



2026:DHC:5625



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment Reserved on: 09.07.2026**
Judgment pronounced on: 15.07.2026

+ **CRL.A. 725/2019**

SUMIT

.....Appellant

Through: Ms. Inderjeet Sidhu, Advocate
(DHCLSC)

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Ekta, P.S. Sector-23, Dwarka.
Ms. Sunita Arora, Advocate
(DHCLSC) for prosecutrix.

+ **CRL.A. 728/2019**

BIDUR

.....Appellant

Through: Mr. Harsh Prabhakar, Advocate
(DHCLSC) with Mr. Dhruv
Chaudhary, Mr. Shubham Sourav
and Mr. Vijit Singh, Advocates.

versus

STATE

.....Respondent

Through: Mr. Utkarsh, APP for the State with
SI Ekta, P.S. Sector-23, Dwarka.
Ms. Sunita Arora, Advocate
(DHCLSC) for prosecutrix.

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In these appeals filed under 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C.), accused nos. 1 and 2 (A1 and



A2) in SC No. 6605 of 2016 on the file of the Additional Sessions Judge- Fast Track, South-West, Dwarka, New Delhi, assail the judgment dated 30.01.2019 and order on sentence dated 30.01.2019 as per which they have been convicted and sentenced for the offences punishable under Sections 365, 376D read with 34 of the Indian Penal Code, 1860 (the IPC). A1 has also been convicted for the offence punishable under Part II of Section 506 IPC.

2. The prosecution case is that on 23.12.2017 at about 10:15 p.m., A1 and A2 kidnapped PW1, a girl aged about 19 years, from Rajkotri with the intent to compel her or knowing it likely that she would be forced or seduced to have illicit intercourse and thereafter, at about 11:00 p.m., between Gurgaon and Dwarka, Sector 21, Metro Station, gang raped PW1. A1 criminally intimidated PW1 by threatening to kill her. Hence, as per the charge-sheet/final report, A1 and A2 are alleged to have



committed the offences punishable under Sections 365, 376D and 506 IPC.

3. Based on Ext. PW1/A FIS of PW1, crime no. 370/2018Dwarka Section-23 police station, that is, Ext. PW23/C FIR, was registered by PW23, Assistant Sub-Inspector. PW24, Sub-Inspector, conducted investigation into the crime and on completion of the same, filed the chargesheet/final report alleging the commission of the offences punishable under the aforementioned Sections.

4. When A1 and A2 were produced before the trial court, all the copies of the prosecution records were furnished to them as contemplated under Section 207 Cr.P.C. The case was committed to the Court of Sessions under Section 209 Cr.P.C. *vide* order dated 19.04.2018.

5. After hearing both sides, the trial court, as per order dated 28.01.2019, framed a Charge under Sections 366, 376D read with Section 34 IPC against A1 and A2, and *vide* order dated



04.05.2018, a Charge under Section 506 Part (II) IPC against A1 was framed. The same was read over and explained to A1 and A2, to which they pleaded not guilty.

6. On behalf of the prosecution, PWs.1 to 28 were examined and Exts. PW1/A-D, PW1/D1, PW2/D1, PW3/D1, PW4/A-C, PW4/D1-D9, PW5/A-E, PW7/A1-A4, PW7/B-D, PW8/A, PW11/A-B, PW12/A, PW13/A, PW16/A-S, PW17/A, PW19/A-C, PW20/A-D, PW22/A-F, PW23/A-F, PW23/X1, PW24/A-D, PW25/A, PW25/A1, PW25B-G, PW27/A, F-1, F-2 and F-2/A-C were marked in support of the case.

7. After the close of the prosecution evidence, A1 and A2 were questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against them in the evidence of the prosecution. A1 and A2 denied all those circumstances and maintained their innocence. A1 submitted that PW1 and her friend (PW2) were travelling in his cab and were getting intimate with each other inside the cab. According to A1,



they requested him to spend some extra time, and he allowed them to remain in the cab for that purpose. When he demanded the fare charges, PW1 and her friend (PW2) quarrelled with him and assaulted him, causing injuries. They threatened him that if he insisted on receiving the fare, they would falsely implicate him. A1 further submitted that in the police station, he was forcibly confined in the lock-up and was compelled to extract his semen into a condom handed over to him by the Investigating Officer (IO), after which he was sent for medical examination.

