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

% ***Judgment Reserved on: 23.07.2026***
Judgment pronounced on: 05.08.2026

CNR No. DLHC013837752017

+ **CRL.A. 844/2017**

MAHENDER RATHORE

.....Appellant

Through: Mr. Siddharth Yadav, Advocate with
Mr. Anmol K. Pandey and Ms. Jyoti
Yadav, Advocates.

versus

STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Utkarsh, APP for State with SI
Sonal Raj, P.S. Bharat Nagar.
Mr. Arunav Patnaik, Ms. Bhabna Das
and Ms. Pragya, Advocates (Amicus
Curiae)

CORAM:

HON'BLE MS. JUSTICE CHANDRASEKHARAN SUDHA

JUDGMENT

CHANDRASEKHARAN SUDHA, J.

1. In this appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, (the Cr.PC), the sole accused in SC No. 128/2015 on the file of the Additional Sessions Judge, Special Fast Track Court, North West, Rohini, Delhi, assails the



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judgment dated 26.07.2017 and order on sentence dated 31.07.2017 as per which he has been convicted and sentenced for the offences punishable under Section 376 and 506 of the Indian Penal Code, 1860 (the IPC).

2. The prosecution case is that on 23.02.2012, at about 2:00-2:30 P.M., in House No. 143, Tailor Wali Gali, Village Haiderpur, the accused raped PW6 at knife point and thereafter threatened to kill her if she disclosed the incident to others. Hence, as per the chargesheet/final report, the accused was alleged to have committed the offences punishable under Sections 376 and 506 IPC.

3. PW6, the prosecutrix, submitted Ext. PW6/A written complaint dated 25.07.2012 to the Commissioner of Police, Delhi; the Deputy Commissioner of Police and the SHO concerned, alleging that despite reporting the incident to the police, no action had been taken by the police. Despite the same,



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as no action was taken, PW6 filed Ext. PW6/B complaint before the Additional Chief Metropolitan Magistrate, North-West District, Rohini, Delhi, which was forwarded under Section 156(3) CrPC to the SHO, Shalimar Bagh Police Station, for investigation and report.

4. Pursuant to the same, crime no. 250/2012, Shalimar Bagh Police Station, i.e., Ext. PW1/A FIR was registered by PW1, Head Constable. PW14 Inspector, conducted the investigation and on completion of the same, filed the charge-sheet/final report alleging commission of the offences punishable under Sections 342 and 376 IPC.

5. When the accused was produced before the committal court, all the copies of the prosecution records were furnished to him 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 18.03.2013.



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6. After hearing both sides, the trial court as per order dated 28.05.2013, framed a Charge for the offence punishable under Sections 376 and 506 IPC, which was read over and explained to the accused to which he pleaded not guilty.

7. On behalf of the prosecution, PWs. 1 to 14 were examined and Ext. PW1/A, Ext. PW 2/A, Ext. PW5/A-B, Ext. PW 6/A-C, Ext. PW 7/A, Ext. PW 8/A, Ext. PW 9/A-F, Ext. PW11/A-B, and Ext. PW14/A-D were marked in support of the case.

8. After the close of the prosecution evidence, the accused was questioned under Section 313(1)(b) Cr.P.C. regarding the incriminating circumstances appearing against him in the evidence of the prosecution. The accused denied all those circumstances and maintained his innocence. The accused submitted that in the year 2010, he had advanced a sum of ₹1,00,000/- to PW13, the husband of PW6, as the latter required



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financial assistance for the marriage of his sister and for the treatment of his ailing father. According to the accused, the amount was arranged from his savings as well as money borrowed from his relatives. PW13 failed to repay the amount, which led to a quarrel between them. The accused submitted that he had also lodged complaints before the police on 03.07.2012, 19.07.2012, and 23.07.2012 alleging extortion by PW13.

9. After questioning the accused 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 CrPC is seen done by the trial court. However, non-compliance of the said provision does not, *ipso facto* vitiate the proceedings, unless omission to comply 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**



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2888). Here, the accused has no case that non-compliance of Section 232 Cr.P.C. has caused any prejudice to him.

10. No oral or documentary evidence was adduced on behalf of the accused.

11. Upon consideration of the oral and documentary evidence on record and after hearing both sides, the trial court, *vide* the impugned judgment dated 26.07.2017, held the accused guilty of the offences punishable under Section 376 and Section 506 IPC. As per order on sentence dated 31.07.2017, the accused has been sentenced to rigorous imprisonment for a period of 07 years as well as fine of ₹50,000/- and in default of payment of fine, to simple imprisonment for six months for the offence punishable under Section 376 IPC and to rigorous imprisonment for a period of 03 years as well as fine of ₹40,000/- and in default of payment of fine, to simple imprisonment for four months for the offence punishable under Section 506 IPC. The sentences



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have been directed to run concurrently. Aggrieved, the accused has preferred the present appeal.

12. The learned counsel appearing for the appellant/accused submitted that the testimony of PW6, the prosecutrix, suffers from material improvements and improbabilities, rendering the prosecution case unreliable. It was contended that, for the first time during her deposition before the trial court, PW6 brought in a new case that her young child was present at the time of the alleged incident, a fact which finds no mention either in her FIS/FIR or in her Section 164 CrPC. It was further submitted that although PW6 alleged that the accused had held a knife to her neck while committing the offence, no injuries, cuts or marks were found on her neck, thereby rendering the allegation improbable.

12.1. The learned counsel also pointed out that the alleged incident occurred on 23.02.2012, whereas the first



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complaint came to be lodged only on 25.07.2012, after a delay of more than five months, during which the prosecution version was susceptible to embellishments and improvements. The learned counsel further argued that, according to the prosecution, the husband of PW6 returned home at about 9:00-9:30 PM. Despite the gravity and seriousness of the offence, neither PW6 nor PW13, her husband made a call to the police, nor did they record the particulars of any police official whom they allegedly met that night. It was also submitted that, although PW6 was pregnant at the relevant time, no immediate medical examination was undertaken to ascertain her condition or the safety of the foetus after the sexual assault, which is normally expected in such circumstances. The trial court has erred in not taking into consideration the defence version that the accused had advanced a loan of ₹1,00,000/- to PW13, the husband of PW6 and, when he demanded repayment, PW6 and her husband falsely implicated



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him in the present case with a view to avoid discharging the said liability.

12.2. It was further submitted that the materials on record probabilises the plea of alibi taken by the accused. Placing reliance on the testimony of PW14, the Investigating Officer (IO), and the Call Detail Records (CDRs) produced during the trial, it was contended that the location of the mobile phone used by the accused establishes that he was in the Jahangirpuri Industrial Area, approximately 4 to 4.5 kilometres away from the place of occurrence, at the relevant time between 2:00 PM and 2:30 PM, thereby rendering his presence at the scene of the incident highly doubtful. The attention of the Court was also drawn to the testimony of PW14, wherein she deposed that in the status report filed before the Court she had mentioned that the beat officer of Haiderpur who had conducted inquiry revealed that PW6 and her husband had demanded ₹1,00,000/- from the accused, failure of



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which would result in a false implication. It was also pointed out that the defence is probablised because PW13, the husband admitted that a day before his examination before the Court, he had called the accused on his mobile phone.

12.3. It was also submitted that the testimony of PW11, the landlady, shows that the accused had been residing as her tenant for about ten years with his wife and that the accused and PW6 were occupying adjacent rooms in the premises. In such circumstances, it was argued that it was highly improbable that the accused could have committed the alleged offence of rape in the room of PW6 while his wife was present in the adjoining room and the landlady herself was available in the premises. Reliance was also placed on Ext. PW14/C Site Plan, which depicts the proximity of the rooms occupied by the accused and PW6, to contend that the layout of the premises renders the prosecution version inherently improbable.



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13. *Per Contra*, the learned Additional Public Prosecutor submitted that the impugned judgment suffers from no infirmity warranting interference by this Court. The learned APP, submitted that the version of PW6, as disclosed in her FIS/FIR, her Section 164 statement, her examination-in-chief and her cross examination, has remained substantially consistent on all material particulars and inspires confidence. It was further submitted that the defence plea that the prosecutrix had falsely implicated the accused on account of an alleged demand of ₹10,00,000/- is wholly unsubstantiated. Although the accused claimed that he had lodged complaints with the police regarding the alleged extortion even prior to the registration of the present FIR, no such complaint(s) or document(s) was produced or proved during the course of trial.

