IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Reserved on: 29.08.2026
Pronounced on: 31.10.2026
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Whether the operative part or full judgment is pronounced: ***Full***

CrlA (S) No.10/2022

1. Sanjeev Sharma alias Sanju, age: 29 years
   S/o Tilak Raj
2. Rashpal Sharma, age: 38 years
   S/o Nanak Chand
3. Rakesh Singh, age:30 years
   S/o Kartar Singh
   All residents of Village Kanthan Tehsil Mahore District Reasi.

... APPELLANT(S)

Through: - Mr. G. S. Thakur, Advocate,
Mr. Ajay Singh Kotwal, Advocate.

Vs.

Union Territory of Jammu and Kashmir
Through Station House Officer,
Police Station, Arnas.

...RESPONDENT(S)

Through: - Mr. Sumeet Bhatia, GA.

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) This appeal is directed against the judgment of conviction dated 30th July, 2022, passed by the learned Principal Sessions Judge, Reasi (for short "he trial court") in the challan titled "**State** vs. **Rakesh Singh and others**", arising out of FIR No.89/2014 under Sections 363, 376 and 109 RPC registered with Police Station, Arnas, whereby the

appellants have been convicted for commission of offences under Sections 363 and 376 RPC. The appellants have also assailed the order of sentence dated 30th July, 2022, whereby they have been sentenced to rigorous imprisonment for a period of ten years and fine of Rs.10,000/- for commission of the offence under Section 376 of RPC, rigorous imprisonment for a period of six months and fine of Rs.500/- for commission of the offence under Section 363 of RPC, and in default of payment of fine, the appellants have been directed to undergo further imprisonment for a period of three months.

Grounds of Challenge:

2) The appellants have assailed the judgment of conviction and order of sentence on the grounds that the victim had made contradictory statement before the learned trial court vis-à-vis the statement recorded under Section 164-A of Cr.P.C, as in her statement before the learned trial court, she had stated the place of occurrence as a jungle/nallah, whereas in the statement recorded under Section 164-A Cr.P.C., she had stated the roof of the house as the place of occurrence. It is also urged that the medical examination of the victim did not establish the commission of rape and further that the FIR was lodged belatedly, after

a delay of four days. It is also contended by the appellants that the learned trial court has not complied with the mandate of Section 119 of the Evidence Act and in the absence of mandatory compliance with the provisions of Section 119 of the Evidence Act, the statement of the victim could not have been relied upon by the learned trial court to convict the appellants.

Submissions:

3) Mr. G. S. Thakur, learned counsel appearing for appellant Nos.1 and 3, has laid much stress that the learned trial court has not complied with the mandate of Section 119 of the Evidence Act. He further submits that, at one stage of the proceedings before the learned trial court, the prosecution itself moved an application for re-examination of the victim and the interpreter PW Roshan Bhan, thereby admitting that there was an irregularity in recording statement of the victim on account of her being a 'deaf and dumb witness', as such, the conviction of the appellants cannot be sustained. Learned counsel further contends the medical evidence doesn't corroborate the statement of the victim with regard to commission of offence of rape and even the apparels worn by the victim have not been proved to have been seized by the Investigating Officer, which further

creates doubt about the prosecution story, notwithstanding the fact that the FSL report reveals that there were stains of blood and semen on the trouser sent for forensic examination. Learned counsel has vehemently argued that in the statement of the victim recorded under Section 164-A Cr.P.C., the place of occurrence was shown to be the roof of the house, whereas in her statement before the learned trial court, an altogether new place of occurrence has been stated by the victim, as such, the appellants could not have been convicted on the basis of the solitary statement of the victim. He has relied upon the judgments of the Hon'ble Apex Court in "**Ram Singh Vs. The State of Himachal Pradesh", 2026INSC 330**, "**Munna Pandey Vs. State of Bihar", AIR 2023 SC 788** and "**Dola and Anr. Vs. State of Odisha", (2018) 18 SCC 695** and Division bench of this court in **"State of J&K Vs. Ramesh Chander", 2017(6) JKJ 206(HC)**.