7.1. A2 submitted that on 24.12.2017, he was called by A1 to the police station to stand surety for the latter. When he reached the police station, he was made to sit there and was thereafter forcibly confined in the lock-up, where he was compelled to extract his semen into a condom handed over to him by the IO. Thereafter, he was sent for medical examination.

8. After questioning A1 and A2 under Section 313(1)(b) Cr.P.C, compliance of Section 232 Cr.P.C was mandatory. In the



case on hand, no hearing as contemplated under Section 232 Cr.P.C is seen made by the trial court. However, non-compliance of the said provision does not *ipso facto* vitiate the proceedings, unless omission to comply with the same is shown to have resulted in serious and substantial prejudice to the accused (See **Moidu K. vs. State of Kerala, 2009 (3) KHC 89 : 2009 SCC OnLine Ker 2888**). Here, A1 and A2 have no case that non-compliance of Section 232 Cr.P.C has caused any prejudice to them.

9. No oral or documentary evidence was adduced on behalf of A1 and A2.

10. On consideration of the oral and documentary evidence and after hearing both sides, the trial court, *vide* the impugned judgment dated 30.01.2019, convicted A1 and A2 for the offences punishable under Sections 365, 376D read with 34 IPC. A1 has also been convicted for the offence punishable under Part II of Section 506 IPC. Accordingly, A1 and A2 have been sentenced to rigorous imprisonment for 20 years as well as fine of ₹10,000/-and



in default of payment of fine, simple imprisonment for a period of 3 months for the offence punishable under Section 376D IPC and to rigorous imprisonment for 10 years and fine of ₹10,000/-and in default of payment of fine, simple imprisonment for a period of 3 months for the offence punishable under Section 366 IPC. A1 has also been sentenced to rigorous imprisonment for a period of one year and fine of ₹5,000/-, and in default of payment of fine, to simple imprisonment for 30 days for offence punishable under Part II of Section 506 IPC. The sentences have been directed to run concurrently. Aggrieved, A1 and A2 have come up in appeal.

11. It was submitted by the learned counsel for the appellant/A1 that there are material improvements in the statements given by PW1 and in her testimony. Ext. PW1/B MLC of PW1 records that her hymen was torn; however, it simultaneously notes “no fresh injuries”. The medical record, therefore, does not disclose any finding suggesting recent forcible sexual assault. Further, PW10, the doctor, stated for the first time



during his cross-examination only that PW1's hymen was "freshly torn". This observation/opinion is absent in Ext. PW1/B MLC.

11.1. It was further submitted that Ext. F-2 FSL report does not expressly record that semen was detected on the inner surface of the used condoms before DNA profiling was undertaken. In the absence of such a finding, the presence of A1's DNA profile on the inner portion of the condom does not, by itself, conclusively establish that the DNA originated from semen. The possibility that the DNA profile could have been generated from some other biological material, such as blood or saliva, and that such material could have been introduced onto the exhibit, cannot be ruled out.

11.2. It was submitted that the prosecution has relied upon the recovery of Ext. PW8/A condom purchase bill from A1 at the time of his arrest. However, Ext. PW16/B personal search memo contains no reference to that bill. Further, PW8, the shopkeeper from whom the prosecution alleges the condom was purchased, neither identified A1 nor stated that he recalled selling the product



to the latter. Therefore, the prosecution has failed to establish any nexus between A1 and the purchase of the condom.

11.3. The learned counsel submitted that the prosecution has failed to establish an unbroken chain of custody in respect of the forensic exhibits. The prosecution did not produce the *malkhana register*, nor was the *malkhana moharrir* examined to prove the safe custody and movement of the sealed exhibits. Therefore, it was prayed that the impugned judgment be set aside and that the appellant be given the benefit of doubt. In support of the arguments, reference was made to the dictums in **State of Rajasthan vs. Gurmail Singh (2005) 3 SCC 59**, **The State of Himachal Pradesh v. Jitendra Kumar Crl.A.No.923/2016 dated 27.02.2025 (Supreme Court)**, and **Chatpal @ Satpal vs. State 2011 (123) DRJ 131 (DB)**.

