this by itself does not lead to the inference that there was penetration of the male organ of the accused in vagina of the prosecutrix to attract the provision of Section 376 IPC. So far the argument of the Ld. Add. PP to the effect that inference of rape should be drawn from the fact that the prosecutrix was made to lie down and then accused gave her pain and subsequently she was found bleeding from her private part, in my opinion is of no consequence as the prosecutrix has not stated a word that the accused had used his male organ to cause pain in her private part. There is also no evidence on record that accused had laid himself upon her or in any other manner raped her. Besides, so far the bleeding from the private part of the prosecutrix is concerned, as per the MLC of the prosecutrix Ex. PW8/A , it is mentioned that there was no active bleeding and there was not even reference of fresh injury on her private part though it is observed that her hymen was torn and admitted a tip of finger. Similarly in her MLC Ex. PW9/A also there is no mention that when the prosecutrix was examined in the hospital there was any bleeding found on her private part. The clothes of the prosecutrix i.e two blood stained underwears which were handed over to the police on 13.8.08 do not inspire any credence since PW-4 the father of the prosecutrix did not hand over these two panties to the police on 11.8.08 when the police visited the room of the accused after his arrest and claimed to have recovered one towel, bed sheet and a piece of cloth of red colour at the instance of accused. Besides, the prosecution has also failed to prove on record that blood group 'A' found on all these exhibits in terms of the FSL report Ex. PB was of the prosecutrix, as no blood group of prosecutrix has been proved on record. Besides, there is no cogent evidence on record that the bed sheet, towel a red colour piece of cloth were seized from the room of the accused at his instance as PW-4 the father of

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the prosecutrix admitted in his cross examination that he had handed over these items to the police. It is the case of the prosecution that after the incident when PW-4 came to know about the same , he went to the room of accused , it was found locked and there is no evidence on record that till his arrest on 11.8.08 the room was ever opened that he could have access to these exhibits in the room of the accused. Thus his testimony to this effect that he had handed over these items to the police leads to the inference that these exhibits were not recovered at the instance of the accused. Besides, these exhibits, the baniyan and the underwear of the accused were seized at RTRM hospital. However, as per the FSL report though human blood was detected on the baniyan but there was no reaction and on the underwear also the human blood was detected but there was inconclusive result. It is pertinent to mention that in the absence of any proof of blood group of the prosecutrix it cannot be said that the blood found on any of the exhibit was of the prosecutrix. In these circumstances, in my opinion the prosecution has failed to prove beyond reasonable doubt that the accused had committed rape upon the prosecutrix but in view of the unrebutted testimony of the prosecutrix, it is proved by the prosecution that the accused is guilty of outraging the modesty of the prosecutrix. The accused is thus acquitted of the charge u/s 376(2)(f) IPC and is convicted for the offence punishable u/s 354 IPC."

13. Feeling aggrieved, the State preferred Criminal Leave Petition before this Court. The leave was granted *vide* order dated 05th May, 2011.

SUBMISSIONS MADE ON BEHALF OF THE STATE:

14. Mr. Usman, learned Additional Public Prosecutor ["**APP**"] for

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the State, submitted that the learned Trial Court erred in acquitting the respondent of the offence under Section 376 IPC while simultaneously convicting him under Section 354 IPC on the very same set of facts and evidence. It was contended that the learned Trial Court erroneously held that the prosecution had failed to prove rape merely because the victim had not expressly used the word "penetration" in her testimony. The learned APP submitted that the testimony of the minor victim(PW-2) clearly established that the respondent had removed her underwear, removed his own pant, made her lie down on the bed and thereafter caused pain in her private part by laying on top of her, following which blood started oozing from her private part. It was argued that the learned Trial Court accepted the testimony of the victim to convict the respondent under Section 354 IPC and, therefore, there was no justification for discarding the very same testimony while considering the charge under Section 376 IPC. It was accordingly submitted, the victim had narrated the entire incident and the only omission was the absence of the specific expression "penetration", which ought not to have resulted in an acquittal for the offence of rape.