13.1. The learned APP further argued that the plea of alibi has not been established in accordance with law. Relying



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upon Section 103 of the Indian Evidence Act, particularly Illustration (b), it was submitted that the burden of proving the plea of alibi squarely rests upon the accused and the prosecution is under no obligation to prove that the accused was elsewhere at the relevant time. It was contended that such a plea must be established by cogent evidence so as to make it impossible for the accused to have been present at the place of occurrence. It was also submitted that the Call Detail Records relied upon by the defence do not advance the plea of alibi. The mobile number 9250963939, on the basis of which the accused sought to establish his location is seen registered in the name of one Vijay Kumar Kushwaha. However, the said person was never examined as a witness to prove that the accused was the actual user of the said mobile number at the relevant time. In the absence of such evidence, the CDRs cannot conclusively establish the whereabouts of the accused.



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13.2. The learned APP further pointed out that the accused did not specifically raise the plea of alibi in his statement recorded under Section 313(1)(b) CrPC by stating that he was present at Jahangirpuri Industrial Area at the relevant time. Therefore, such omission further weakens the defence version.

13.3. With regard to the absence of injuries on PW6, the prosecutrix, it was submitted that the alleged incident occurred on 23.02.2012, whereas the medical examination was conducted only on 23.09.2012, nearly seven months thereafter. In such circumstances, the absence of injury marks on the body of the prosecutrix is neither unusual nor fatal to the prosecution case. It was also contended that the failure to make a PCR call by PW6 is inconsequential since PW6 along with her husband had at the earliest possible time approached the nearest police station to lodge a complaint.



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14. The learned counsel for the victim submitted that the appellant has not established any plea of alibi or any other circumstance(s) that could probabalise his innocence.

15. Heard both sides and perused the record.

16. The only point that arises for consideration in the present appeal is whether there is any infirmity in the impugned judgment calling for an interference by this court.

17. I shall make a brief reference to the oral and documentary evidence relied on by the prosecution in support of the case. According to prosecutrix, the incident took place at about 02:00-02:30 p.m. on 23.02.2012. Her husband returned home by 10:00 pm and on the very same night, they approached the police. The police assured that action would be taken. But no action was taken. Hence, she submitted Ext. PW6/A Complaint dated 25.07.2012 to the Commissioner of Police with copies to the Deputy Commissioner of Police and the SHO, Shalimar Bagh



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police station. The said complaint in Hindi translated reads thus:-

“On 23.02.2012, at around 02:00 - 02.30 PM, another tenant living in the house, Mahendra Rathore (the accused) S/o. Vishwanath Rathore, came into my room, forcibly grabbed me, put a knife to my neck and threatened me that if I made a noise, he would kill me. I got scared. Mahendra Rathore (the accused) forcibly raped me against my will and threatened me that if I complained about the incident to anyone, he would kill me. At around 10 PM in the night when my husband came home, I started crying. I disclosed the incident to my husband. Then I went with him to Shalimar Bagh, police station and got my complaint registered. But, till now, no action has been taken. I have been making several rounds to the police station. Therefore, it is requested that immediate legal action may be taken against the aforementioned Mahendra Rathore (the accused)”.



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18. Despite giving Ext. PW6/A Complaint, no action was taken. Hence, she filed Ext. PW6/B complaint dated 17.08.2012 under Section 200 CrPC alleging commission of the offences punishable under Sections 341, 376 and 506 IPC before the Court of the ACMM, North-West District, Rohini, Delhi. In the said complaint, she reiterated her case in Ext. PW6/A. This led to the registration of the crime, that is, Ext. PW1/A FIR.

19. Pursuant to the registration of Ext. PW1/A FIR, the 164 Cr.P.C. statement of PW6, the prosecutrix, was recorded by the Metropolitan Magistrate on 28.09.2012. The same also recorded in Hindi, translated reads thus:- *“On 23/2/2012, between 02:00 - 02:30 PM, when I was lying down and resting in my house, a man named Mahendra Rathore, who lives in our neighbourhood, entered our house, put a knife to my neck and raped me. He forbade me from making any noise or speaking, and then put his private part inside me. He raped me, and while*



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leaving, he threatened me that if I disclosed the incident to anyone, he would kill me. On the same day, I went to the police station to file a complaint where we were told to reach a compromise and our plea was not heard. When I was raped, I was also pregnant. I have nothing more to say. When I was raped, we used to live in House No. 143, Haiderpur, Delhi.”

20. PW6, when examined before the trial court, deposed that on 23.02.2012, at about 2:00-2:30 PM, while she was alone in her room at House No. 143, Tailor Wali Gali, Village Haiderpur, Delhi, the accused trespassed into her room and raped her at knife point. Her young child was sleeping at the time of the incident. At the time of the incident, she was about 1 – 1¼ months pregnant. The accused threatened to kill her if she disclosed the incident to anyone. After the accused left, she remained confined in her room. When PW13, her husband, returned home at about 10:30 PM, she narrated the incident to



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him, whereafter they went to Shalimar Bagh police station (PS) and informed the police. The police asked them to return home and assured action. However, no action was taken. Six months went by. She gave birth to a female child, who subsequently died. As no action was taken by the police, she sent Ext. PW6/A complaint by speed post to the Commissioner of Police; the DCP and the SHO. Still no action was taken, and so, she filed Ext. PW6/B complaint before the Court on 17.08.2012.

20.1. PW6 in her cross-examination admitted that PW11 was her landlady. She is unaware of any complaints given by the accused against her on 03.07.2012, 19.07.2012 or 23.07.2012 to the SHO Shalimar Bagh, PS or any complaint filed on 31.07.2012 seeking relief under Section 156(3) Cr.P.C. PW6 denied the suggestion that she was deliberately feigning ignorance of the said complaints or that she instituted the present complaint to pressurise the accused into withdrawing them. PW6



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admitted that she had not submitted any written complaint to the police on the date of the incident and had not approached any senior police officer such as the ACP or DCP when the FIR was not registered. PW6 admitted that she was residing on the first floor; that there was a floor above the first floor and that PW11, the landlady, resided on the ground floor of the building. She did not raise any alarm because the accused had placed a knife on her neck. She did not notice whether the knife had caused any scratch or injury. She had not disclosed the incident to the landlady or any neighbour. She had disclosed the incident only to her husband. She did not have a mobile phone at the relevant time and there was no landline connection in the tenanted premises. PW6 further deposed that there was no landline telephone in the neighbouring houses as, according to her, no neighbours were present from whom she could have sought for help. When her husband returned home, she narrated the incident to him and both



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of them went to the police station. PW6 admitted that she had not gone for any medical examination after the incident as she was unaware of the hospital where such examination could be conducted. PW6 further deposed that when the landlady came to know about the incident, the latter told them either not to register a case or, if they did, to vacate the rented premises. PW6 denied the suggestion that no such incident had occurred, that she and her husband had falsely implicated the accused or that after the registration of the case they demanded money from the accused or sought withdrawal of the complaints filed by the accused in order to exonerate him.

21. PW13, the husband of PW6, a vegetable vendor, when examined deposed that as per his normal routine, he used to leave for work at about 5:00 AM for the Mandi, return home at around 09:00 AM and thereafter leave again to sell vegetables in Rohini. Ordinarily he returns home by around 09:30 PM. On



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23.02.2012, when he returned home at about 10:00 PM, he found his wife weeping and no food cooked. Upon enquiry, she informed him that the accused residing in the adjacent room, had entered their house and raped her at knife point. Thereafter, he took his wife to Shalimar Bagh, PS where he informed the police about the incident. According to PW13, the police recorded the statement of his wife (PW6), obtained the accused's telephone number from him, informed him that they would call the accused and take action, and thereafter sent them back home. The following morning, he again went to the police station with his wife, but no action was taken. According to PW13, he himself had taken her for treatment thereafter.

21.1. At this juncture, the prosecutor is seen to have sought the permission of the court to '*cross examine*' PW3 on aspects relating to the medical examination of his wife and the identification of the scene of occurrence as he had resiled on the



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said aspects from the previous statement given to the police. The request was allowed by the trial court. On further examination, PW13 admitted that he had not requested the police to conduct medical examination of his wife as he was unaware of such a requirement. PW13 further admitted that the police had contacted him over phone during the night for the medical examination of his wife, which he initially refused. However, the following morning, he accompanied his wife with the police to BJRM Hospital, Jahangir Puri, where her medical examination was conducted.

