IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on :10.10.2025
Judgment pronounced on: 09.01.2026

\+ **CRL.A. 240/2023 & CRL.M.(BAIL) 375/2023**

BADAL @ PRINCE MALHOTRA ..... Appellant

versus

STATE (NCT OF DELHI) ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Saurabh Upadhyay, Mr. Aakash Yadav, Mr. Salil Dixit and Mr. Amit Upadhyay, Advocates.

For the Respondent : Mr. Sunil Kumar Gautam, APP for the State with SI Asha, PS Sarita Vihar.
Mr. Asheesh Jain, Senior Advocate (Amicus Curiae) with Mr. Adarsh Kumar Gupta, Mr. Vishal Gupta and Ms. Neha Yadav, Advocates.

CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present appeal is filed challenging the judgment of conviction dated 22.09.2022 (hereafter '**impugned judgment**') and order on sentence dated 29.11.2022 (hereafter '**impugned order on**

sentence'), passed by the learned Additional Sessions Judge, New Delhi District, Patiala House Courts, New Delhi in SC No. 9503/2016 arising out of FIR No. 322/2016 ('**FIR**'), registered at Police Station Sagarpur.

2. By the impugned judgment, the appellant was held convicted for the offences under Section 376(2)(i) of the Indian Penal Code, 1860 ('**IPC**') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

3. By the impugned order on sentence, the appellant was sentenced to undergo rigorous imprisonment for a term of 10 years and to pay a fine of ₹20,000/-, and in default of payment of fine, to undergo simple imprisonment for two months.

4. The brief facts of the case are as under:

4.1. On 01.07.2016, a complaint was made by the brother of the victim, who was fourteen years of age at that time, in regard to her being missing from the house since 11 AM. It was alleged that a sum of ₹2 lakhs in cash, clothes and ID proofs of the victim were also missing. This led to registration of FIR for the offence under Section 363 of the IPC.

4.2. Subsequently, on 07.07.2016, a PCR call was received that a girl had been traced and her description matched with the victim. The victim was produced before the concerned SHO, whereafter, she was counselled and sent for medical examination. During medical

examination, the victim told the doctor that she had left the house of her own will and the accused was known to her since the last one month. The victim allegedly also informed that the appellant had taken her to his house and forcibly had sexual intercourse with her on 01.07.2016 and 02.07.2016. On 07.07.2016, the victim's father produced one red bag containing some clothes, pink purse, Samsung phone and ₹62,000/-. On the same day, place of incident was inspected at the instance of the victim and the appellant was arrested.

4.3. Age proof of the victim was collected from her school wherein her date of birth was found to be 17.01.2001 as per the school record.

4.4. On 08.07.2016, the victim's statement under Section 164 of the Code of Criminal Procedure, 1973 ('**CrPC**') was recorded where she stated that she had gone from her home on 01.07.2016 and met with the appellant, who took her to his home. She stated that the appellant purchased a Scooty from her money and also raped her for two days without her consent. On 07.07.2016, she left the house of the appellant, whereafter, her parents found her and a call was made to the police.

4.5. The victim deviated from her earlier statements during recording of her evidence and claimed that her statements about having physical relations with the appellant on 01.07.2016 and 02.07.2016 was given under pressure of her parents. The parents of the victim also deposed that the victim had not told them about having any physical relation with the appellant.

4.6. By the impugned judgment, the learned Trial Court found that the prosecution had succeeded in proving the case against the appellant. It was noted that although the victim had ultimately denied that she had any sexual intercourse with the appellant, she had admitted to staying with the appellant. It was also noted that the victim had stated that she was subjected to sexual harassment without her consent when she was produced for medical examination as well as in her statement under Section 164 of the CrPC, her hymen was found to be broken and the FSL report affirmed the presence of the DNA of the appellant in the samples obtained from the vaginal and vulval regions of the victim. It was also observed that the examination of the police witnesses who had drawn the samples as well as the examination of the doctors was dispensed with, and no circumstances were brought to show that the investigation was improper or biased.

4.7. Aggrieved by the same, the appellant preferred the present appeal.

4.8. When the victim could not be served despite best efforts as she was not found to be available at the given address, by way of order dated 25.02.2025, the Predecessor Bench appointed Mr. Asheesh Jain, Sr. Adv. to assist the Court on behalf of the victim.