15. It was further submitted that the ocular testimony of the prosecutrix, who was just a four and a half year old child victim, stood fully corroborated by the medical and scientific evidence on record. Reliance was placed upon the MLC (Ex. PW-8/A), wherein, Dr. Preeti, recorded that the hymen of the victim was torn 1.2 cm and that she was bleeding from her private part. The learned APP further relied upon the FSL Reports (Ex. PA and Ex. PB), which confirmed the

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presence of human semen on Exhibits IX-a and IX-b, being the underwear (panty) of the girl child victim. It was submitted that the victim was first taken by her parents to a private hospital on 10.08.2008 and, on being advised from there, she was taken to a Government hospital the following day, where her medical examination was conducted and the FIR came to be registered. The clothes of the victim were subsequently handed over to the police within three days. It was argued that the medical evidence, coupled with the FSL reports and the testimony of the victim, sufficiently established the commission of the offence under Section 376 IPC.

16. The learned APP further submitted that although the investigating agency failed to collect the blood group of the victim, thereby preventing a conclusive determination that the blood stains recovered from the respondent's bedsheet belonged to the victim, such lapse could not enure to the benefit of the respondent. It was contended that the attending circumstances remained incriminating, as blood-stained clothes including a bedsheet were recovered from the respondent's house at his instance during police custody remand, as deposed to by the Investigating Officer (PW-13), whose testimony was not properly appreciated by the learned Trial Court.

17. It was further argued that the place of occurrence was the respondent's house, the incident took place on the night of 10.08.2008, and the testimonies of the victim's parents (PW-4 and PW-7) fully supported the prosecution case. According to the learned APP, the scope of challenge was limited to the Trial Court's refusal to convict the respondent under Section 376 IPC despite relying upon the same

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evidence to record a conviction under Section 354 IPC, and in view of the victim's testimony read together with the medical and scientific evidence, the respondent ought to have been convicted for the offence of rape. Reliance was placed upon the judgement of this Court in ***State v. Inderpal*** 2025:DHC:11880-DB.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENT/ ACCUSED:

18. *Per contra*, learned counsel for the respondent submitted that the testimony of the prosecutrix was fraught with material contradictions and could not be relied upon to sustain a conviction under Section 376 IPC. It was pointed out that, during her cross-examination, the prosecutrix stated that the uncle of the respondent was also present in the house at the relevant time. However, both PW-4 (father of the victim) and PW-7 (mother of the victim) had initially stated that the respondent's uncle was residing in the same house, while PW-4 specifically deposed that his younger brother, Ranjay, who resided with the respondent, had gone to Bahadurgarh on the day of the incident and was, therefore, not present in the room at the relevant time. It was further submitted that the prosecutrix admitted in her cross-examination that she had made her statement before the learned Judge as instructed by her parents and the lady counsel present in the Trial Court, thereby indicating that she had been tutored before her deposition.

19. Learned counsel further submitted that the prosecutrix herself admitted during her cross-examination that she had been suffering from pain in her private part even prior to the alleged incident. It was

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argued that although the incident was alleged to have occurred on the night of 10.08.2008, the medical examination was conducted only at about 12:30 p.m. on the following day. Moreover, the MLC (Ex. PW-8/A) recorded that there was no active bleeding at the time of the medical examination. According to the learned counsel, these circumstances cast serious doubt on the prosecution's version and weakened the evidentiary value of the medical evidence relied upon by the prosecution. Reliance was further placed upon testimony of PW-3, the doctor who conducted MLC of the Respondent, wherein he had stated that, semen sample could not be procured.

20. It was further submitted that the prosecution case suffered from additional inconsistencies. While the mother of the prosecutrix deposed that she confronted the respondent immediately after learning of the incident and found him present, the father (PW-4) stated that when he went to confront the respondent, the latter's house was found locked. Learned counsel also pointed out that although it was alleged that the respondent used to teach the prosecutrix, the mother failed to give any definite answer regarding whether the respondent was even literate. It was lastly contended that the prosecution had failed to prove its case beyond reasonable doubt, particularly in view of the investigating agency's failure to ascertain the blood group of the blood stains recovered during the investigation. As a result, it could not be established whether the blood belonged to the prosecutrix or the respondent, and such lapse in the investigation ought to enure to the benefit of the respondent.