12. It was submitted by the learned counsel for the appellant/A2 that the testimony of PW1 suffers from material inconsistencies and lacks independent corroboration on crucial



aspects. No independent public witness has supported the prosecution case. The conviction has been founded upon the testimony of PW1, her family members, and her friends, all of whom are interested witnesses. According to the prosecution, PW1 was in telephonic conversation with PW2 during the relevant period, however, the Call Detail Record reveals that no phone number stood in the name of PW2. Therefore, the prosecution has failed to establish its case beyond reasonable doubt, and the appellant/A2 is, therefore, entitled to an acquittal.

13. It was submitted by the learned Additional Public Prosecutor that PW1, the prosecutrix, has been consistent in her statements and testimony, which is further corroborated by the testimony of PW2 and PW3 as well as the medical evidence. A plain reading of the Ext. PW1/B MLC shows that PW10, the doctor, has opined that the findings are consistent with recent sexual intercourse/assault. The defence has selectively relied upon isolated portions of the medical record. Further, the purchase bill



was not seized under the general search memo but under a separate memo, which has been duly exhibited as Ext. PW16/O.

13.1. It was further submitted that the DNA Report records that the DNA profile generated from the blood sample of A1 matched the DNA profile generated from the inner portion of the used condom. The forensic findings thus directly connect A1 with the biological material. Therefore, there is no infirmity in the impugned order calling for an interference by this court.

14. Heard both sides and perused the record.

15. The only point that arises for consideration in this appeal is whether the conviction entered and sentence passed against the appellants/A1 and A2 by the trial court are sustainable or not.

16. I shall briefly refer to the oral and documentary evidence relied on by the prosecution in support of the case. Ext. PW1/A FIS/FIR of PW1 recorded on 24.12.2017, reads thus: *“I am 19 years old and work at Ambience Mall, Amante Store. On*



23.12.2017 at about 10:00 p.m., I was waiting for a cab near Shankar Chowk, a little ahead of IFFCO Chowk, Gurgaon, Haryana, to go home in Uttam Nagar. A Toyota car stopped near me, and I asked the driver (A1) if he would go to Uttam Nagar, to which he replied affirmatively. I boarded the cab, and at that time, besides the driver (A1), one more person was present. As soon as I sat in the cab, another passenger also boarded for Rajokri. I was receiving calls from my mother and a friend, namely, Kunal (PW2). While sitting on the front passenger seat, I was continuously conversing on the phone with my mother and friend. After a short while, I started doing paath. During that time, the driver (A1) was also continuously receiving phone calls. The man who had boarded the cab with me to go to Rajokri got down at Rajokri. The driver (A1) said to me that he had to collect money from a person nearby. I told him that I was already getting late and asked him to hurry up. The driver (A1) took the car to a secluded place. Around 11:00 p.m., I received a phone call from



my friend Kunal (PW2). I could not talk much with him, and the call got disconnected. As soon as I dialed Kunal's (PW2) number again, the driver (A1) snatched the phone from my hand and started saying that if I did not listen to him, he would kill me, and if I remained quiet, they would not do anything to me. After saying this, the driver (A1) went outside to put on a condom, and during that time, his accomplice stayed inside the car and kept the car doors locked. At that moment, the second phone inside my pocket vibrated. I picked it up while it was still in my pocket and placed it upside down on the seat. The driver (A1) pulled the phone away when he came inside to commit galat kaam. He committed galat kaam with me by threatening to kill me. After that, the driver's accomplice (A2) also did the galat kaam with me. I asked them to let me go, and they dropped me off at Sector 21 Dwarka metro station. During this incident and while they were using force, I scratched A1 with my nails. When they dropped me off, I saw some digits of the car number, which were AT-4791. The vehicle was a



commercial vehicle. On the front glass of the car, a red sticker of Lord Shiva smoking a chillum was pasted. A1 had thrown my phones and left while dropping me off. After that, I called Kunal (PW2) and informed him that I was at Dwarka Sector 21 metro station. Kunal (PW2) and my manager arrived shortly. My manager informed the police, who arrived at the spot and took me to the hospital for medical examination. A1 and A2 took me outside Rajokri in their car to a place where there were high walls, where they stopped the car and raped me. I can also identify that car. Legal action be taken against the accused persons.”