5. The learned counsel for the appellant submitted that the appellant's conviction cannot be sustained as the same is premised on solely on the basis of scientific evidence, without appreciating that the

same has no corroboration from the statements of the victim (PW2) or her parents (PW3 and PW4).

6. He submitted that in cases pertaining to sexual offences, the victim is the star witness and her testimony is the substantive evidence. He submitted that all scientific and circumstantial materials are only corroborative and once the prosecutrix and her parents have not supported the case of the prosecution, the case loses its core evidentiary foundation.

7. He submitted that the victim in the present case has categorically deposed that her statement under Section 164 of the CrPC was given under duress and pressure from her parents. He further submitted that even in cross-examination, the victim only admitted to voluntarily eloping with the accused and staying with him voluntarily, not being forced into establishing sexual relations. He submitted that the statement under Section 164 of the CrPC cannot substitute a victim's evidence during trial.

8. He submitted that the learned Trial Court erred in acting solely on the basis of the positive DNA report, even though it is well-settled that scientific evidence, especially DNA reports, are not infallible. He submitted that the failure of defence to put a specific suggestion in regard to collection and analysis of samples to the concerned witness does not endorse the case of the prosecution. He placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Rahul v. State of***

***Delhi Ministry of Home Affairs & Anr.* : Criminal Appeal No. 611/2022**.

9. He submitted that the samples were taken on 07.07.2016, while the alleged incident happened on 01.07.2016 and 02.07.2016, and the samples were belatedly sent to the laboratory on 19.07.2016. He submitted that the delay in sending the samplesfrom *malkhana* to the laboratory raises serious doubt of potential contamination, which cannot be ruled out merely because no suggestion in this regard was put to the concerned police witness. He submitted that despite conceding to the presence of gap in sending the samples to FSL, the learned Trial Court erroneously shifted the onus on the defence for not cross-examining in this respect.

10. He submitted that the reliance on Modi's jurisprudence was misplaced and medical jurisprudence indicates that presence of spermatozoa alone is not conclusive of recent intercourse. He thus submitted that presence of DNA after 5-6 days does not prove recent or forced intercourse. He further submitted that hymen tear was old and there were no external injuries which renders the medical evidence as inconclusive.

11. He submitted that the absence of any substantive evidence coupled with the procedural lapses ought to have led to the appellant being acquitted. He submitted that when the victim turns hostile, the Court is bound to seek independent corroboration and if the only

remaining piece of evidence is unreliable, as in the present case, the benefit of the same automatically accrues to the accused.

12. He further submitted that the foundational facts required for raising the presumptions under Section 29 and 30 of the POCSO Act were not established, despite which the same was applied even though the victim and her parents did not support the case of the prosecution and there was no eye witness to the alleged rape.

13. He submitted that the appellant was merely 19-20 years of age at the time of his implication in the present case and the victim admitted to having eloped with consent, which shows that no coercion was involved. He submitted that in the absence of the victim or her parents confirming physical relations, the appellant ought to be acquitted in present circumstances.

14. The learned *amicus curiae* argued that the FSL report conclusively shows that the appellant had established sexual relations with the victim, when she was a minor. He submitted that as the present case concerns allegations pertaining to sexual assault of a minor, the presumption under Section 29 of the POCSO Act would act against the appellant and it was upon the appellant to prove to the contrary.

15. He also led this Court through a number of judgments on the issue of medical evidence as a basis of conviction and the reliability of a hostile witness.