21.2. PW13, in his cross examination, deposed that he is unaware of the complaints made by the accused against him and his wife to various police authorities on 03.07.2012, 19.07.2012 and 23.07.2012 or a complaint seeking relief under Section 156(3) Cr.P.C. filed on 31.07.2012. PW13 further deposed that he was unaware whether the complaint filed seeking



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directions under Section 156(3) Cr.P.C. was still pending before the Court. He denied the suggestion that Sub-Inspector Sanjay Dahiya had served him notices in connection with the aforesaid complaints and deposed that he had never met the said officer. PW13 further deposed that he had lodged a report at Shalimar Bagh PS on 23.02.2012, at which time the police recorded his statement and obtained his signatures thereon, but never provided him with a copy. He deposed that he was unaware whether a crime had been registered on the basis of his statement. Despite repeated requests, no copy of the FIR had been supplied. PW13 deposed that after 23.02.2012, the police did not call him or his wife to the police station, though they themselves visited the police station several times. He instructed his counsel to file a complaint before the Court for registration of the case. He denied the suggestion that the complaint filed before the Court was based on false and fabricated instructions or that no incident of rape had



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taken place. He also denied the suggestion that his wife had merely signed the complaint at his instance without instructing the counsel.

21.3. The complaint was drafted by his counsel based on the instructions of his wife. PW13 denied the suggestion that he had demanded ₹10 lakhs from the accused before filing the complaint before the Court or that he had threatened to falsely implicate the accused in a rape case in case the amount was not paid. PW13 explained that the delay in filing the complaint before the Court was on account of their waiting for the police to take action and it was only when no action was forthcoming, they had approached the Court. PW13 denied the further suggestion that, prior to the examination of his wife before the Court, he had continued demanding money from the accused or threatened that he and his wife would depose against the latter if the amount was not paid. He admitted that his mobile number was 7503919073



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and that he had made a call to the accused on the previous day of the examination at about 10:55 AM. However, he denied that he had demanded ₹10 lakhs during that call in exchange for deposing in favour of the accused. He explained that he had contacted the accused to inform that the latter's maternal uncle, residing in Orai, District Jalaun, Uttar Pradesh, had threatened him and had offered ₹50,000/- to settle the matter. According to PW13, during the call he informed the accused about the said threat and that he intended to inform his counsel and the Court about the same. He denied the suggestion that he had conveyed to the maternal uncle of the accused that no settlement below ₹10 lakhs was acceptable, asserting instead that he had refused to accept any money. He admitted that although the accused's maternal uncle had made the settlement offer and extended threats, he did not lodge any complaint regarding the same. He



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merely informed his counsel, who advised him to ignore the incident.

22. PW11, when examined, deposed that she is the owner of House No. 143, Tailorwali Gali, Haidarpur, where she resides with her family. On 01.02.2013, the police came to her house, made inquiries and recorded her statement. She identified the accused in Court and admitted that he had been her tenant occupying a portion on the first floor of her house. He was her tenant for ten years before 2013. She further admitted that PW13 and one Munesh @ Lotan were also her tenants of another portion of the building for about four years, though Munesh had vacated the premises much earlier. According to PW11, as PW13; the accused and Munesh were not maintaining the premises properly, she had asked them to vacate the house. PW11 further deposed that she had rented the premises to them as they were known to her and belonged to the same locality. PW13 as well as the



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accused vacated the premises in August 2012. PW1 further deposed that during the tenancy, neither of them had ever disclosed the incident to her.

23. PW9, Nodal Officer, TATA Telecom Services Limited, New Delhi, deposed that as per records, mobile no. 9250963939 has been allotted in the name of Vijay Kumar Kushwah. The call detail records of the aforesaid mobile phone for the period from 01.02.2012 to 28.02.2012 has been marked as Ext.PW9/B.

24. PW7, Senior Resident, Obstetrics and Gynaecology, AIIMS, deposed that Dr. Poonam Pandey, who had left the services of the hospital, had prepared Ext. PW7/A MLC No. 47661 of the prosecutrix.

25. PW14, Inspector, Shalimar Bagh, PS, the IO, when examined deposed that on 17.08.2012, PW6 moved Ext. PW6/B complaint before the Court. As instructed by the SHO,



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she attended the Court. On 17.09.2012, the ACMM directed her to file a report, pursuant to which she enquired into the matter and filed a Status Report in the Court. The Court directed registration of the case. Hence, she discussed the matter with the Senior Officers and registered the crime. The Status Report has been marked as Ext. PW14/B. PW14 further deposed that she had obtained the certified copy of the CDR of mobile phone no. 9250963939 used by the accused during the period from 01.02.2012 till 28.02.2012. In the cross examination PW14 deposed that the accused was present at Jahangirpuri Industrial Area at about 02:00 PM-02:30 PM. According to her, the alleged incident had taken place between 02:00 PM-02:30 PM and that the place of occurrence is situated close to Jahangirpuri. PW14 further admitted that a FIR is required to be registered whenever a complaint is lodged at the police station. She further deposed that she had recorded in the status report that the Beat Officer of



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Haiderpur, during inquiry, had found that PW6 and PW13, had demanded ₹1,00,000/- from the accused or else they would implicate him in a false case.

26. The prosecution case primarily rests on the testimony of PW6 as well as PW13. It is well settled that a conviction for the offence of rape can be founded on the sole testimony of the prosecutrix, provided her evidence is found to be cogent, reliable and inspires confidence. The question, therefore, that arises for consideration is whether the version of PW6, though supported by the testimony of the other prosecution witnesses and the documentary evidence on record inspires confidence or whether there are any inconsistencies and surrounding circumstances rendering her testimony unreliable and unworthy of acceptance for establishing the offences alleged against the accused beyond reasonable doubt.



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27. One of the '*inconsistencies/contradictions*' pointed out by the learned counsel for the appellant/accused, is that PW6 made an improvement during her testimony before the trial court by stating that her young child was present at the time of the alleged occurrence. This according to the learned counsel, is a major inconsistency or improvement made. This fact does not find mention in her earlier versions contained in Ext. PW6/A or in her statement recorded under Section 164 CrPC, and hence a reason to doubt the case.

28. Ext. PW6/A, the FIS/FIR, in this case and Ext. PW6/C 164 statement can be used for contradicting or corroborating the version of the maker of the same. If a witness is to be contradicted, then the procedure contemplated under Section 145 Evidence Act needs to be followed. In the case on hand, such a procedure has not been followed. Nevertheless, the said statements are relied on by the prosecution to corroborate the testimony of PW6. It is true that



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PW6 never had such a case in Ext. PW6/A or PW6/C. But this omission, by itself, is not of such a nature as to demolish the prosecution case. The child is not said to have witnessed the occurrence. There is no material on record regarding the age or competence of the child to be a witness. Therefore, the omission to mention the presence of the infant in the earliest version cannot be treated as material enough to go to the root of the prosecution case. The testimony of a witness cannot be evaluated with mathematical precision. Minor omissions or embellishments, which do not affect the substratum of the prosecution case or the essential ingredients of the offence, are liable to be neglected.

29. It was further submitted that, although PW6 alleged that the accused had placed a knife on her neck during the commission of the offence and threatened to kill her, the medical evidence does not disclose any injury, cut mark or other external mark on her neck. This argument does not merit acceptance. The



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alleged incident took place on 23.02.2012, whereas the medical examination of PW6 was conducted only on 23.09.2012, approximately seven months after the incident. In such circumstances, it would be wholly unrealistic to expect any superficial injury or residual mark, if any, to be visible on the neck after such a notable lapse of time. It is also pertinent to note that it is not the prosecution case that the accused inflicted any injury on the neck of PW6 by using the knife. The allegation is that PW6 was raped at knife point with the object of intimidating her and preventing her from raising an alarm during the commission of the offence. The absence of an injury on the neck or threatening with a knife is, therefore, wholly consistent with the prosecution version, as mere placing of a knife on the neck does not necessarily result in a cut, abrasion or other external injury.

30. It was further submitted that, despite the offence being committed in broad daylight, PW6 neither raised any alarm nor



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attempted to attract the attention of the adjacent tenants. It is the specific case of the prosecution that the accused had raped PW6 at knife point and threatened to kill her if she raised an alarm. In such circumstances, it would be wholly illogical to expect PW6 to shout for help or resist in a manner that would expose her to the very danger with which she was being threatened. The reaction of a girl/woman to a sexual assault varies from person to person, and no universal or standard behaviour can be prescribed. The mere absence of an alarm or immediate call for assistance, particularly when the victim was under the threat of a weapon, does not render the prosecution version improbable.