ANALYSIS AND FINDINGS:

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21. The learned counsel for the respondent is right in his submission that the burden is on the prosecution to prove beyond reasonable doubt that the respondent is guilty of offence under Section 376 IPC and this burden is to be discharged by adducing reliable evidence in proof of guilt of the respondent. In the present case, the prosecution seeks to establish the guilt of the respondent through the evidence of victim 'N' (PW-2). The law is well settled that prosecutrix is a victim of, and not an accomplice in a sexual offence, and there is no provision in the Indian Evidence Act, 1872 ("**Evidence Act**") requiring corroboration in material particulars of the evidence of the prosecutrix as is in the case of accomplice. Prosecutrix is thus a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured witness in the cases of physical violence.

22. The age of the victim at the time of commission of the offence was hardly 4 ½ years. The Indian Evidence Act, 1872 does not describe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease, weather of mind or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto.

23. In ***Radhey Shyam v. State of Rajasthan*** (2014) 5 SCC 389, the

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Hon'ble Supreme Court reiterated that the evidence of a child witness must be subjected to a close scrutiny to rule out the possibility of tutoring. It can be relied upon if the Court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the Court must find adequate corroboration to the child witness evidence. If found reliable, truthful and corroborated by other evidence on record, it can be accepted without hesitation.

24. In ***Pradeep v. State of Haryana,*** 2023 SCC OnLine SC 777, the Hon'ble Supreme Court emphasized on the importance of preliminary examination of a child witness. It held that although oath cannot be administered to a child witness under 12 years of age, yet, as per Section 118 of the Evidence Act, it is duty of a Trial Judge to conduct a preliminary examination before recording the evidence of the child witness to ascertain if the child is able to understand the questions put to him and that he is able to give rational answers to the questions put to him. It held that the Trial Judge must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and states why he is of the opinion that the child understands the duty of speaking the truth. It further held that the questions put to the child in the preliminary examination must also be recorded so that the appellate court can go into the correctness of the opinion of the Trial Court. The Hon'ble Court further held that the corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself, is no ground to reject the evidence of

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the child witness. The Court must make a careful scrutiny of the child witness and apply its mind to the question whether there is possibility of a child witness being tutored.

25. In interpreting the evidence given by a child victim of sexual assault, the Hon'ble Supreme Court in the case of ***State of H.P. v. Sanjay Kumar*** (2017) 2 SCC 51, held that social realities have to be given due attention. The relevant para of the judgment reads as under:-

> *"30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person hasto be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases.In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well.* ***Equally,***

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there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims."

26. Having considered the rival submissions and on an appreciation of the evidence on record, in the light of principles enunciated above, we are of the considered view that the findings returned by the learned Trial Court, thereby acquitting the respondent of the offence punishable under Section 376 IPC, cannot be sustained. The learned Trial Court proceeded mainly on the premise that the prosecution had failed to establish penetration merely because the prosecutrix did not expressly depose to the same. Such an approach overlooks that the testimony of a child victim cannot be assessed with undue emphasis on technical or anatomical terminology. The incident in question took place prior to the enactment of the POCSO Act, therefore, the presumption provided under Section 29 of the POCSO Act is not applicable. However, the testimony of a 4 ½ years old victim is required to be considered keeping in mind her age and the mental agony that she had undergone. The extract of the statement of the statement of victim (PW-2) is as follows:-

"Courts Questions:
Q. What is your name?
Ans. N.[Name withheld]
Q. What is your father's name and mother's name?
Ans. S and R.[Names withheld]
Q. What is the name of your school?
Ans. Mercy school.
Q. Should we speak truth or lie?
Ans. Truth.
After asking the abovementioned

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questions from the witness, the Court is of the opinion that the witness is fit for statement.

Accused Munna who is today present in court, I used to call him "Bhai" and he used to teach me and one day he removed my panty and he gave pain in my private part and he had also removed his pant before giving pain to me.

At this stage, witness indicated towards her private part i.e vagina. Blood had started oozing from my private part and I had told the entire incident to my mother on the same day. Thereafter, I was taken to hospital by my parents and I was medically examined in the hospital. My statement was recorded by one judge in a court and I had already told the Judge the all facts. At the time of incident, accused used to reside in our neighbourhood. The accused had made me lying on Bichauna before giving pain. It was evening/night when the incident took place.

Xxxxxxx Ms. Neelma Chaudhary, Ld. Counsel for accused.

The uncle of the accused was also present in the house. He is also my uncle. It is correct that I had given my statement before the Judge what my parents had told me. My parents and Lady Advocate who is present in court had instructed me before giving evidence. It is correct that I was suffering from pain in my private part prior to the incident."