17. In Ext. PW1/D 164 statement of PW1 recorded on 25.12.2017, PW1 has stated thus: On 23.12.2017, she was working in the evening shift from 12:30 p.m. to 09:30 p.m. However, due to heavy rush of customers, she could leave the store only around 09:55 p.m. After coming out of the mall and crossing the road, she boarded a white colored Toyota Innova cab in which two male passengers were already seated. Another passenger also boarded



the cab at the same time as she did. She was going to Uttam Nagar, whereas the other passenger was to be dropped at Rajokri. After dropping the passenger at Rajokri, the driver (A1) took a left turn into the Rajokri lane and stopped the cab at a distance, stating that he had to collect some money from someone. After returning, the driver (A1) turned the vehicle around three to four times. When she questioned the driver (A1) about it, the latter said that they had lost their way. She then opened Google Maps on the driver's (A1) mobile phone to assist him with the route. She was talking to her friend (PW2) on her own mobile phone, but the call suddenly got disconnected. When she attempted to redial, the driver (A1) snatched her mobile phone and switched it off. As the driver (A1) started moving towards her, she pleaded with him to let her go and offered to hand over all her belongings if he would just drop her home. However, the driver (A1) threatened to kill her and asked her to do as he said. The driver (A1) then got out of the vehicle to put on a condom. During that time, the second mobile phone kept



in her pocket started vibrating. She tried to place it upside down on the seat, but the driver (A1) noticed the light from the phone and snatched that phone as well. The driver (A1) forcibly raped her. Thereafter, the man (A2) who was sitting in the rear seat also forcibly raped her. She can identify both of them. Thereafter, the cab driver (A1) dropped her at Sector-21, Dwarka metro station. At that time, she noticed that the registration number of the vehicle was AT-4791 and that there was a sticker of Lord Shiva affixed on the front mirror of the vehicle. After entering the metro station, she received a call from her *chachu*, to whom she narrated the entire incident. She also telephoned her manager, Priyanka. Thereafter, everyone reached the Metro Station. Priyanka informed the police, who arrived at the spot, took her to the hospital for her medical examination, and recorded her official complaint.

18. PW1 when examined before the trial court, stood by her case. She deposed that when she hired the cab for Uttam Nagar, one person was already seated along with the driver (A1). Another



2026:DHC:5625



passenger also boarded the cab from the same point and was to be dropped at Rajokri. The cab driver (A1) dropped the passenger at Rajokri. During the journey, she was continuously talking to her friend, namely, Kunal (PW2) and was also speaking to her mother intermittently. After dropping the passenger at Rajokri, A1 told her that he had to collect money from someone. She told A1 that he could collect the money later and should first drop her at her house. A1 replied that it would take only about two minutes. Accordingly, she permitted A1 to collect the money and instructed him to do so quickly. After travelling some distance, the cab stopped. Both A1 and the co-passenger (A2) got down to collect the money and returned after about two to three minutes. Thereafter, A1 drove for a short distance, stopped the cab again, and stated that he had lost his way and was trying to find the route out of that place. Since the battery of her phone was about to discharge, she took A1's phone and showed him their location and the route ahead using Google Maps. In the meantime, PW2 called,



but due to a network problem, the call got disconnected. When she was about to call PW2 back, A1 snatched the phone from her and switched it off. She was scared as A1 came near her with evil intentions. She pleaded with A1 not to harm her in any manner and told him that he could take all her belongings and money if he wished. She repeatedly requested both A1 and the co-passenger (A2) to let her go, but they refused. A1 and A2 threatened to kill her if she did not comply with their demands. Thereafter, A1 forcibly established physical relations with her inside the cab, followed by A2. She requested A2 not to do any wrong to her, but he did not listen and raped her despite her repeated requests. During the incident, while resisting, A1 and A2 might have sustained scratches on their bodies from her nails. At the time of committing the sexual assault, both A1 and A2 used condoms. After the incident, she requested A1 and A2 to let her go. A1 and A2 threatened her not to disclose the incident to anyone, left her at Sector-21, Dwarka metro station and immediately fled the scene.