31. It was further submitted that the prosecution version of rape is highly improbable and unbelievable inasmuch as the incident is alleged to have taken place in a room which is situated immediately adjacent to the room where the accused was residing with his wife. It was contended that, having regard



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to the proximity of the rooms and the presence of other occupants in the house, it was next to impossible for the accused to have committed the offence in the manner alleged by PW6, without attracting the attention of others including his wife. In support of this contention, reliance was placed upon Ext. PW14/C, the site plan prepared by PW14, the I.O.

32. Before appreciating the said contention, it becomes necessary to examine the evidentiary value of a site plan prepared by the IO and the extent to which it can be relied upon for determining the probabilities of the prosecution case. When the learned counsel for the appellant/accused was asked the evidentiary value of the site plan, he submitted that the same is one piece of prosecution evidence, that is in favour of the accused and hence, the Court should not doubt or ignore the same, when all the other aspects of the prosecution case are being accepted.



33. In this context, it would be apposite to refer to the dictum in **Jagdish Narain v. State of U.P., (1996) 8 SCC 199**, wherein the Apex Court has explained the evidentiary value of a site plan. It has been held that while preparing a site plan an investigating police officer can certainly record what he sees and observes, for that will be direct and substantive evidence being based on his personal knowledge; but in most cases he would not have been present when the incident took place, so he will have to derive knowledge as to when, where and how it happened from persons who had seen the incident. When a witness testifies about what he heard from somebody else it is ordinarily not admissible in evidence being hearsay, but if the person from whom he heard is examined to give direct evidence within the meaning of Section 60 of the Evidence Act, the former's evidence would be admissible to corroborate the latter in accordance with Section 157 Evidence Act. However, such a



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statement made to a police officer, when he is investigating into an offence in accordance with Chapter XII of the Code of Criminal Procedure cannot be used to even corroborate the maker thereof in view of the embargo in Section 162(1) CrPC appearing in that chapter and can be used only to contradict him (the maker) in accordance with the proviso thereof, except in those cases where sub-section (2) of the section applies.

33.1. The law on this subject has been succinctly laid down by a three-Judge Bench of the Apex Court in **Tori Singh v. State of U.P. AIR 1962 SC 399 : (1962) 1 Cri LJ 469.** In the said case, it was contended on behalf of the appellant therein that if one looked at the sketch map, on which the place where the deceased was said to have been hit was marked, and compared it with the statements of the prosecution witnesses and the medical evidence, it would be extremely improbable for the injury which was received by the deceased to have been caused



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on that part of the body where it had been actually caused if the deceased was at the place marked on the map. This contention was repelled and it was held that the mark on the sketch-map was put by the Sub-Inspector, who was obviously not an eyewitness to the incident. He could only have put it there after taking the statements of the eyewitnesses. The marking of the spot on the sketch-map is really bringing on record the conclusion of the Sub-Inspector on the basis of the statements made by the witnesses to him. This would not be admissible in view of the provisions of Section 162 Cr.P.C., for it is in effect nothing more than the statement of the Sub-Inspector that the eyewitnesses told him that the deceased was at such and such place at the time when he was hit. The sketch-map would be admissible so far as it indicates all that the Sub-Inspector saw himself at the spot; but any mark put on the sketch-map based on the statements made by the witnesses to the Sub-Inspector would



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be inadmissible in view of the clear provisions of Section 162 Cr.P.C. as it will be no more than a statement made to the police during investigation.

34. In the case on hand, a perusal of the testimony of PW14, the I.O.; PW6, the prosecutrix, and PW13, the husband of the prosecutrix, show that Ext. PW14/C Site Plan was prepared by PW14 at the instance of PW6. Therefore, it was based on the information/statement given by PW6 to PW14, the IO, during the course of investigation, Ext. PW14/C plan was prepared and hence, the embargo under Section 162(1) Cr.P.C. is attracted. This does not mean that the prosecution could never have proved Ext. PW14/C site plan. The correct procedure would have been to bring out the facts through the testimony of either PW6 or PW13 or through PW11, the landlady. Neither PW6 nor PW13 was asked regarding the lie of the rooms of the house. No such attempt is seen made by either the prosecution or the accused. It



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is true that PW11 deposed that the accused was one of her tenants occupying a portion of the first floor of her house and that the other portion was occupied by PW13 and one Munish @ Lota. However, PW11 was never asked regarding the lie of the rooms or whether they were adjacent rooms or whether it was possible to hear, if not see, the happenings in the adjacent rooms. In such circumstances, Ext. PW14/C site plan cannot be relied on by either the prosecution or the defence.

35. Now, even assuming for argument sake, the site plan is accepted, the same would not improve the case of the accused. As per the plan, point marked 'A' is the scene of occurrence and the room marked '③', the room of the accused. They are indeed adjacent rooms. However, no materials have been brought on record to show that at the relevant time, the wife or family of the accused were very much present in the adjacent room or that there were other occupants in the adjacent rooms.



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Not even a suggestion is seen put to PW6, that in the light of the presence of occupants in the adjacent rooms, it was next to impossible for the crime to have been committed. On the other hand, PW6 deposed that there was no one around when the incident occurred. That being the position, even if it is assumed that the tenanted premises of the accused is situated adjacent to the room of PW6, the same does not help the accused in any way.

36. It was further submitted that, despite PW13 admittedly possessing a mobile phone, neither he nor PW6 made a call to the police immediately after the occurrence, thereby rendering the prosecution case doubtful. This contention is devoid of merit. Both PW6 and PW13 have consistently deposed that, after PW6 disclosed the incident to PW13 on the same evening, they proceeded to Shalimar Bagh, PS to lodge a complaint. Their case has never been that they informed the police through the



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emergency number or by making a PCR call. On the contrary, the consistent prosecution version is that they approached the police station in person, but no action was taken by the police authorities, which ultimately constrained PW6 to submit Ext. PW6/A to the higher police authorities and, thereafter, to institute a complaint before the Magistrate under Section 200 Cr.P.C., which was forwarded under Section 156(3) Cr.P.C. to the SHO concerned for investigation and report.

37. The learned counsel for the appellant/accused further argued that PW6 did not undergo a medical examination immediately after the alleged incident and, therefore, the prosecution failed to establish penetrative sexual assault by medical evidence. A perusal of the materials on record and the testimony of PW6 and PW13 clearly reveal that, immediately after PW6 disclosed the incident, both of them approached the police and attempted to set the law in motion. Had the police discharged



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their statutory obligation by registering the information and conducting a prompt investigation, PW6 would have undergone a medical examination. The failure to conduct such examination at the relevant time is thus attributable to the inaction of the police authorities and not to any omission on the part of the prosecutrix. The law is well settled that lapses or defects in investigation cannot, by themselves, be made a ground to discard an otherwise credible prosecution case. In **Karnel Singh v. State of M.P. 1995 SCC (5) 518; 1995 AIR SC 2472**, the Hon'ble Supreme Court held that, in cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. It is also equally settled that medical evidence is essentially corroborative in nature. The opinion of the medical expert is intended to lend assurance to



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the ocular version and is not a prerequisite for proving the commission of rape. Conviction can be founded on the sole testimony of the prosecutrix if it is found to be credible and trustworthy. Therefore, the absence of an immediate medical examination or contemporaneous medical opinion, due to the failure of the investigating agency, cannot by itself demolish the prosecution case when the testimony of PW6 is otherwise found to be reliable and inspires confidence. It is also unreasonable to expect a layman, particularly a victim of sexual assault, to independently arrange for a medico legal examination without the assistance of the police. Once PW6 and PW13 had approached the police station and reported the occurrence, they were justified in expecting the police to take the necessary steps in accordance with law, including facilitating her medical examination.

38. The learned counsel for the appellant/accused further raised a plea of alibi by relying upon the testimony of PW14, the



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IO, and the Call Detail Records produced by PW9, the Nodal Officer. It was contended that PW14 had admitted during the cross examination that, at the relevant time between 02:00 PM and 02:30 PM, the accused was present at Jahangirpuri Industrial Area, and not at the place of occurrence. Reliance was further placed on Ext. PW9/F, the Cell ID Chart with location, to contend that the mobile phone allegedly used by the accused was located in the vicinity of Jahangirpuri Industrial Area during the relevant period.

39. Insofar as the plea of alibi is concerned, it would be apposite to refer to Section 11 of the Evidence Act which reads thus:-

“11. When facts not otherwise relevant become relevant.