27. In order to corroborate the testimony of the victim, prosecution placed reliance on the testimonies of her parents examined as PW-4 and PW-7 respectively. The relevant extracts of their testimonies are as follows:-

"PW-4 S s/o K, aged 29 years r/o xxx, New Delhi. On SA

Accused Munna, today present in court belonged to my village, was also living in a room in front of our house and he used to

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teach my daughter namelyN. My daughter used to play in the house of accused oftenly. On 10.8.2008 at about 10 PM I came back from my job and thereafter I went to purchase some articles from nearby shop and at about 11.30 PM I came back my home after shopping. My wife told me that the blood was oozing from the private part of my daughter N. N had gone to the house of Munna for tuition on that day and she came back from his house in that condition. Thereafter, I went to the room of Munna and found the door closed of his room. Thereafter, I along with my wife took N to Gandhi Nursing Home situated at Om Vihar, Uttam Nagar. On examination one lady doctor asked us to take the girl to DDU hospital as it was rape case.

On the next day I took my daughter N to DDU hospital and doctor asked me that it was a rape case and asked me to lodge a complaint to the police. The doctor informed to the police and after some time police reached there in the hospital. Police recorded my statement already Ex.PW1/A which bears my signatures at point B. Thereafter, my daughter was medically examined in the hospital. N remained admitted in the hospital for two days.

On 11.8.2008 accused was arrested from Gali No.5, Mansa Ram Park, Uttam Nagar vide arrest memo Ex.PW1/A which bears my signatures at point A.

On 13.8.2008 I handed over the panty of N to police officer and same was taken into possession vide seizure memo Ex.PW4/B which bears my signatures at point A.

My younger brother namely R was also residing with accused Munna in the same room but on the day of incident R had gone to Bahadurgarh to meet my one another brother namely D. At the time of incident R was not present in the room.

One towel was taken into possession by police from the house of the accused.

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PW7: Mrs R wife of S, 25 yrs, r/o xxx, New Delhi on SA:-
On 10.08.2008, my daughter namely Ms N after taking the dinner went to the house of the accused. At about 10.30 p.m. when she came back she was weeping. I found blood stains on her both legs. Thereafter, I removed her panty and found that the same was in pool of blood. At that time, my husband was not present at the house. When I asked from my daughter she told that Bhaiya had given pain to me. She was having injury on her private part. Thereafter, I went to the house of Munna and enquired from him but he did not tell anything. After one hour my husband reached at the house and I told him about the entire fact. My husband also went to the house of Munna but the house of Munna was found to be locked. Thereafter, I along with my husband taken to my daughter to Gandhi Nursing Home, Uttam Nagar, New Delhi. My daughter was not admitted there and they referred to DDU Hospital, New Delhi but during night we came back to my house. On the next day at about 11/11.30 a.m, I along with my husband Sanjay as also my daughter Nisha went to DDU Hospital. Police was called at DDU Hospital. Police officer enquired from me."
(The statements gave the name of the victim as also some of the relatives. We have used abbreviations for the same to hide the identity of the victim.)

28. A careful perusal of the cross examination reveals that no suggestion whatsoever was given to PW-2, PW-4 and PW-7, disputing the genesis of the occurrence, questioning the manner in which the injuries were caused, or even suggesting that the prosecutrix had not suffered pain or bleeding as alleged. The complete absence of any confrontation on these material aspects leaves the prosecution version substantially unchallenged and lends considerable assurance to its

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truthfulness.

29. The medical evidence on record unequivocally corroborates the prosecution case and completely belies the findings returned by the learned Trial Court. The gynae examination of the victim was conducted at the hospital. The MLC Ex. PW-9/A records that the hymen of the prosecutrix was torn, there was 1.2 cm tear, thereby, establishing the existence of injury to her genital parts. Although, the MLC notes that there were "no active bleeding" at the time of examination, such observation cannot be construed to mean that the prosecutrix had never bled. The evidence on record establishes that the incident had occurred several hours prior to the medical examination, and that, prosecutrix was first taken to a private hospital before being referred to a government hospital, thereby, adequately explaining the absence of active bleeding at the time of her medical examination.