While getting out of the cab, she noted the registration number of the cab, the last digits of which were AT 4791. While they were approaching the metro station, A1 and A2 returned all her belongings. She switched on her mobile phone and noticed that her *chachu* was calling her. However, A1 did not allow her to answer the call. After alighting from the cab at the metro station, she again received a call from her *chachu*, which she answered. She informed him that she was at the Sector-21 Dwarka metro station. Thereafter, she also received calls from PW2 and PW3 and informed them of her location. It was around midnight, and the metro services had already stopped for the day. PW2 reached the metro station. By that time, she had also informed the manager of her store about the incident. Her family and the manager arrived shortly. Her manager called the police. The police arrived and took her to DDU Hospital for her medical examination. Ext. PW1/A her statement was recorded. After the medical examination, she showed the spot of incident to the IO, who prepared Ext. PW1/C



site plan. The next day, she identified A1 before the police. She also identified A1 and A2 before the trial court. The clothes PW1 were wearing at the time of the incident have been marked as Ext. P1 to P4.

19. PW1 in her cross examination deposed that she was seated on the front seat of the cab, while the co-passenger who boarded the cab with her sat on the back seat. She denied the suggestion that, apart from A1, there was nobody else in the cab when she boarded it. She denied the suggestion that she hired the cab for Uttam Nagar because she wanted to spend time in the cab. The co-passenger who boarded the cab at Ambience Mall was not known to her. She denied the suggestion that the said co-passenger was her boyfriend (PW2) or that the latter remained with her until Sector-21 Dwarka metro station. She denied the suggestion that she boarded the cab at Ambience Mall with her boyfriend, that both of them sat on the back seat, or that they engaged in physical intimacy on the back seat of the cab. She denied the suggestion



that when she started engaging in physical relations with her boyfriend, A1 had stopped the cab. She denied the suggestion that she instructed A1 to continue driving and that they would pay him extra money for his services. She denied the suggestion that she and her boyfriend alighted at Sector-21 Dwarka metro station together. She denied the suggestion that when A1 demanded the fare, they started beating the latter or that she threatened to implicate him in a false rape case. She denied the suggestion that she was carrying a condom in her bag and planted it in order to falsely implicate A1 and A2. She denied the suggestion that A1 did not snatch her mobile phone or that the mobile phone remained with her throughout the journey. PW1 deposed that she had herself removed her clothes as she was under threat from A1 and A2. She feared that if she did not comply with their demands, they would kill her. She did not offer resistance because of the threat. However, when A1 and A2 initially tried to touch her inappropriately, she attempted to resist by pushing them away and



scratching them with her nails. She denied the suggestion that she scratched A1 when he demanded the fare. She had informed PW2 that she was uncomfortable with the manner in which the cab was being driven. However, due to network issues, she could not explain everything to him. When PW2 called again, A1 had already snatched her mobile phone. When PW2 advised her to escape, and A1 left the cab on the pretext of collecting money from someone, she remained in the cab because she did not know the way back home. The place was isolated, and no transport was available from there. Moreover, at that point, A1 had not yet harmed her in any manner. She denied the suggestion that she had told the driver to take his time and return later because she intended to engage in intimate physical relations with her boyfriend in the driver's absence. PW1 admitted that she had identified A1 at the police station. The second offender was not produced before her at that time. After one or two days, A2 was also shown to her by the police, and she identified him at Sector-



23 police station. PW1 identified the place of occurrence from the addresses mentioned on the nameplates of farmhouses. Although she did not know the name of the places, she identified the location based on the nameplates and her recollection. She denied the suggestion that she identified the place of occurrence at the instance of the IO. She denied the suggestion that she has falsely implicated A1 and A2 because A1 demanded his fare, relating to which a quarrel had taken place.

20. PW2, a friend of PW1, deposed that on the night of 23.12.2017, at about 10:00 p.m., after his duty hours, he had called the latter. PW1 told him that she was in a cab. At about 10:30 p.m., PW1 told him that she was doing some *paath* and would call him later. After about 10-15 minutes, he received a call from PW1, who told him she was on her way to Uttam Nagar. PW1 informed him that she was not comfortable. He asked her about the number of people in the cab. She informed him that there were three persons in the cab, a driver and two other passengers. After 2 to 3