Facts not otherwise relevant are relevant –

(1) if they are inconsistent with any fact in issue or relevant fact;

(2) if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Illustrations

(a) The question is, whether A committed a crime at Calcutta on a certain day. The fact that, on that day, A



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was at Lahore is relevant. The fact that, near the time when the crime was committed, A was at a distance from the place where it was committed, which would render it highly improbable, though not impossible, that he committed it, is relevant.

(b) xxxxx”

39.1. In **Jayanti bhai Bhenkarbhai v. State of Gujarat, (2002) 8 SCC 165 : 2002 SCC (Cri) 1873**, it has been held that alibi is not an exception (special or general) envisaged in IPC or any other law. It is only a rule of evidence recognized in Section 11 of the Evidence Act that facts which are inconsistent with the fact in issue are relevant. The burden of proving commission of offence by the accused so as to fasten the liability of guilt on him remains on the prosecution and would not be lessened by the mere fact that the accused had adopted the defence of alibi. The plea of alibi taken by the accused needs to be considered only when the burden which lies on the prosecution has been discharged satisfactorily. If the prosecution



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has failed in discharging its burden of proving the commission of crime by the accused beyond any reasonable doubt, it may not be necessary to go into the question whether the accused has succeeded in proving the defence of alibi. But once the prosecution succeeds in discharging its burden then it is incumbent on the accused taking the plea of alibi to prove it with certainty so as to exclude the possibility of his presence at the place and time of occurrence. An obligation is cast on the court to weigh in scales the evidence adduced by the prosecution in proving the guilt of the accused and the evidence adduced by the accused in proving his defence of alibi. If the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the place and time of occurrence, the court would evaluate the prosecution evidence to see if the evidence adduced on behalf of the prosecution leaves any slot available to fit



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therein the defence of alibi. The burden of the accused is undoubtedly heavy. This flows from Section 103 of the Evidence Act which provides that the burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence. However, while weighing the prosecution case and the defence case, pitted against each other, if the balance tilts in favour of the accused, the prosecution would fail and the accused would be entitled to the benefit of that reasonable doubt which would emerge in the mind of the court.

40. The defence has primarily relied on the testimony of PW14, along with Ext. PW9/B Call Detail Records and Ext. PW9/F Cell ID Chart with location of mobile number 9250963939 for the period from 01.02.2012 to 28.02.2012, to contend that the accused was present at Jahangirpuri Industrial Area during the relevant time and, therefore, could not have been at the place of occurrence. A careful perusal of the evidence, however, does not



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inspire confidence in the said plea. It is pertinent to note that when PW9, the Nodal Officer, entered the box to prove the Call Detail Records and the Cell ID Chart, no cross examination whatsoever was conducted on behalf of the accused, despite adequate opportunity being given. Consequently, no attempt was made to elicit from PW9 that the Call Detail Records established the presence of the accused at Jahangirpuri Industrial Area or to explain the relevance of the Cell ID locations in support of the plea of alibi. Ext. PW9/F was merely marked without getting any clarification from the witness regarding the location of the mobile number during the relevant time. From a perusal of Ext. PW9/F Cell ID Chart, this Court is unable to conclude that the location of the aforesaid mobile was at Jahangirpuri Industrial Area at around 02:00-02:30 PM on 23.02.2012.

41. Coming to the testimony of PW14 on this aspect, the relevant portion reads thus:-



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“.....during inquiry it was found that the accused was present at Jahangirpuri Indl. Area at 02:00 p.m. vol. The incident took place between 2-2:30 p.m. and the spot is close to Jahangirpuri.....”

(Emphasis supplied)

The testimony of PW14 regarding the accused being present at Jahangirpuri Industrial Area is not shown to be founded upon any document brought on record during the trial. As to how PW14 concluded that on the relevant day, the accused was at Jahangirpuri Industrial Area is beyond my comprehension. The testimony of PW9 only proves that mobile No. 9250963939 had been issued in the name of one Vijay Kumar Kushwah. PW9 also proved the call record details of this number for the period from 01.02 2012 to 28.02.2012. PW9 has not spoken regarding the location of the aforesaid mobile number on the relevant day. In such circumstances, the version of PW14 regarding the location of the accused, though a loyal prosecution witness, cannot be



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accepted especially when the accused never had taken up such a plea when the prosecution witnesses were examined. Even if the testimony of PW14 is, in fact, taken into account, she has further admitted that the “*spot*”, which apparently must be the place of incident, is close to Jahangirpuri Industrial Area. If that be so, the same does not completely exclude the possibility of the presence of the accused at the scene of occurrence.

42. It is true that PW13 admitted that, on the previous day of his examination before the Court, he had called the accused on the aforesaid mobile number. This part of the testimony of PW13 was referred to canvass the point that mobile number 9250963939 though issued in the name of a third person, the same was, in fact, being used by the accused. But, PW13 was examined before the trial court on 16.10.2014. The date of incident is 23.02.2012. Therefore, even assuming that the number was being used by the accused, the same would not advance his case of alibi



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as there is neither any satisfactory evidence that he was in fact using the said number two years prior to 16.10.2014 or that his location was away from the place of occurrence making it impossible for him to have committed the offences.

43. The primary defence put forward by the accused in his statement recorded under Section 313(1)(b) CrPC is that the present case is a result of a monetary dispute between him and PW13, the husband of the prosecutrix. The accused, while questioned under Section 313(1)(b) Cr.P.C. stated that in the year 2010, he had advanced a sum of ₹1,00,000/- to PW13, who had represented that he required the money for the marriage of his sister and for the medical treatment of his ailing father. The amount was arranged from his personal savings as well as by borrowing from his relatives. Despite repeated demands, PW13 failed to repay the loan, which led to disputes and quarrels between them. When he persisted in demanding repayment, PW13



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attempted to extort money from him, compelling him to lodge complaints before the police on 03.07.2012, 19.07.2012 and 23.07.2012.

44. During the course of arguments, it was brought to the notice of this Court that the appellant had filed Crl. M.A. No. 48292/2017 under Section 391 CrPC, seeking permission to adduce additional evidence by placing on record the complaints dated 03.07.2012, 19.07.2012 and 23.07.2012, allegedly submitted by him before various police authorities, as well as the complaint dated 31.07.2012 stated to have been filed before the jurisdictional magistrate and that the application was allowed by order dated 18.02.2020. Hence, the said documents need to be considered in evidence, which would probabalize the defence of the accused that the attempt of the prosecutrix and her husband is to extort money from him. On the other hand, the learned counsel for the prosecutrix drew the attention of the Court to the order dated



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01.08.2018 by which an application on similar grounds had been dismissed. Therefore, it was submitted that without reviewing the earlier order, the later order by which the documents were received or taken on file, could not have been passed.

45.CRL.M.A. 29089/2018 was filed on 27.07.2018 by the appellant/accused with a prayer for receiving additional documents on record. The documents are a complaint dated 03.07.2012 (sent to the Commissioner of Police, Delhi, A.C.P., Outer District, D.C.P., Ashok Vihar, and S.H.O., P.S. Shalimar Bagh); complaint dated 19.07.2012 (sent to the Commissioner of Police, Delhi, with copies to A.C.P., Rohini, D.C.P., Pushpanjali, and S.H.O., P.S. Shalimar Bagh); complaint dated 23.07.2012 (sent to the S.H.O., P.S. Shalimar Bagh), complaint dated 14.01.2013 (made to the S.H.O., P.S. Shalimar Bagh) as well as a complaint dated 31.07.2012 filed under Section 200 of the Cr.P.C. before the Additional Chief Metropolitan Magistrate, Rohini Courts, Delhi.



46. Thereafter, another similar application, namely, CRL.M.A. 48292/2018 filed on 15.11.2018 with the same documents and list of witnesses came up for consideration before this Court on 18.02.2020. The said application was allowed and the relevant part of the order reads thus:-

6. *Considering the above, this Court is of the view that the interest of justice would be served in allowing the present application and taking the complaints dated 03.07.2012, 19.07.2012, and 23.07.2012 filed by the appellant before various authorities and the complaint dated 31.07.2012 on record, albeit, only for the purposes of considering that such complaints were made and not the contents thereof. The facts, as stated in the response to the application, shall also be read as part of the record.*

7. The appellant also seeks to rely on a complaint dated 14.01.2013. It is seen that this was not put to the



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witness and it is also not verified. Thus, this Court does not consider it apposite to treat the same as a part of the record.