30. The testimonies of PW-4 and PW-7 consistently establish that the child had returned home bleeding from her private part, which is in complete consonance with the medical findings of a torn hymen. The FSL Reports (Ex. PA & Ex. PB) further provide substantial scientific corroboration by recording the presence of human semen on Ex. IX-a and IX-b, being the underwears of the prosecutrix. The FSL report also confirmed the presence of blood and semen on Ex. V and VII, namely, the towel and cloth piece, recovered from the respondent's room at his instance during police remand. The detection of blood on these articles effectively dispels the contention advanced by the respondent that the prosecutrix was not bleeding after the incident.

31. Although, the investigating agency failed to determine the

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blood group, such lapse is merely an investigation lapse and cannot outweigh the otherwise cogent medical and scientific evidence. More importantly, the respondent has offered no explanation whatsoever, either in his statement under Section 313 Cr. PC or by leading any defence evidence, as to how the blood and semen came to be present on the towel and bed-sheet recovered from his room. The presence of semen on the underwear of a four-year-old victim, is a circumstance which strikes at the very core of the respondent's defence. No suggestion was put to the prosecution witnesses during cross-examination, nor was any alternative explanation advanced by the respondent regarding the presence of semen on the underwear of the prosecutrix. The scientific evidence in the form of FSL report and the MLC, when read conjointly with the testimony of the prosecutrix and the medical findings, forms a complete and consistent chain of incriminating circumstances pointing unerringly towards the guilt of the respondent.

32. The respondent sought to assail the prosecution case by emphasising that there is a contradiction between the testimonies of PW-4 and PW-7 regarding the respondent's presence in his room after the incident. We are unable to accept the said contention. PW-7, the mother of the prosecutrix, deposed that immediately after the prosecutrix disclosed the incident to her, she went to the respondent's room at about 10:30 pm and confronted him. PW-4, the father of the prosecutrix, on the other hand, deposed that upon returning home from outside after purchasing some articles at 11:30 p.m. and upon being informed of the occurrence by his wife, he proceeded to the

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respondent's room, by which time, it was found locked. It is evident from their testimonies that PW-7 confronted the respondent immediately after the incident, whereas, PW-4 reached the spot approximately an hour later, by which time, the respondent had already left. Thus, there is no contradiction in the statements of PW-2 and PW-7 regarding the presence of the respondent in his room. Both witnesses consistently deposed that the prosecutrix disclosed the occurrence immediately to the mother (PW-7), that she was bleeding from her private part and that the respondent, who used to live with the uncle of the victim, was the person who had committed the offence.

33. Furthermore, the contention of the respondent that since the semen sample could not be procured, it can be presumed that respondent was incapable to commit sexual intercourse, needs to be discarded. After arrest, the respondent was medically examined. PW-3 Dr. Shankar Narayanan, Medical Officer, RTRM Hospital, upon examination, found that the external genetelia of the respondent was normal. However, the semen sample could not be procured after sufficient effort. No suggestion was put to the doctor that the semen sample could not be procured because the respondent was incapable of performing sexual intercourse. Moreover, the respondent was further examined at DDU Hospital by Dr. Komal Singh (PW-11) after being referred from RTRM Hospital. On examination, the doctor opined that there was nothing to suggest that respondent was incapable of performing sexual intercourse. His detailed report is Ex. PW-11/A. Respondent did not cross examine Dr. Komal Singh. Therefore, the

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defence taken that respondent was incapable of sexual intercourse, is not acceptable.

34. The testimony of victim cannot be regarded as "tutored" merely because, in cross examination, she stated that her parents and the lady Advocate, present in court, had instructed her before giving evidence. There is nothing on record which may indicate that the parents or the lady Advocate had proded the prosecutrix during deposition. Hence, it cannot be said that the victim was tutored.

35. The victim, in her cross examination, stated that her uncle was also present in the house, while according to PW-4 and PW-7, R, uncle of the prosecutrix, was not present with the accused at the time of incident. The statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 19.08.2008 by the learned Metropolitan Magistrate, wherein she stated that "*bhai*", i.e., the Respondent, used to reside in the house of her *chacha*, though her *chacha* was not present on the day of the incident. The testimony of the victim was recorded in court on 04.09.2009, that is, more than a year after the incident. The prosecutrix, being only four and a half years of age at the time of the incident, was able to remember the material facts of the case, including what had happened to her and what had transpired in relation to the sexual assault. Minor variation on ancillary details need not be given undue importance.