4) Mr. Ajay Kotwal, learned counsel appearing for appellant Rashpal, has submitted that there is absolutely no evidence against appellant-Rashpal, as such, he could not have been convicted by the learned trial court.

5) *Per contra*, Mr. Sumeet Bhatia, learned Government Advocate, appearing for the respondent, has argued that the

learned trial court has rightly appreciated the evidence of the victim and, as such, there is no illegality in the impugned judgment of conviction. He has vehemently argued that as per report of ENT Specialist, Govt. Hospital Sarwal, the victim was having difficulty in speech. Learned Government Advocate has also placed reliance upon the examination report of Audiologist & Speech Pathologist of ASCOMS Hospital, Batra, Sidhra, to submit that the victim was not dysphonic.

6) Heard and perused the record.

Prosecution Case:

7) The facts necessary for the disposal of the present appeal are that on 18th November, 2014, at 1500 hours, PW-1, the complainant-father of the victim, submitted a written application with SHO, Police Station, Arnas, stating therein that on 16th November, 2014, he, along with his wife, had gone to purchase household goods and, on returning home at about 5:00 p.m., his family members informed him that his 11-year-old daughter had gone to the fields to gather leaves for the goats, but did not return home. He, along with family members, went into the jungle to search for his daughter. When they reached in the jungle, they heard someone talking. When he called out his daughter's name,

he saw the accused persons, Rakesh Singh, Sanjeev Kumar, and Rashpal, running away. When he went towards the bushes, he found that his daughter was lying there in an unconscious condition and her clothes were blood-stained. He and his family members took his daughter to his home, where she regained consciousness and narrated that all the three accused persons, finding her alone, came towards her. One of them, who was wearing a black jacket, took her on his shoulders and carried her towards the jungle. When she raised a hue and cry, one of the other two accused caught hold of her legs while the other covered her mouth, and they took her towards the bushes. The accused who was wearing the black jacket raped her, whereas the other two accused caught hold of her. She became unconscious and did not know as to what happened thereafter. The complainant further stated that when he saw the three accused running away, accused Rakesh Singh was wearing a black jacket. He stated that, as the occurrence had taken place in a remote area, as such, he could not reach the police station and inform the police immediately.

8) On receipt of the aforesaid report/application, FIR No.89 of 2014 was registered on 18th November, 2014, for commission of offences under Section 376 and 109 RPC.

During investigation of the case, the statement of the victim was recorded before the learned Magistrate under Section 164-A of Cr.P.C. The victim was medically examined by the Medical Officer. Her clothes were also seized and sent to the FSL for chemical examination. The trouser/shalwar allegedly worn by the victim was found to have seminal as well as blood stains, whereas the shirt was found to be blood-stained. After conclusion of the investigation, chargesheet was filed against the appellants for commission of the offences under sections 363,376/109 R.P.C before the Court of the Chief Judicial Magistrate, Reasi, on 20th February, 2015, which was thereafter committed to the learned trial court.

9) Appellants Rakesh Singh and Sanjeev Sharma were charged for commission of offences under Sections 376 and 363 RPC in terms of order dated 5th May, 2015, whereas the appellant Rashpal Sharma was charged for commission of offences under Sections 363/109 RPC. Out of 18 witnesses cited by the prosecution, 13 witnesses were examined.

10) After recording the statements of the appellants under Section 342 of the J&K Cr.P.C., the appellants were provided an opportunity to lead evidence in their defence, but they did not lead any defence evidence.

11) After hearing the parties and upon appreciation of the evidence available on record, the learned trial court convicted and sentenced the appellants in the manner mentioned hereinabove.

12) In order to appreciate the contentions raised by the appellants, it is deemed appropriate to briefly summarize the evidence led by the prosecution.