ANALYSIS

16. At the outset, it is relevant to note that while dealing with an appeal against judgment on conviction and sentence, in exercise of Appellate Jurisdiction, this Court is required to reappreciate the evidence in its entirety and apply its mind independently to the material on record. The Hon'ble Apex Court in the case of ***Jogi & Ors. v. The State of Madhya Pradesh*** **: Criminal Appeal No. 1350/2021** had considered the scope of the High Court's appellate jurisdiction under Section 374 of the CrPC and held as under:

> *"9. The High Court was dealing with a substantive appeal under the provisions of Section 374 of the Code of Criminal Procedure 1973. In the exercise of its appellate jurisdiction, the High Court was required to evaluate the evidence on the record independently and to arrive at its own findings as regards the culpability or otherwise of the accused on the basis of the evidentiary material. As the judgment of the High Court indicates, save and except for one sentence, which has been extracted above, there has been virtually no independent evaluation of the evidence on the record. While considering the criminal appeal under Section 374(2) of CrPC, the High Court was duty bound to consider the entirety of the evidence. The nature of the jurisdiction has been dealt with in a judgment of this Court in Majjal v State of Haryaya [(2013) 6 SCC 799] , where the Court held:*
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> > *'6. In this case what strikes us is the cryptic nature of the High Court's observations on the merits of the case. The High Court has set out the facts in detail. It has mentioned the names and numbers of the prosecution witnesses. Particulars of all documents produced in the court along with their exhibit numbers have been mentioned. Gist of the trial court's observations and findings are set out in a long paragraph. Then there is a reference to the arguments advanced by the counsel. Thereafter, without any proper analysis of the evidence almost in a summary way the High Court has dismissed the appeal. The High Court's cryptic*

reasoning is contained in two short paragraphs. We find such disposal of a criminal appeal by the High Court particularly in a case involving charge under Section 302 IPC where the accused is sentenced to life imprisonment unsatisfactory.

7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter. Since this exercise is not conducted by the High Court, the appeal deserves to be remanded for a fresh hearing after setting aside the impugned order.' "

(emphasis supplied)

17. The criminal jurisprudence is premised on the principle that a conviction cannot be sustained on the basis of mere surmises or conjecture. It is thus for the prosecution to establish, by means of cogent and credible evidence, each element of the alleged offence beyond reasonable doubt. Accordingly, a meticulous examination of the impugned judgment as well as the material on record is necessitated to discern as to whether material aspects of the case were either summarily disregarded or addressed in sweeping generalisations.

18. This Court is now required to determine the most fundamental question that lies at the heart of every criminal trial: Does the

prosecution's evidence prove the case beyond reasonable doubt? In doing so, this Court deems it apposite to carefully examine the events that transpired during and post the occurrence of the alleged incident. The inception of the present case occurred on a complaint given by the brother of the victim in relation to the victim, who was less than sixteen years of age, being missing. Subsequently, a PCR call was received that a girl had been traced and the victim was produced before the concerned SHO on 07.07.2016. Initially, the victim asserted that she had left her home of her own free will and made allegations of forceful penetrative sexual assault being committed by the appellant on 01.07.2016 and 02.07.2016. It is the case of the prosecution that the victim stayed at the appellant's house from 01.07.2016 till she was recovered and the appellant had forcibly established sexual relations with her on two days, as per the victim's statement recorded under Section 164 of the CrPC.

19. The prosecution examined seven witnesses to prove its case, that is, the victim (PW1), the victim's brother (PW2), the victim's father (PW3), the victim's mother (PW4), the investigating officer (PW5), the officer who was on duty when the complaint was received and who ultimately produced the victim before the SHO (PW6), and the Senior Scientific Officer (Biology), FSL, Rohini who had prepared the FSL report (PW7). Pertinently, in the present case, the appellant had admitted quite a few documents under Section 294 of the CrPC, including, the MLC of the victim, Gyne report of the victim, the MLC of the appellant, the proceedings under Section 164 of the CrPC

conducted by the concerned Magistrate, the admission form as well as admission and withdrawal register, statement of Ct. Rishipal, statement of W/Ct. Suman, statement of Ct. Jaswant and statement of Raju.

20. Confronted with the peculiar circumstances of the present case where the victim and her family members had turned hostile, the learned Trial Court was still weighed to convict the appellant on the basis of the FSL report which indicated that the DNA profile of the appellant matched with the ones generated from the exhibits obtained from the vaginal and vulval regions of the victim. As also recorded by the learned Trial Court, even the prosecution had pressed for conviction of the appellant in view of the FSL report, which stood proved in evidence of PW7.