8. The application is allowed in the aforesaid terms.”

(Emphasis

supplied)

47. In the light of the order dated 01.08.2018 dismissing the application for receiving additional evidence, the second application ought not to have been moved by the appellant/accused. The least that could have done was to bring the order dated 01.08.2018 to the notice of the Bench concerned. It is true that paragraph 21 of CRL.M.A. 48292/2018 do refer to the order dated 01.08.2018. However, the same does not seem to have been brought to the notice of the Court by either side. It was quite unfair on the part of the appellant/accused to have obtained the said order without drawing the attention of the Court to the earlier order dated 01.08.2018, by which his request for receiving additional



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evidence, both oral and documentary, had been dismissed on merits.

48. Insofar as the scope of Section 391 CrPC is concerned, it is well settled law that the Section invests the appellate court with the power to record additional evidence, provided it is satisfied, for the reasons to be recorded, that additional evidence in the matter is necessary. Since Section 391 of the Code is an exception to the general rule that an appeal should be decided on the evidence which was before the trial court, power under the Section has to be exercised with caution and circumspection so as to meet the ends of justice and not as a matter of course. The object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. Admission of additional evidence should not operate in a manner prejudicial to the prosecution or the defence. Though wide discretion is conferred on the Court, the same has to be exercised judicially



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and the legislature had put the safety valve by requiring recording of reasons. (See **Ajay Kumar Garg v. Gaurav**, (2017) 11 SCC 469)

49. In the case on hand, the appellant/accused has no case that he was not granted time to adduce evidence by the trial court. No reason(s) whatsoever has been shown as to what prevented him producing the documents relied on by him before the trial court. If that had been produced, the prosecution would also have had an opportunity to challenge the documents and cross-examine the witnesses through whom the defence would have attempted proving the same. However, that opportunity has been denied to the prosecution and so the documents cannot be relied on.

50. Even assuming for argument sake that the additional documents produced can be taken into consideration and relied on, the same does not advance the case of the



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appellant/accused. The incident took place on 23.02.2012. Going by the prosecution case, PW6, the prosecutrix, first approached the higher police authorities by way of Ext. PW6/A written complaint dated 25.07.2012 finding that no action had been taken by the police despite the incident being brought to the notice of the police immediately. This was followed by Ext. PW6/B complaint under Section 200 Cr.P.C. which was filed before the jurisdictional magistrate on 17.08.2012. The complaints filed by the accused before the police authorities are dated 03.07.2012; 19.07.2012 and 23.07.2012. In the first complaint dated 03.07.2012, his case is that PW13 demanded a loan of ₹ 1 lakh, which he refused and that PW13 *“has been framing a conspiracy against me and I have got to know from people associated with him that, don’t know under what conspiracy he wants to take revenge from me....”* In the 2nd complaint dated 19.07.2012, he reiterates his earlier version and



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alleges that as he refused to accede to the demand of PW13, the latter is threatening to implicate him in a false case. This version is repeated in the complaint dated 23.07.2012 filed before the jurisdictional magistrate. But the accused has a completely different version when he was questioned under Section 313(1)(b) Cr.P.C. by the trial court on 08.11.2016, wherein he stated that he had advanced a loan of ₹ 1 lakh in the year 2010 to PW13, which the latter refused to repay. When he insisted for repayment, the false implication has been made against which he preferred the aforesaid complaints. In 2012, when he gave the aforesaid complaints, the accused had no case that PW13 had borrowed money from him in the year 2010. The story of advancing money comes for the first time on 08.11.2016 when questioned under Section 313(1)(b) Cr.P.C. He has yet another case when PW13 was cross-examined. According to the accused, PW13 demanded ₹10 lakhs from him and threatened



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that if he failed to accede to the demand, he would be falsely implicated. Therefore, the appellant/accused does not seem to have a consistent case.

51. Further, an interesting document is seen produced by the appellant/accused as Annexure 'F' status report along with the appeal memorandum. It is beyond my comprehension as to why the said document was produced by the appellant/accused himself, which apparently goes against his case. The said document reads thus:-

***“IN THE COURT OF SH. VISHAL SINGH MM,
ROHINI, DELHI***

IN THE MATTER OF:-

MAHENDER SINGH

V/S

ARVIND KUMAR & SMT. KRANTI DEVI

STATUS REPORT

Hon'ble sir,

It is submitted that complainant Mr. Mahender



Singh has filed a complaint case against Mr. Arvind and his wife Smt. Kranti Devi in the Hon'ble court alleging that, alleged persons are demanding Rs. 100000/- from him by extending threat of implicating him in false criminal case. .

In this regard it is submitted that alleged persons have been contacted and their statement were recorded. Alleged persons Arvind Kumar and his wife told that they and Mahender Singh along with his family were residing in house No. 143, 1st floor, village Haider Pur Delhi. According to Smt Karanti devi Mahender Singh committed rape on her on 23-2-2012, while she was alone in her room. Arvind told that when he came to know about the incident, he called Mahender Singh and asked him about the incident. Mahender told him that he committed this mistake and he is ready to face all the consequences. According to Arvind he never demand any money from Mahender but himself was ready to pay Rs. 120000/- on the condition that Arvind will not being the matter in the knowledge of Police. For paying Rs. 120000/- Mahender Singh demanded a time of one & half months.

In this regard it is submitted that Smt. Kranti Devi w/o Arvind Kumar has also filed a complaint case U/s 156.3 Cr.P.C. in the Hon'ble Court against Mahender Singh the present complainant and next date of hearing in that



complaint case is 17.09.2012. The inquiry in that case is being conducted by W/SI Durga of PS Shalimar Bagh Delhi.

During inquiry of the present complaint case the statements of witnesses were recorded. Pt. Ram Sarikhan R/o H. No. 198/89, Jhuggi Ayurvedic Hospital Haider Pur Delhi told during inquiry that Mahender accepted that he had raped the wife of Arvind Kumar and he himself compromised the matter by promised to pay Rs. 100000/- to Arvind Kumar. Arvind Kumar never demanded any money from Mahender but Mahender himself offered Rs. one lacs to Arvind. According to Pt. Ram Sarikhan on Jugpal of mangolpuri was also present in the park at the time of compromise between Arvind and Mahender. Jugpal S/o Sh. Harkesh R/o C-41, Gali No. 1, Mangolpuri Delhi was also contacted and his statement was also recorded, he clearly denied that he was a part of any compromise between Mahender & Arvind. According to him, he knew both Arvind as well as Mahender very well and both are good friend of him but he did not knew what is the matter between them.

From the inquiry till date it revealed that Arvind Kumar never demanded any money from Mahender Singh but complainant Mahender Singh himself offered Rs. One Lacs to Arvind Kumar to compromise the matter of rape allegedly committed by him upon Smt. Kranti Devi the wife of Arvind



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Kumar.

There is no evidence of threatening and demanding of money by Arvind Kumar from Mahender Singh. Hence no cognizable offense is made out. However any order passed by the Hon'ble court will be abide by strictly.

submitted please.

SI Sanjay Kumar

7/9/12”

(Emphasis supplied)

52. No argument was advanced by the learned counsel for the appellant/ accused as to the evidentiary value of Annexure ‘F’ status report or the extent to which it can be relied on or the purpose for which it can be looked into. The report appears to be one under Section 202 Cr.P.C. filed by the police to the complaint dated 31.07.2012 filed by the accused under Section 200 Cr.P.C. before the jurisdictional magistrate alleging commission of offences punishable under Section 384 and 506 IPC against PW6 and PW13.



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53. What is the purpose or scope of enquiry under Section 202 CrPC? Section 202 has twin objects; one, to enable the magistrate to scrutinize carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the magistrate himself may hold an inquiry under Section 202 or direct an investigation to be made by a police officer. The scope of enquiry under this Section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is



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different from the investigation contemplated in Section 156 as it is only for helping the magistrate to decide whether or not there is sufficient grounds for him to proceed further. The scope of enquiry under S.202 of the CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. (**Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker, 1960 KHC 730 : AIR 1960 SC 1113; Nagawwa v. Veeranna Shivalingappa Konjalgi, 1976 KHC 894 : AIR 1976 SC 1947; National Bank of Oman v. Barakara Abdul Aziz, 2012 KHC 3078; Manharibhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel, 2012 KHC 4556 and Birla**



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Corporation Ltd. v. Adventz Investments and Holdings Ltd., 2019 KHC 6559).