minutes, PW1 told him that one of the passengers had alighted and that the driver had driven the car to an isolated place, and she was not able to make out the exact location. PW1 told him that the driver had told her that he had to take money from someone and had therefore come there to collect the money. After 2 to 3 minutes, the call got disconnected. Thereafter, PW1 again called him and told him that she was waiting for the driver and the co-passenger. He suggested to her that if she was not comfortable and was feeling suspicious, she should escape from there. PW1 told him that she was not aware of the location and, therefore, had no way to leave the cab. The calls were regularly getting disconnected, and the call again got disconnected. Thereafter, PW1 called him and told him that the driver and the co-passenger had arrived and that they had left that place. PW1 then informed him that the driver was not driving the cab properly and was intentionally taking wrong routes. He could also make out from the conversation taking place in the car that the driver was trying to



find the way out. The call again got disconnected. He again received a call from PW1, during which call, he heard PW1 telling the driver to drive by following Google Maps, but the driver refused and told her that he was sure about the way. The call got disconnected again. He tried video calling, but the call was not getting through. Since the balance on his mobile phone was quite low, he sent an SMS to his friend Gurpreet Singh (PW21) asking him to contact PW1. Gurpreet Singh (PW21) then connected him through a conference call, and at about 11:04 p.m., the call was connected. He could hear PW1 yelling “*bachao*”. Then, the call did not get through. He panicked, and his friend suggested that he should approach the nearest police station. During this time, he was travelling in the Delhi Metro. He deboarded the metro at Subhash Nagar metro station. PW21 informed him that the former was reaching Subhash Nagar metro station. In the meantime, he received a call from the mother of PW1, who informed him that the mobile phone of PW1 was not reachable. The mother of PW1



was also panicking. He told her that he was approaching the police. Thereafter, he and PW21 went to Subhash Nagar police station and told the Duty Officer that he wanted to lodge a complaint regarding the kidnapping of PW1. When he was about to write the complaint, PW1 called him and informed him that she had reached Dwarka Sector-21 metro station. She further informed him that she had been raped and that the offenders had dropped her at Dwarka Sector-21 metro station. He thereafter received a call from the mother of PW1 and informed her that PW1 had reached Dwarka Sector-21 metro station. He told the mother of PW1 that he was reaching there and advised her to also come there. He met PW1 at Dwarka Sector-21. She was crying and he consoled her. The colleagues of PW1, her mother, and her sister also reached there. The father of one of the colleagues of PW1 made a call to the Police Control Room and reported the matter to the police. The police reached the spot and took PW1 for her medical examination. He accompanied her to the hospital. The police asked



PW1 to lead them to the place of occurrence. PW1 led them to the spot, and after making efforts, she was able to identify the place of occurrence. They returned to the police station, where the police recorded his statement. On that day, he was using mobile phone nos. 9911113097 and 9899511898. PW1 was using two mobile phone numbers, they being 9873083861 and 8826211576.

20.1. PW2 in his cross-examination deposed that at around 11:20 p.m., he had alighted at Subhash Nagar metro station. PW21 joined him there on his motorcycle at about 11:25 p.m. He did not look at the name of the police station where he and PW21 went because he was in a state of panic. They reached the police station within about two minutes from the Subhash Nagar metro station. At around 11:30 p.m., he received a call from PW1, and thereafter they left for Dwarka Sector-21 metro station. He and PW21 reached the metro station after 12:00 midnight. He did not think of calling the PCR because he was in a state of panic and was concerned about the safety of PW1. He was also unaware of her



location. He denied the suggestion that on the date of the incident, he was travelling with PW1 and had alighted from the cab driven by A1 from Gurgaon. He denied the suggestion that while in the cab he wanted to get intimate with PW1 and, for that purpose, offered money to A1. He denied the suggestion that immediately after sitting in the cab, he started making physical contact with PW1. He denied the suggestion that A1 drove the cab on his instructions so that he could spend more time with PW1 to have sexual relations with her. He denied the suggestion that when they were deboarding the cab, A1 demanded the fare charges from him, but they refused to pay the fare due, or that thereafter he assaulted A1 and, in collusion with PW1, has falsely implicated A1 and A2. He denied the suggestion that PW1 was carrying condoms in her bag or that while he was with PW1, he used the same for establishing physical relations with her. He denied the suggestion that since he was travelling in the cab throughout the journey with



PW1, he had led the police to the exact place where the incident had taken place.