21. Before this Court, the entire case of the appellant is premised on essentially two tenets– the key witnesses, including the victim, in the present case have turned hostile; and the FSL report is only a corroborative piece of evidence and the same cannot form the sole basis of conviction, especially since there is significant doubt on the cogency of the report as the exhibits were belatedly sent to FSL and there is possibility of the samples being tampered.

22. *Firstly*, as far as the aspect of the victim and her family members having turned hostile is concerned, in the opinion of this Court, the same alone cannot lead to acquittal of the appellant. In the present case, the victim stated during her medical examination as well

as in her statement under Section 161 of the CrPC that the appellant had established physical relations with her without her consent on 01.07.2016 and 02.07.2016. In her statement under Section 164 of the CrPC, the victim stated that she had alleged that the appellant had misbehaved with her and established physical relations with her on two days when she was staying at the house of the appellant. Later on, the victim turned hostile and claimed that the allegations of misbehavior by the appellant were made under pressure of her parents. She stated that she had made the allegations as she was under pressure of her parents. She explicitly denied that the appellant had made physical relations with her during her stay at his house. In this case, parents of the victim also resiled during recording of their evidence and stated that the victim had not told them anything about the accused having established physical relations with her without her consent.

23. Undeniably, the somersault of the victim and her parents during recording of their evidence raises some suspicion in the mind of this Court that they may have been won over by the appellant and his family members before their evidence was recorded. However, it is imperative to note that the present case is not one where the victim has outrightly denied that she had leveled such allegations. Rather, she has tendered a cogent explanation for making purportedly false allegations. It is the very case of the prosecution that the victim had *willingly* gone to the house of the appellant along with some cash and jewelry. The victim has volunteered during her cross examination and

iterated twice that she had made the allegations under pressure from her parents as she had taken a huge amount from her house and she was afraid.

24. Where the victim is a child, mere minor contradictions would not adversely impact the matter. However, as discussed above, in this case, the victim has gone on to *deny* the allegations in their entirety. It is trite law that the accused can be convicted solely on the basis of evidence of the victim as long as same inspires confidence and corroboration is not necessary for the same, however, when a victim's testimony is marked by identified flaws or gaps or provides an insufficient account of the incident, a conviction cannot be sustained [Ref: ***Nirmal Premkumar v. State* : 2024 SCC OnLine SC 260**]. The explanation offered by the victim does not appear to be implausible. *Albeit* some doubt is cast that the victim may have turned hostile under influence of the appellant, in the absence of any supporting material evidencing the same, the fact that the victim did not support the case of the prosecution would have been sufficient to return a finding of not guilty without any supporting corroborative evidence.

25. In the present case however, the prosecution has leaned significantly on the FSL report, the findings of which are severally incriminating.

26. Thus, *secondly*, it is imperative to deal with the aspect of FSL findings. The appellant has sought to question the credibility of the report as well as the reliability of the same in addition to emphasizing

that scientific evidence cannot be the sole basis of conviction.

27. While scientific evidence may not be sufficient for conviction, however, the same can act as a corroborating factor which endorses the earlier statements of the victim, even if she subsequently turns hostile. Recently, in the case of ***Jahid v. State Govt of NCT of Delhi* : 2025:DHC:11807**, this Court upheld the conviction of the appellant under Section 6 of the POCSO Act even though the victim had subsequently turned hostile, by taking into account the findings of the FSL report which supported the case of the prosecution.

28. It is however imperative that such scientific evidence is proved infallible by a staunch chain of custody of the samples. In the present case, admittedly, there is an unexplained delay of 12 days in sending the samples to FSL. Additionally, the malkhana incharge has not been examined to endorse the safe keeping of the samples in malkhana. Rather, the evidence of the investigating officer (PW5) has no mention of the whereabouts of the samples in the intervening period. PW5 has only asserted that she had taken the 9 sealed pullandas with the samples of the victim along with the sample seal from W/Ct. Suman on 07.07.2016, and Ct. Rishipal had handed over the sealed pullanda containing the sample of the appellant along with the sample seal to her on 07.07.2016 as well, which were sent to FSL through Ct. Jaswant on 19.07.2016. In cross-examination, she denied suggestions that the sealed samples were tampered.