53.1 Further, the investigation under Section 202 Cr.P.C. is different from the investigation under Chapter XII Cr.P.C. The embargo under Section 162 Cr.P.C. against the use of the statements of persons recorded by the police, applies only to an investigation under Chapter XII Cr.P.C. as indicated by Section 162 itself. The interdict under Section 162 Cr.P.C., therefore, does not apply to an investigation under Section 202 Cr.P.C. which provision is located outside Chapter XIV Cr.P.C. Hence, statements recorded during an investigation under Section 202 Cr.P.C. can be used to contradict the statement given under Section 145, to impeach his credit under Section 155(3), to corroborate his testimony under Section 157 and to refresh his memory under Section 159 of the Evidence Act. (See **Punya Prasad Sankota v. Balvadra Dahal and Another, 1985 CriLJ**



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159).

54. Annexure 'F' status report filed along with the appeal memorandum says that there was no extortion or attempt of extortion by PW6, the prosecutrix or PW13, her husband.

55. There is yet another status report, marked as Ext. PW14/B, which is apparently the report filed by the police to Ext. PW6/B complaint filed by PW6 before the Court, which was thereafter forwarded under Section 156(3) Cr.P.C. for investigation and report and on the basis of which the present crime was registered. The said report dated 17.09.2012 reads thus:-

***“ In the Court of Sh. Vishal Singh MM, Rohini Court
(North-West Dist.) Delhi.***

In Re :- CC No. /2012

In the Matter of :-

Smt. Kranti

...Complainant

W/o Sh. Arvind Rathore

R/o H. No. 143, Tailor Wali Gali,

Vill. Haiderpur,



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Delhi.

Versus

Mahender Rathore

...Accused

S/o Sh. Vishwanath Rathore

R/o H. No. 143,

Tailor Wali Gali,

Vill. Haiderpur,

Delhi.

STATUS REPORT

Hon'ble sir,

It is submitted that complainant Smt. Kranti W/o Sh. Arvind Rathore Presently residing at H. No. 474 Khadar Ambedkar Nagar Haider Pur Delhi filed a Complaint Case against Sh. Mahender Singh alleging that he committed rape upon her at the point of knife on 23-02-2012 in between 2-2.30 PM in her rented room situated at the first floor of H. No. 143 Tailor Wali Gali Haider Pur Village Delhi, where she was residing earlier as a tenant along with her husband and the alleged Mahender Singh Rathore was also residing on the same floor in the next room to her as a tenant with his family.

The complainant stated in her complaint that in the night of 23-02-2012 at about 10PM she narrated the whole incident to her husband when he returned home. They went to PS Shalimar Bagh Delhi and reported the matter and Police Officials of PS Shalimar



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Bagh interrogated alleged Mahender Singh Rathore. The complainant was asked to provide the copy of the complaint which was lodged by her in the PS. Shalimar Bagh on the day of incident, but she denied of having any copy of complaint and stated that she did not give any written complaint in the police station. She further stated that she does not know whom she made the complaint in the police station and on the day of incident she neither made a call at 100 number nor informed any other tenant / land lady about the incident residing in the house. As per the police record there is no such incident was reported to PS Shalimar Bagh on 23-02-2012, hence no inquiry was made by any police official into the matter earlier.

The first complaint of Ms. Kranti dt.25-07-2012 was received at PS Shalimar Bagh and marked to HC Santosh, the Beat Officer of Haider Pur to inquire the matter who during inquiry found that Mr. Mahender Singh has also filed a Complaint Case against Mr. Arvind and his wife Smt. Kranti Devi which is pending in the Hon,ble Court alleging that alleged persons are demanding Rs. 100000/- from him by extending threat of implicating him in false criminal case.

The inquiry in the above complaint of Ms Kranti was also made at the place of occurrence in this regard, but no such evidence came on record to corroborate the allegation of the complainant. As per the call detail of mobile phone no. 9250963939 used by the alleged Mr. Mahender Singh Rathore, on the date and time of



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incident he was present at Jahangir Puri Ind. Area at 2.00 PM.

The complainant did not make any complaint in the Police Station Shalimar Bagh before the complaint dt. 25-07-2012 the reason best known to her. However the complainant Ms. Kranti and her husband Arvind Rathore are still adhere to the facts mentioned in the complaint before the Hon,ble Court, hence any order passed by the Hon'ble court will be abide by strictly.

Submitted please.

SI Durga Kapri

SHO/Shalimar Bagh”

56. Ext. PW14/B status report has to be read along with the testimony of PW14, the I.O. who in her cross-examination, deposed thus:- “...*It is correct that I had mentioned in the status report of Beat Officer of Hyderpur who conducted the inquiry and found that the victim and her husband had demanded Rs. 1 Lac from accused by extending threat of implicating him in a false case...*”. Ext. PW14/B status report does not corroborate the testimony of PW14 on this aspect. The report only says that the inquiry into the complaint of PW6 revealed that the accused herein had filed a complaint



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against PW6 and PW13 alleging extortion. There is also one other aspect in the testimony of PW14 which also needs to be adverted to. PW14 went to the extent of saying that the accused was not at the scene of occurrence by deposing that on the date of the incident, between 2:00 to 2:30 PM, he was at Jahangirpuri Industrial Area. PW14 never explained as to how she concluded so. It is true that Ext. PW9/F is the Cell ID chart with location of mobile No. 9250963939 for the period from 01.02.2012 to 28.02.2012. However, as noticed earlier, on going through Ext. PW9/F, I am unable to make out on which day, at what time, the appellant/accused was at the various locations referred to in the document. The location of the appellant/accused on the relevant day ought to have been brought out by examining a witness who was competent to explain the same. Although PW9 was examined, the location of the appellant/accused on the relevant day was never brought



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out. These two aspects in the testimony of PW14, that is, regarding the location of the appellant/accused on the date of the incident and her claim that the prosecutrix and her husband were trying to extort money which is directly in conflict with Annexure 'F' status report, probabalizes the version of the prosecutrix that despite reporting the crime immediately to the police, the police failed to take any action.

57. Be that as it may, was the magistrate right or justified in calling for Ext. PW14/B and Annexure 'F' status report? No arguments were advanced on this point also. I will briefly refer to the law on the point. The procedure to be followed when a person files a written complaint as contemplated under Section 2 (d) CrPC before a magistrate is dealt with in Chapter XV CrPC. The five options that are available to a magistrate who is competent to take cognizance of the case can be summarised as follows:- I. Rejection of the



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complaint - If the complaint on the face of it does not at all make out any offence, then the magistrate may reject the complaint. This power of rejection at the pre-cognizance stage is inherent in any magistrate and the said power should not be mistaken for the power of dismissal available to the magistrate under S.203 CrPC, since the latter power of dismissal is one which can be exercised only at the post cognizance stage (See **CREF Finance Ltd. v. Sree Shanthi Homes (P) Ltd., 2005 KHC 1409: 2005 SCC (Cri) 1697; Govind Mehta v. State of Bihar, AIR 1971 SC 1708; Nagraj v. State of Mysore, AIR 1964 SC 269 and Raju Puzhankara v. State of Kerala, 2008 (2) KHC 318**).

57.1. II. Forward it under Section 156(3) CrPC - Where the magistrate does not reject the complaint at the threshold, the magistrate may, without taking cognizance of the offence, order an investigation by the police under Section 156(3) CrPC and



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forward the complaint to the officer-in-charge of the police station concerned provided that the complaint alleges the commission of a cognizable offence. Such a course can be adopted by the Magistrate only at the pre-cognizance stage. (See **Dilawar Singh v. State of Delhi, 2007 (3) KHC 940: AIR 2007 SC 3234 and Suresh Chand Jain v. State of M.P., 2001 KHC 155: AIR 2001 SC 571**). Even a complaint alleging the commission of offences exclusively triable by a Court of Session can also be so forwarded under S.156(3) CrPC. (See **Tula Ram v. Kishore Singh, 1977 KHC 215: AIR 1977 SC 2401**). The Station House Officer (the SHO) who receives such a complaint forwarded under Section 156(3) CrPC will have to treat the complaint as a First Information Report within the meaning of Section 154 CrPC and is bound to register a crime and proceed to conduct an investigation as provided under Section 157 CrPC. (See **Mohammed Yousuff v. Smt. Afaq**



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Jahan, 2006 KHC 67: (2006) 1 SCC 627: AIR 2006 SC 705).