36. Another significant circumstance not duly considered by the learned Trial Court is that there was absolutely no material on record to suggest any previous enmity or motive on the part of the family of the prosecutrix to falsely implicate the respondent in an offence of

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such grave nature. Respondent himself took a contradictory defence, inasmuch as, during cross examination of PW-4 and PW-7, it was suggested that the respondent was having illicit relations with PW-7, and over this issue, a quarrel took place between him and PW-4, which led to his false implication. However, in his statement recorded under Section 313 Cr. PC, he stated that he had given Rs. 50,000/- to PW-7, mother of the prosecutrix, for safe keeping, but when he asked for the return of money, she refused and threatened to falsely implicate him in a criminal case, if he demanded back the money again and on 10th August, 2008, when he again demanded the money, she falsely implicated him in this case and did not return the money.

37. The reasons stated for false implication are contradictory to each other. Either way, no effort was made to prove the same. Respondent has, therefore, failed to prove that the family of the victim had any motive for his false implication. Thus, in the absence of any established motive for false implication, the testimony of prosecutrix and her parents, acquire greater credibility.

38. We are also unable to comprehend to the reasoning of the learned Trial Court that the offence of rape remained unproved merely because the prosecutrix did not expressly use the word "penetration" in her testimony. The testimony of a child witness cannot be assessed on the touchstone of technical, legal or medical terminology, but must be appreciated by considering its substance, the surrounding circumstances and the natural manner in which the child of such a tender age narrates such a traumatic incident of rape. The Court must remain sensitive to the fact that a child of four years is incapable of

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understanding or articulating the legal ingredients of the offence and cannot be expected to describe the act in precise language. A perusal of the statement of the prosecutrix recorded under Section 164 Cr. PC (Ex. PW-14/B) by PW-14 reveals that she was hesitant, fearful, and shy while recounting the incident, reflecting the trauma she had undergone. Nevertheless, the prosecutrix consistently stated that respondent removed her underwear, removed his own clothes, made her lie on the bed, lay on top over her, caused pain in her private part, and that blood started coming from her private part thereafter. After this incident she straight way went to her mother and narrated the incident to her. The narration of the incident immediately after the occurrence to the mother, corroborates the testimony of the prosecutrix. Her narration of the incident, though expressed in childlike language, clearly conveys the occurrence of penetrative sexual assault and cannot be discarded merely because she did not use the specific expression "penetration."

39. In the case of ***State of Rajasthan v. Chatra*** (2025) 8 SCC 613, the facts were somewhat similar. The child victim did not utter even a single word and had just shed her tears in the court at the time of her depositions. Dealing with the traumatic condition which the victim had undergone, the Hon'ble Supreme Court set aside the order of acquittal passed by the Rajasthan High Court and restored the conviction and sentence awarded to the accused by the Trial Court, while observing that even if the child witness could not depose what had actually happened with her, the other corroborated evidence, including the medical report, should be taken into account and in case

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of a child witness, her testimony alone cannot play a decisive role. The relevant paragraphs of the judgment reads as under:-

> *"26. Having considered the principles of law as above, let us now proceed further. We have independently examined the evidence of the witness, by placing reliance on whom the trial court recorded the conviction of the respondent-accused, which was erroneously appreciated by the High Court, the same was reversed by the High Court. The child witness (victim), it is true, has not deposed anything about the commission of the offence against her. When asked about the incident, the trial Judge records that 'V' was silent, and upon being further asked, only shed silent tears and nothing more. Nothing could be elicited from the testimony regarding the commission of the offence. This, in our view, cannot be used as a factor in favour of the respondent. The tears of 'V', have to be understood for what they are worth. This silence cannot accrue to the benefit of the respondent. The silence here is that of a child. It cannot be equated with the silence of a fully realised adult prosecutrix, which again would have to be weighed in its own circumstances.*
>
> *27. It has been held in Hemudan Nanbha Gadhvi v. State of Gujarat [(2019) 17 SCC 523 :(2020) 3 SCC (Cri) 400], that a nine year old prosecutrix turning hostile would not be a fatal blow to the prosecution case when other evidence can establish the guilt of the accused. In these facts, "V" has not turned hostile. Trauma has engulfed her in silence. It would be unfair to burden her young shoulders with the weight of the entire prosecution. A child traumatised at a tender age by this ghastly imposition upon her has to be relieved of being the basis on which her offender can be put behind bars. In almost all other cases, the testimony of the prosecutrix is present and forms an essential part of the conviction of an accused, but at the same time, there is no*