29. The learned Trial Court has noted that although arguments in

relation to delay in depositing samples with FSL and possibility of tampering were agitated at the time of final arguments, however, no such suggestion was given to the police witness and FSL expert. It was also noted that no questions were put in relation to the requirement for storage of samples at a particular temperature or in regard to the report being defective due to contamination of samples. It was also noted that the only suggestion put to PW7 was in regard to rough notes used by him to prepare the report, which was negated. The learned Trial Court was also weighed to reject the arguments in relation to cogency of FSL report on account of the police officers– Ct. Rishipal and W/Ct. Suman, who were material to the investigation as the samples were collected in their presence, were not examined as their testimony was dispensed with under Section 294 of the CrPC. The MLC of both the appellant and the victim was also admitted. Even though the appellant conceded to the evidence of the officers who had dealt with the samples, that is, Ct. Rishipal, W/Ct. Suman and Ct. Jaswant, the same does not absolve the prosecution of its duty to prove the cogent chain of custody of the samples. Even otherwise, there is nothing in the statements of these witnesses which sheds any light on the safe custody of the samples in the intervening period. Only Ct. Jaswant has mentioned that he had taken the samples from the malkhana for depositing the same in FSL for examination, however, the prosecution has made a fatal error in the present case by not exhibiting the malkhana record or examining the malkhana in charge. Even if this Court was to be persuaded to overlook the aspect

of delay in light of the initial statements of the victim, especially due to the same being not agitated in examination of the investigating officer as well, however, the sheer dearth of clarity about the whereabouts of the samples renders the same suspicious.

30. Reliance has been placed by the appellant on the case of ***Rahul v. State of Delhi Ministry of Home Affairs & Anr.*** (*supra*), where in a case involving allegations of rape and murder, the Hon'ble Apex Court had rejected the DNA profiling by finding that the samples remained in the malkhana of police station for more than 10 days. Pertinently, in the present case, there is no material to *per se* show that the samples remained in malkhana at all.

In this case, the DNA profile extracted from the vaginal swab of the victim was found to have mixed male DNA profile, which was similar to that of two of the accused persons. It was observed that the possibility of tampering couldn't be ruled out and the Courts below had erred in not examining the underlying basis of the findings of the DNA reports, whereby the evidence in regard to the DNA profiling was rendered highly vulnerable. It was noted that the prosecution has to bring home the charges beyond reasonable doubt. Noting the lapses in trial, the Hon'ble Apex Court also noted that some material witnesses were not cross-examined at all or not adequately cross-examined. It was observed that Section 165 of the Indian Evidence Act, 1872 confers unbridled powers upon the trial courts to putt necessary questions to elicit the truth. The relevant portion of the

judgment is as under:

> "***32.*** *It is true that PW-23 Dr. B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had stepped into the witness box and his report regarding DNA profiling was exhibited as Ex. PW-23/A, however mere exhibiting a document, would not prove its contents.* ***The record shows that all the samples relating to the accused and relating to the deceased were seized by the Investigating Officer on 14.02.2012 and 16.02.2012; and they were sent to CFSL for examination on 27.02.2012. During this period, they remained in the Malkhana of the Police Station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out.*** *Neither the Trial Court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion.*
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> ***34.*** *The Court is constrained to make these observations as the Court has noticed many glaring lapses having occurred during the course of the trial. It has been noticed from the record that out of the 49 witnesses examined by the prosecution, 10 material witnesses were not cross-examined and many other important witnesses were not adequately cross-examined by the defence counsel. It may be reminded that Section 165 of the Indian Evidence Act confers unbridled powers upon the trial courts to put any question at any stage to the witnesses to elicit the truth. As observed in several decisions, the Judge is not expected to be a passive umpire but is supposed to actively participate in the trial, and to question the witnesses to reach to a correct conclusion…."*
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> (emphasis supplied)

31. Placing reliance on the said case and adverting to a catena of other precedents, recently, the Hon'ble Apex Court has discussed the reliability of DNA evidence as well as necessity of a proper chain of

custody in the case of ***Kattavellai v. State of T.N.*** **: 2025 SCC OnLine SC 1439**. The relevant portion is as under:

> *30. Having noticed various gaps as above, the logical question that arises is where were the swabs?; why were they sent for forensic analysis belatedly?; were they properly stored?; whether the Malkhana of the Police Station where they were kept according to some of the witnesses, was sufficiently equipped or not; if the same were kept in the hospital, was it ensured that no other member of the staff could have had access to them?; in whose custody were they?; if the swabs were damaged, who shall be held responsible for the destruction of vital evidence, etc. Similar questions arise in connection with the semen sample taken from the accused as a consequence of an order passed by the Judicial Magistrate, Uthamapalayam, on 13th June, 2011. PW-56 states that the said samples were sent to FSL, Chennai, on 16th June, 2011 but subsequently returned.* ***It is unclear, yet again, that between 13th and 16th June 2011 where such samples were stored; who was in charge thereof and whether he had kept them in safe custody?; how and in what condition they were sent; when and why they were returned - unfortunately, all these questions have no answer forthcoming from the record.***
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> *31. In* ***Anil v. State of Maharashtra [(2014) 4 SCC 69]*** *this Court observed that DNA profiles have had a tremendous impact on criminal investigations. A DNA profile is valid and reliable, but the same depends on quality control and procedures in the laboratory. We may add to this position and say, that quality control and procedures outside the laboratory matter equally as much in ensuring that the best results can be derived from the samples collected.* ***We record with some sadness that there are quite a few cases in which DNA evidence, despite being there, has to be rejected for the reason that the manner, in which the samples were handled during and after collection by the concerned doctor, in transit to the lab, inside the lab and the results drawn therefrom, are not in accordance with the best possible practices which would focus on ensuring that throughout this process the samples remain in pristine, hygienic and biologically suitable conditions.***
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> *33.* ***Rahul (supra)*** *was a case concerning the kidnap, rape and murder of a woman, wherein 3 persons were convicted by the*

Special Fast-Track Court, Dwarka Courts in Sessions Case No. 91 of 2013. These persons had kidnapped a woman as she returned from work, proceeded to do horrible things to her, and then dumped her lifeless remains in a field, from where it was discovered four days later. The DNA evidence, here, was rejected because it remained in the police Malkhana for two months and in such time, the possibility of tampering could not be ruled out. It was also held that neither the Trial Court nor the High Court had examined the underlying basis of the findings in the DNA reports or whether the techniques used had been reliably applied by the concerned expert. ***As such, it was concluded that the DNA profile, in the absence of such evidence, had become highly vulnerable when the collection and sealing of the samples sent for examination was not free from suspicion.***

34. ***Prakash Nishad v. State of Maharashtra [(2023) 16 SCC 357]*** *was a case concerning the rape and murder of a 6-year-old child. Similar to the present case, it was a case of circumstantial evidence. Based on the disclosure statement made by the Appellant therein, the police found certain garments as also traces of semen of the Appellant on the vaginal smear of the minor victim, based on which he was sought to be convicted.* ***DNA evidence had to be rejected by this Court on the grounds that there was a delay in sending the samples to the FSL, which was unexplained.*** *It was observed that because of the delay, the concomitant prospect of contamination could not be ruled out.* ***The need for expediency in sending samples to the concerned laboratories was underscored.***

35. This case, incidentally, if not unfortunately, is another one of the like of the above. ***Despite the presence of DNA evidence, it has to be discarded for the reason that proper methods and procedures were not followed in the collection, sealing, storage, and employment of the evidence in the course of the Appellant-convict's conviction. DNA, as we have observed, has been held to be largely dependable, even though this evidence is only of probative value, subject to the condition that it is properly dealt with.*** *Over the past decades, many cases have come to their logical conclusion with the aid of DNA evidence in many regions across the world. It is also equally true that many persons wrongly convicted have finally had justice served, with them being declared innocent because of advancements in this technology. It is unfortunate that, alongside such advancements, we still have cases where, despite the evidence being present, it has to be rejected for the reason that the concerned persons, either doctors or*

investigators, have been careless in the handling of such sensitive evidence."