The SHO is obliged to register a crime whether or not such SHO has the territorial jurisdiction to investigate the offence within the meaning of Section 156(1) CrPC. In a case where the SHO has no territorial jurisdiction, the SHO will have to register the crime and then transfer the same to the Police Station having jurisdiction (See **Madhubala v. Suresh Kumar, 1997 KHC 378: AIR 1997 SC 3104**). This power of the magistrate under Section 156(3) CrPC cannot be exercised by him after taking cognizance (See **Tula Ram v. Kishore Singh, 1977 KHC 215: AIR 1977 SC 2401** and **George v. Jacob Mathews, 1996 KHC 19: ILR 1996 (1) Ker. 836**).

57.2. III. Taking cognizance of the offence- Where the magistrate does not order investigation by the police under S.156(3) CrPC at the pre-cognizance stage and does not reject the complaint at the threshold, then the magistrate may decide



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to proceed under Chapter XV CrPC and thereby take cognizance of the offence, provided the allegations in the complaint prima facie make out an offence. If after applying his mind to the allegations made in the complaint the magistrate takes judicial notice of the accusations and decides to proceed under Chapter XV CrPC, he can then be said to have taken cognizance of the offence. But if the Magistrate, instead of proceeding under Chapter XV CrPC takes any other action such as issuing search warrant or ordering investigation under S.156(3) CrPC then he cannot be said to have taken cognizance of the offence. (See **D. Lakshminarayana v. V. Narayana, 1976 SCC (Cri) 380: AIR 1976 SC 1672; Narsingh Das Tapadia v. Goverdhan Das Partani, 2000 KHC 682: AIR 2000 SC 2946; S. K. Sinha, Chief Enforcement Officer v. Videocon International Limited, 2008 KHC 4247: AIR 2008 SC 1213**). Where the Magistrate chooses to take cognizance of



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the offence, he may adopt any of the following alternatives:- (a) He shall examine on oath the complainant and the witnesses, if any, present (See Section 200 CrPC). If after the stage of Section 200 CrPC, the magistrate thinks fit to postpone the issue of process against the accused then he has two options before him. He may- (i) either himself conduct an enquiry, or (ii) direct an investigation by a police officer or any other person as he thinks fit under Section 202(1) CrPC. Where the offence alleged in the complaint is one triable exclusively by a Court of Session, the magistrate cannot direct an investigation under Section 202(1) CrPC. (See clause (a) of the proviso to S.202(1) CrPC). The Magistrate will have to himself conduct an enquiry during the course of which he shall call upon the complainant to produce all his witnesses and examine them on oath. (See the proviso to Section 202(2) CrPC). Similarly, in all complaints other than those made by a Court, a direction for



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investigation can be made only after the complainant and the witnesses, if any, present have been examined under Section 200 CrPC (See clause (b) of the proviso to S.202(1) CrPC). Therefore, under Section 202(1) CrPC it is open to the magistrate to himself conduct an enquiry and / or thereafter order an investigation or vice versa.

57.3. IV. Issuing process- If after himself conducting an enquiry or directing investigation under **Section** 202(1) CrPC, the magistrate is of the opinion that there is sufficient ground for proceeding, he shall then issue summons or warrant against the accused under Section 204(1) CrPC depending on the nature of the case.

57.4. V. Dismissal of complaint after S.202 enquiry / investigation- If after considering the statements on oath of the complainant and the witnesses if any and the result of the enquiry or investigation if any, under Section 202 CrPC, the



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magistrate is of the opinion that there is no sufficient ground for proceeding, he shall then dismiss the complaint after briefly recording his reasons for doing so. (See Section 203 CrPC).

[See Biju Purushothaman v. State of Kerala, 2008 (3) KHC 24: ILR 2008 (3) Kerala 42: 2008 Cr.LJ]

58. Coming to the case on hand, Ext. PW6/B complaint filed by PW6, the prosecutrix, is relating to offences punishable under Sections 376 and 506 IPC. The offence punishable under Section 376 IPC is apparently an offence triable exclusively by a court of sessions and, therefore, by virtue of clause (a) to the proviso to Sub-section (1) of Section 202 Cr.P.C., the magistrate could not have sent the matter for investigation under Section 202 Cr.P.C. to the police. The proviso to Sub-section (2) makes it clear that when the offence complained of, is triable exclusively by a court of session, the magistrate shall call upon the complainant to produce all his



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witnesses and examine them on oath. Therefore, the magistrate on receipt of Ext. PW6/B complaint, had the option before taking cognizance to forward it under Section 156(3) Cr.P.C. to the police for investigation and report. But once cognizance is taken and the magistrate completes the procedure under Section 200 Cr.P.C. and proceeds to Section 202 Cr.P.C., then he cannot retrace his steps, and return to the pre-cognizance stage and forward the complaint under Section 156(3) Cr.P.C. Section 202 Cr.P.C. is the post cognizance stage. On receipt of Ext. PW6/B complaint calling for a report under Section 202 Cr.P.C. from the police itself was wrong in the light of Clause (a) to the proviso to Sub-section (1) and proviso to Sub-section (2) of Section 202 Cr.P.C. On the other hand, the magistrate himself ought to have conducted the inquiry as contemplated under proviso to Section 202(2) Cr.P.C. Further, after having reached the Section 202 stage, referring the complaint under Section



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156(3) Cr.P.C. to the SHO concerned for investigation and report was, therefore, apparently a wrong procedure adopted by the jurisdictional magistrate.

59. The same is the case with the complaint filed by the accused alleging commission of the offence of extortion, which is an offence apparently triable by a Court of Magistrate. The said complaint also, before taking cognizance, could have been forwarded by the magistrate to the SHO concerned for investigation and report under Section 156(3) CrPC. If the magistrate was not inclined to forward it under Section 156(3) Cr.P.C., then he could have proceeded to take cognizance under Section 200 Cr.P.C. and then proceeded to Section 202 Cr.P.C.; conducted an inquiry by himself or directed an investigation by the police for the purpose of deciding whether or not there was sufficient ground for proceeding into the case. If after conducting such inquiry or receipt of a report pursuant to the



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investigation conducted by the police, the magistrate was of the opinion that there was sufficient ground to proceed, then process ought to have been issued under Section 204(1) Cr.P.C. But once cognizance had been taken and report was called for under Section 202 Cr.P.C., the magistrate ought not to have gone back to the pre-cognizance stage and forwarded the complaint under Section 156(3) Cr.P.C. to the SHO for investigation and report.

60. In the case on hand, the magistrate by calling for Annexure 'F' status report had proceeded to the post-cognizance stage and, therefore, ought not to have retraced the steps and gone back to the pre-cognizance stage and forwarded the complaint under Section 156(3) Cr.P.C., which apparently is a wrong procedure adopted by the jurisdictional magistrate. Does this incorrect procedure adopted by the magistrate in any way affect the case before this Court? This will have to be



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answered in the negative in the light of Section 465 Cr.P.C., which says that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings before or during trial or in any way under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. No such failure of justice has been pointed out in the case on hand.

61. Now coming to the sentence imposed. Though no arguments were advanced by the learned counsel for the appellant/accused, the learned prosecutor fairly brought it to the notice of the Court that the provisions of Section 376 IPC, as it stood prior to the Criminal Law (Amendment) Act, 2013 (which



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came into force on 03.02.2013), govern the present case as the incident in this case took place on 23.02.2012. Under the unamended provision, the offence of rape was punishable with rigorous imprisonment for a term not less than seven years, which could extend to imprisonment for life or imprisonment for a term extending to ten years, along with fine. The proviso to Section 376(1), however, empowered the Court, for adequate and special reasons to be recorded in the judgment, to impose a sentence of less than seven years. Thus, the proviso manifests that an offender convicted of rape should not be dealt with leniently as a matter of course, and that a sentence below the prescribed minimum can be awarded only upon the existence of extenuating circumstances of an exceptional nature. Consequently, while determining the question of sentence, the Court must bear in mind the statutory mandate and ensure that any reduction below the minimum prescribed sentence is



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supported by cogent, adequate and special reasons recorded in the judgment. In the facts and circumstances of the present case, I find no adequate or special reasons for a reduction of the statutory minimum sentence of seven years rigorous imprisonment imposed by the trial court. The sentence awarded is appropriate to the gravity of the offence committed and calls for no interference.

62. In the light of the aforesaid discussion, I do not find any infirmity in the impugned judgment calling for an interference by this Court.

63. In the result the appeal *sans* merit is dismissed.

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

**CHANDRASEKHARAN SUDHA
(JUDGE)**

AUGUST 05, 2026/kd