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> *hard-and-fast rule that in the absence of such a statement a conviction cannot stand, particularly when other evidence, medical and circumstantial, is available pointing to such a conclusion. Reference can be made to State of Maharashtra v. Bandu [(2018) 11 SCC 163 : (2018) 2 SCC (Cri) 458], wherein the prosecutrix was "deaf and dumb and mentally retarded". The Court*
> *held that even in the absence of her being examined as a witness, other evidence on record was sufficient to record conviction of the accused. The principle of law, therefore, is that if the prosecutrix is unable to testify, or for some justifiable reason remains unexamined, the possibility of conviction is automatically excluded. At this stage, it is important to record that we should not for a moment be understood saying that a person with a disability is by definition an incompetent witness."*

40. In almost similar facts and circumstances, in the case of ***Inderpal*** (supra), in her court statement, the prosecutrix merely stated that the uncle pulled off her underwear, laid her on the floor and thereafter laid upon her body and except that he did nothing. The Trial Court acquitted the accused, holding that the said act did not constitute "sexual assault". While placing reliance on the judgement of ***Chatra*** (supra), the Division Bench of this Court set aside the judgement of acquittal, observing that the victim was under trauma and fear even after months of the incident and held that the omission on her part to aver the actual act of sexual assault cannot be said to be a discrepancy. It was at the best an omission. It was further held that in the case of a child in her preteens, the omission cannot be taken as a discrepancy.

41. The learned Trial Court failed to appreciate the cumulative

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effect of the ocular, medical and forensic evidence, and instead, assessed each circumstance in isolation, resulting in an erroneous conclusion. Consequently, we are of the considered opinion that the findings of the learned Trial Court are contrary to the evidence on record and suffer from a manifest mis-appreciation of the medical and scientific evidence, warranting interference by this Court.

42. In view of the foregoing discussion, we are of the opinion that the learned Trial Court misdirected itself in its appreciation of both the ocular and scientific evidence and adopted an unduly narrow approach while examining the ingredients of Section 376 IPC. The evidence on record reveals the ordeal of a child, barely four and a half years of age, who was betrayed and sexually assaulted by a neighbour, whom she used to call "*Bhai*" and would ordinarily have trusted. Her prompt disclosure of the incident to her mother (PW-7), her consistent narration before the Magistrate (PW-14) under Section 164 Cr. PC and her testimony before the Trial Court inspires confidence. The Courts recognise that a child of such tender age cannot be expected to describe the act with clinical precision; what is material is whether the substance of the testimony is natural, truthful, and consistent. In the present case, the testimony of the prosecutrix stands amply corroborated by medical evidence of a torn hymen and a 1.2 cm tear at the posterior fourchette with erythematous inflammation as also the scientific evidence, confirming the presence of semen on the seized panty (*Ex. IX-a and IX-b*) of the victim, leaving no room for reasonable doubt.

CONCLUSION:

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43. The prosecution has been able to prove beyond reasonable doubt that the respondent committed penetrative sexual assault upon the minor prosecutrix and the investigative lapses, including the failure to determine the blood group of the prosecutrix and the accused, do not detract from the otherwise cogent, reliable, and corroborated evidence on record. Consequently, the impugned judgment dated 29th April, 2010, insofar as it acquits the respondent of the offence punishable under Section 376 IPC, and instead convicts him under Section 354 IPC, is liable to be set aside.

44. The respondent/accused Munna is accordingly held guilty and convicted for the offence punishable under Section 376(2)(f) IPC and the impugned judgement and the order on sentence is hereby set aside.

45. The matter be listed on 10th September, 2026, for hearing the respondent/convict Munna on the point of quantum of sentence.

46. Since the respondent/convict is not present today, Non-Bailable Warrants be issued against him, for his production on the next date of hearing.

47. In the meanwhile, fresh Nominal Roll of the respondent/convict be requisitioned from the Jail Superintendent.

RAVINDER DUDEJA, J.

NAVIN CHAWLA, J.

SEPTEMBER 02, 2026/NA

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