(emphasis supplied)

32. Although the aforesaid case also pertained to allegations of rape and murder as opposed to only rape of a minor under POCSO Act, where the prosecution is benefited by the statutory presumption, however, where such flagrant gaps exist in the chain of custody of the samples, this Court is constrained to discard such evidence which is not free from suspicion and where the possibility of contamination and tampering cannot be ruled out. Shadow is cast on the genuineness of FSL findings in such a case, which cannot be shirked off, especially when the victim has also not supported the case of the prosecution. Mere assertions of the samples being duly sealed are insufficient to rule out possibility of tampering. Even so, when the samples are under such doubt, such blemished scientific evidence ought not to be heralded to convict the accused, even if the allegations are of a sensitive nature.

33. It is also argued that the victim had initially alleged that the rape took place on 01.07.2016 and 02.07.2016, and the presence of sperm in the samples drawn after five days renders the samples circumspect. It is further argued that although the learned Trial Court has noted that spermatozoa may be found in vagina up to seventeen days after sexual intercourse, however, the FSL report mentions that *sperm* was found and not spermatozoa. While there appears to be some merit in the said assertion, however, having found the FSL report to be unreliable due

to the infirmity in proving safe custody of samples as well as the delay in sending the same for examination, this Court is not inclined to delve into the said aspect.

34. Pertinently, although POCSO Act provides for certain presumptions, the threshold of proving charges beyond reasonable doubt is not diluted in such cases and the presumptions can be rebutted. In the opinion of this Court, the presumptions under POCSO Act do not aid the case of the prosecution in the present case. It is pertinent to note that while Section 29 of the POCSO Act provides for a presumption as to the commission of certain offences, the said presumption is not absolute in nature and only comes into play once the prosecution establishes the foundational facts [Ref. ***Altaf Ahmed v. State (GNCTD of Delhi)*: 2020 SCC OnLine Del 1938**]. For this reason, in order to trigger the presumption, it is incumbent on the prosecution to lead evidence to prove the foundational facts. If the prosecution fails to do so, in the opinion of this Court, a negative burden cannot be thrust upon the shoulders of the accused to prove otherwise.

35. In the present case, a perusal of the material on record indicates that the case of the prosecution, which is essentially based on the FSL report, is marred with blemishes and fails to establish the case against the appellant beyond reasonable doubt.

36. The infirmities are not just in the testimonies of the witnesses, but also in the integrity and reliability of the scientific findings. In

such circumstances, the conviction of the appellant cannot be sustained.

37. At this juncture, this Court finds itself constrained to note that despite *repeated* emphasis on safe handling of samples and need for expediently sending the samples to FSL being emphasized in multiple cases, unfortunately, such lapses of prosecution continue to persist. It is due to this that trial courts ought to take a proactive role to ensure that such lamentable situations which can be avoided by calling for relevant evidence, if necessary, which may be lost after lapse of time at time of appeal, and by putting relevant questions at the time of examination of witnesses that are required to unearth the truth. Accountability should also be levelled on police officials to help avoid such incidents as much as possible.

Conclusion

38. The solemn duty of a criminal court is not to convict merely because an allegation is made, but to convict only when the allegation is proven beyond reasonable doubt.

39. It is a settled principle that when two views are possible— one pointing to the guilt of the accused and the other towards his innocence — the view favourable to the accused must be adopted. This principle is not a technical rule; it is rooted in the foundational notion that no person shall be deprived of liberty except through proof that satisfies the judicial conscience.

40. In the light of the foregoing, this Court is of the view that the conviction recorded by the learned Trial Court is unsustainable. The evidence led by the prosecution does not meet the standard of proof required in a case of this nature. The benefit of doubt must go to the appellant.

41. Accordingly, the impugned judgment and impugned order on sentence are set aside.

42. The appellant is acquitted of all charges. He shall be released forthwith, if not required in any other case.

43. The appeal is allowed and disposed of in the aforesaid terms. Pending application also stands disposed of.

44. This Court appreciates the efforts put in by Mr. Asheesh Jain, Senior Advocate, learned *Amicus Curiae* in assisting the Court.

45. The Delhi High Court Legal services Committee is directed to pay the fees of the learned *Amicus Curiae* as per its scheduled rates and rules.

46. A copy of this order be sent to the concerned Jail Superintendent for necessary compliance.

AMIT MAHAJAN, J

JANUARY 09, 2026/*DU*