21. PW3, the mother of PW1, deposed that the latter was working in a mall at Gurgaon. On 23.12.2017 at about 10:30 p.m., she called PW1, who informed her that she had boarded the cab. At about 10:45 p.m., she again called PW1, but the call could not be connected. At about 11:00 p.m., she called PW2 on his mobile phone and informed him that she was unable to connect to PW1 and that the call was not getting connected and requested him to call PW1. PW2 told her that her daughter was in trouble. At about 11:30 p.m., PW2 again called her and informed her that he had just received a call from PW1 and that she was at Sector-21 Dwarka metro station. She immediately hired an auto-rickshaw and reached Sector-21, Dwarka, metro station. Her daughter (PW1) was crying when she met her. PW1 told her that she had been raped by two persons. The police were already there and then took



PW1 for her medical examination. She accompanied PW1 to the hospital. The police took PW1 to locate the place of occurrence.

21.1. PW3 in her cross-examination deposed that PW2 was her daughter's colleague and that she was aware that they were friends. She had called PW2 on the mobile number saved in her contact list.

22. PW21, Gurpreet Singh, friend of PW2, deposed that on 23.12.2017, at about 11:00 p.m., he received a message from PW2 on his mobile number 9971576197 stating that the balance on the latter's phone was running low. PW2 requested him to initiate a conference call with PW1, as the former wanted to speak to her. PW2 informed him that PW1 was in some kind of trouble and that it was urgent for him to talk to her. Accordingly, he made a conference call by connecting PW2 and PW1 along with himself. During the call, he could make out that PW1 was asking for help and appeared to be in some kind of distress. After the call got disconnected, he went to Subhash Nagar metro station on his



motorcycle to help PW2. Thereafter, he and PW2 immediately went to Tilak Nagar police station. While they were speaking with the police officials, PW2 received a call from PW1 informing him that she was at Sector-21 Dwarka metro station. Thereafter, PW1 and PW2 proceeded to Sector-21 Dwarka metro station on their motorcycle. At the metro station, PW2 spoke to PW1. Shortly thereafter, the police arrived at the spot and took over the proceedings.

22.1. PW21 in his cross-examination deposed that he had not handed over the printout of the SMS message received from PW2 to the IO. Around May - June 2018, he received a call from the IO, who made inquiries. On the date of the incident, he was not questioned by the police, although he was present along with PW1. PW2 met him at about 11:15 p.m. at Subhash Nagar metro station. He denied the suggestion that PW2 met him at Sector-21 Dwarka metro station and that PW2 had not joined him from Subhash Nagar metro station. He denied the suggestion that he had been



planted as a witness by the IO to fill up the lacunae in the prosecution case.

23. From the aforesaid materials on record, it is evident that PW1, the prosecutrix, has remained consistent in her version from the very inception. It is settled law that the sole testimony of a victim can be relied upon to decide a case of sexual assault, provided it is clear, trustworthy and reliable. As held in **Ganesan v. State, (2020) 10 SCC 573** and **State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575**, a conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence, and there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. In the case on hand, I do not find any reason(s) to reject or discard the testimony of PW1.

24. The testimony of PW1 receives corroboration from the testimony of PW2, her friend; PW3, her mother as well as PW21,



the friend of PW2, all of whose testimony I have referred to in detail.

25. Ext. PW1/B the medical evidence also supports the version of PW1. With regard to the hymen, Ext. PW1/B MLC records that the hymen was torn, though it does not say that it was ‘freshly torn’. In the column of clinical opinion in the MLC, it has been opined that the findings are consistent with recent sexual intercourse/assault. Merely because no fresh external or genital injuries were noted does not negate the allegation of rape. Even assuming that some ambiguity exists regarding the condition of the hymen, such circumstance cannot outweigh the cogent and trustworthy testimony of PW1. It was also contended that the medical evidence does not indicate that PW1 was forcibly assaulted. PW1 consistently deposed that she was threatened by A1 with dire consequences, due to which she was terrified and submitted to the sexual assault.



26. PW28 was examined to prove Exts. F-2 and F-2/A to F-2/C, the DNA reports. The DNA profile generated from the blood sample of A2 matched the DNA profile generated from the vaginal, vulval and cervical swabs of PW2, as well as the biological material recovered from the inner surface of one used condom. The DNA profile generated from the blood sample of A1 matched the DNA profile generated from the inner surface of the other used condom. Further, the DNA profile generated from the blood sample of PW1 matched the biological material recovered from the outer surfaces of both used condoms. These findings lend strong corroboration to the consistent testimony of PW1 that A1 and A2 committed sexual intercourse with her while using condoms.