PROSECUTION EVIDENCE

a. **PW-10 Romesh Bhan, (Interpreter, posted as Principal, School for the Hearing Impaired)** has stated that he has been posted as the principal since 1995. Prior to that, he had been serving in the same school as the headmaster since 1981. The said school was established by the Jammu and Kashmir Samaj Kalyan Kendra, which is a registered NGO. In the year 1977, he received training in the education of the deaf and dumb at Lady Noyce Secondary School and Teacher Training College, Delhi. He completed the said training over a period of one year. During this training, he was imparted education and training relating to the teaching of deaf and dumb people. On the basis of this training, he was initially appointed as the Headmaster of the aforesaid school,

and thereafter, since 1995, he has been serving as the Principal. After completing the training in the education of the deaf and dumb, he also obtained a diploma. By virtue of this training and diploma, he possesses expertise in the education of the deaf and dumb, and can communicate effectively with them, and is capable of understanding what they say. He stated on oath that whatever would be put to victim by the Court, by the PP or by the ld. defence counsel, he shall translate the same before the Court in an impartial manner.

b. **PW-2 (victim)** stated that she knows the accused present in the Court. The accused reside in their house, in a village, which is at a distance. She had gone to the field (Bhadi) to collect leaves for the goats. She does not know the names of the accused. While she was cutting leaves, someone caught hold of her from behind. There was a man with a small beard standing on the roof of a house, but he did nothing. Thereafter, the accused present in the Court, (the witness identified the accused by pointing towards him) whose name in the challan is recorded as Rakesh Singh and the other accused,

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Sanju (whom the witness has identified by holding his hand), took her into the *nala* and committed a shameful act (*sharam ki bat*) with her. After the said shameful act, she remained lying unconscious at the spot. Thereafter, she does not know where she was taken or who took her. She was taken to a doctor, but she does not know who took her there. Her statement was recorded in the Court prior to that day. The thumb impression affixed on her statement recorded under Section 164-A Cr.P.C. was shown to her, for the purpose of identification. However, she did not furnish any satisfactory reply in this regard. The Interpreter present in Court identified his signatures, whereupon the same was marked as **RB**. The Interpreter stated that, in his presence, the victim had also affixed her thumb impressions on the said statement. **During Cross-examination** conducted by the learned counsel for the appellant Rashpal Sharma**,** she stated that the fact mentioned in her statement, that the accused had committed an act of shame with her, was not disclosed by her to her parents. She had not gone to the police regarding the said occurrence. She did not know the name of the boy with the small beard. The police had

not come to her house. In her previous statement recorded under Section 164-A Cr.P.C., she had also stated before the Court that she had been taken to the *nallah* where the act of shame was committed with her. However, on perusal of the statement recorded under Section 164-A Cr.P.C., it was found that there was no mention of the *nallah* therein. This *nallah is* near the field (*baadhi*) from where she was cutting leaves. There were no residential houses near *nallah,* however, there were trees and plants. She regained consciousness on the next day after the occurrence. She did not know whether she had gone to a doctor or not. She had also come to the Court along with her parents to give her statement, and no police official was accompanying her. She has 5-6 sisters and one brother. **During her cross-examination by the learned counsel representing the appellant Sanjeev Sharma**, she stated that she had five goats. She had gone alone to the field (*badhi*) to collect leaves for her goats. That place was far away from her house. When she had gone to get leaves, nobody else was accompanying her, and she had gone alone. She did not meet anyone on the way. The clothes worn by her on the day of occurrence

were kept in her house at Arnas. She neither wore those clothes thereafter nor was she wearing them now. Those clothes were still lying in the *Arnas*. The clothes were dirty and not washed. There was no water in the *nallah* where the accused persons had committed the shameful act with her. The police had not done anything. When the shameful act was committed with her, she had pain in her abdomen and there was bleeding also. Except for that, she had not sustained any other injury. The pain continued till the next day. No bleeding had occurred from any place other than her abdomen. *Keshu* and *Sanju* used to talk to each other, due to which she came to know their names. Before the occurrence, she did not know *Sanju* and *Keshu*. Prior to the date of occurrence, she had not seen the aforesaid accused in her village. After the occurrence, when she regained consciousness in the *nallah*, nobody was present there. She did not know how she reached her house. No further question was asked.