27. The submission regarding non-production of the *malkhana* register and failure to examine the *malkhana moharrir* does not create a fatal infirmity. Unless some specific material is produced to indicate tampering with the exhibits or a breach in the



chain of custody, mere non-production of every link witness is insufficient to discard the forensic evidence. The defence has also not shown any actual prejudice or circumstance suggesting that the exhibits were tampered with.

28. Moreover, the medical and forensic evidence admissible under Section 45 of the Indian Evidence Act, 1872 can only corroborate the testimony of the witness. As held by the Apex Court in **Ram Swaroop v. State of Rajasthan, 2008 Cr.L.J 2259**, when there is a variance between medical evidence and ocular evidence, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as claimed to have been inflicted as per the oral testimony, then only in a given case the Court has to draw adverse inference. Over dependence on such opinion evidence, even if the witness is an expert in the field, to checkmate the direct testimony given by an eyewitness is not a safe modus adoptable in criminal cases. It has now become



axiomatic that medical evidence can be used to repel the testimony of eyewitnesses only if it is so conclusive as to rule out even the possibility of the eyewitness's version to be true. A doctor usually confronted with such questions regarding different possibilities or probabilities of causing those injuries or postmortem features which he noticed in the medical report may express his views one way or the other depending upon the manner the question was asked. But the answers given by the witness to such questions need not become the last word on such possibilities. After all he gives only his opinion regarding such questions. But to discard the testimony of an eyewitness simply on the strength of such opinion expressed by the medical witness is not conducive to the administration of criminal justice. Similar view has been expressed in **Mange v. State of Haryana, (1979) 4 SCC 349; State of U.P. v. Krishna Gopal AIR 1988 SC 2154; Ram Dev v. State of U.P. (1995) Supp. (1) SCC 547; State of U.P. v. Harban Sahai (1998)**



6 SCC 50 and Ramanand Yadav v. Prabhu Nath Jha (2003) 12 SCC 606.

29. Further, as argued by the learned counsel for A1, it is true that PW8, from whose shop the condom is supposed to have been purchased by A1, has not identified him. It is also true that Ext. PW8/A bill is dated 30.11.2017, whereas the incident took place on 23.12.2017, nearly a month after the alleged purchase. Even if this piece of evidence is ignored, the remaining evidence on record, that is, the testimony of PW1 corroborated by the testimony of PW2, PW3 and PW21, whose testimony I find no reasons to disbelieve, establishes the case.

30. Section 376D IPC provides that where a woman is raped by one or more persons constituting a group or acting in furtherance of their common intention, each of those persons shall be deemed to have committed the offence of rape. In the case on hand, the testimony of PW1 establishes that A1 and A2 acted in concert and in furtherance of their common intention had raped



her. The essential ingredients of Section 376D IPC are therefore fully satisfied.

31. The trial court has also convicted the appellants for the offence under Section 365 IPC read with Section 34 IPC. The evidence establishes that after another passenger alighted at Rajokri, A1 intentionally diverted the vehicle from its intended route on the false pretext of collecting money. PW1 repeatedly requested him to drop her home, but instead A1 drove her to a secluded place, where the sexual assault was committed. Her movement was therefore completely controlled by the accused, who prevented her from leaving the vehicle, snatched her mobile phones, threatened to kill her and took her to an isolated place against her will. Therefore, PW1 was wrongfully abducted and confined by both accused while acting in furtherance of their common intention. To constitute an offence under Section 506 (Part II) IPC, the prosecution must establish that the accused threatened the victim with death or grievous hurt with the intention



of causing alarm. A1 threatened to kill PW1 if she did not obey him and also threatened her not to disclose the incident to anyone before abandoning her near the metro station. The ingredients of Part II of Section 506 IPC against A1, therefore, stand fully established.

32. In the light of the aforesaid, the findings of guilt recorded by the trial Court for the offences punishable under Sections 365, 376D read with Section 34 IPC against A1 and A2, and under Part II of Section 506 IPC against A1, are proved beyond reasonable doubt.

33. The appeals *sans* merit are dismissed.

34. Application(s), if any, pending, shall stand closed.

**CHANDRASEKHARAN SUDHA
(JUDGE)**

JULY 15, 2026

rs