c. **PW-01 (Complainant and father of the victim)** in his examination-in-chief stated that he knows the accused present in the Court. The victim

is his daughter. His daughter speaks a little, which is understandable to him. He stated that on 16.11.2014, function was held at the house of his uncle, Puran Singh, and the accused present in the Court, namely *Rakesh Singh*, *Rashpaul* and *Sanjay Kumar*, also attended that function. At about 2:00 p.m., he and his wife went to the market to purchase some articles. At about 5:30 p.m. on the same day, when they returned, his other children were searching for the victim, who was missing from the house. He inquired of his children as to since when the victim had been missing. His children stated that approximately forty-five minutes prior, the victim had left for their land to collect fodder for the goats but did not return. Thereupon, all of them started searching for the victim. When he reached his land, he found that three branches cut from the tree were lying there, and a sickle was also lying. Thereafter, they all continued searching while calling out the victim's name. There were thick bushes beyond their land, and the accused present in court were passing by those bushes. When the accused saw them, they fled from the spot. Upon seeing the accused passing near the bushes and then running away after

noticing him and the others, he and his family members became suspicious as to why the accused persons had run away. Due to suspicion, all of them went towards the bushes, where they found the victim was lying without clothes in the bushes. Clothes were blood stained. He lifted the victim from the spot and brought her home. By then it had turned dark. The next morning, he took the victim to the Police Station Arnas to lodge a report. Thereafter, the police took him and the victim to the Government Hospital, *Arnas*, for her treatment and medical checkup. At the hospital, the victim was administered injections and medicines to stop the bleeding. When the victim recovered to some extent, he and the police personnel asked her about the incident. The victim told them that while she was cutting leaves in their land, and had cut three branches, the accused present in the Court came there. One of the accused lifted her on his shoulder, and when she raised an alarm, another accused gagged her mouth and took her down into the bushes, where they committed rape upon her. His statement was recorded at the Police Station, before the Court, and at the hospital. He admitted the

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contents of application and identified his signature on the same, whereupon it was marked as EXT-P1. He also identified his signatures on the FIR and admitted its contents. It was marked as EXT-P1/1. He also identified his signatures on his statement recorded under Section 164-A Cr.P.C. marked as EXT-P1/2. The police had taken the victim to *Reasi Hospital*, where her medical examination was conducted. **During Cross examination,** he stated that he was not carrying any torch with him at that time. It is correct that, he mentioned in his statement under Section 164-A Cr.P.C. that, "On the following day, when his daughter regained consciousness, she stated that one boy wearing a black jacket had lifted the victim on his shoulder, while another had covered her mouth and they had taken her into the forest and thereafter the victim did not know what had happened." He reached Police Station Arnas along with his daughter at about 10:00–11:00 a.m. He, along with the police officials, took his daughter to the hospital. One SHO, the Investigating Officer, one Head Constable (*hawaldar*) and one Constable accompanied them to District Hospital, Arnas. He further stated that when he had

gone to the Police Station with his daughter at about 10:00–11:00 a.m. on 17.11.2014, he had submitted the application for registration of the FIR. The application marked as EXPW-P1 was drafted by one Bansi Lal, who used to write applications in Arnas Bazaar. He, along with his daughter and the police, reached Government Hospital, Arnas at about 12:00 noon as the girl was in a serious condition. It was correct that the police recorded the statement of his daughter in the hospital on 17.11.2014. His statement was also recorded by the police at Government Hospital, Arnas on 17.11.2014. He admitted that part of the statement under Section 164-A Cr.P.C. wherein he had stated that, "When his daughter regained consciousness, she stated that one boy wearing a black jacket had lifted her on his shoulder and another had gagged her mouth and she was taken into the forest, and thereafter she did not know what had happened to her," was correct; however, he stated that the statement given by him before the Court today was not correct. He stated that he remained with his daughter at Government Hospital, Arnas on 17.11.2014, and on the following day, i.e., 18.11.2014, he, along with the police, took

his daughter to Government Hospital, Reasi. Blood was oozing from her urinary passage. Even when he reached Reasi Hospital along with the police, blood was still coming from her urinary passage. He further stated that on 18.11.2014 he had reached Government Hospital, Reasi with his daughter at about 2:30 p.m. The medical examination of his daughter at Government Hospital, Reasi took about 2–3 hours. After the medical examination of his daughter on 18.11.2014, he did not go to Police Station, Arnas, but instead returned home. On 25.11.2014 the police came to his house and carried out investigation in his presence. The police inspected the place of occurrence in his presence on 25.11.2014 and prepared the site plan. Apart from that, no other proceedings were conducted that day. Police had also recorded the statements of the witnesses. Police recorded the statements of PW Balak Ram, victim. (Member, Panchayat) Sheeda Bakarwal, Bansi Lal, Rita Devi, Sunita Kumari and Shani Devi in his presence on 25.11.2014. He further stated that when his daughter was found, it was dark and therefore she could not be taken to the hospital at that time. After about 10–15 days, new

SHO came on the spot for the purpose of investigation. The new SHO also visited the place of occurrence. During investigation, he inspected the spot, prepared the site plan and recorded the statements of the witnesses. Apart from that, new SHO did not conduct any other proceedings in his presence. He further stated that his daughter had never told him that the wrongful act had been committed with her inside any house. She was found in the forest. He has four daughters, and none of them has ever instituted any case against any person. His daughter regained consciousness on 17.11.2014, and throughout the previous night she had remained unconscious at home. He denied the suggestion that any of his daughters had filed any proceedings against any local resident before the Court at Reasi.

d. **PW-03 (Mother of the victim)** has stated that she knows the accused present in Court, who are residents of her area. Accused Sanjeev is a resident of Kori village. Accused Rakesh and Rashpal are residents of Surangi, which is at distance of 4-5 kilometers from her village. Victim is her daughter,

whose age is about 11 years. She (her daughter) cannot see with one eye and is dumb. The incident took place on the 6th day of the 11th month of the previous year. The function was arranged on the birth of grandson of Puran Singh. The accused present in Court had come there at about 11:00 a.m. to take food. House of Puran Singh is adjacent to her house, at a distance of 2-3 *jareeb*. She had seen the accused from her house taking food at the house of Puran Singh. Thereafter, she and her husband went to the shop of Ghulam Rasool Sarpanch, situated at Judda. They had gone there to purchase household articles and returned at about 4:00/5:00 p.m. She (the witness) has four daughters and two sons. On reaching home, they asked the children about the victim. They stated that she had gone to *baadi* to cut leaves for the goat. They called out for victim, but there was no sign of her. Thereafter, they went out in search of her. When they were passing through their vegetable *baadi*, they saw three cut branches of a tree lying on the ground and a cleaver (*paathi*) was also lying there. They thought that she might have fallen somewhere, and went a little distance towards the lower side, where they saw the accused

running away from the bushes. They became suspicious as to why the accused were running away after seeing them. Thereafter, she and others reached the spot wherefrom the accused had fled and found the victim lying unconscious. She was lying completely naked, her clothes were stained with blood, and blood was also scattered on her legs. Thereafter, she and her daughters went near the victim and put clothes on her. Later her husband and son also came to the spot. Thereafter, the victim was lifted from the spot in an unconscious condition and brought home. By that time, it turned dark and therefore the next early morning, they went to Police Station Arnas and lodged a report, and from there the police personnel accompanied them and took the victim to Arnas Hospital. The victim was treated at hospital, and she regained consciousness at about 10:00-10:30 a.m. Thereafter they asked her as to what had happened to her, where upon, she stated that she had gone to *bhadi* to cut leaves and had cut three branches, and her cleaver (*paathi*) had fallen on the ground. When she came down to the ground, the accused came there. Rakesh Singh lifted her on his shoulder and when she raised alarm, accused

Sanjeev closed her mouth. They took her down to a distance into the bushes and accused Keshu committed sexual assault upon her, whose name was Rakesh Singh. The other accused Sanju also committed sexual assault upon her. She stated that her statement was recorded by the police. The police had come to her village. The police inspected the spot and prepared the site plan at the spot itself. She did not remember any other proceedings. **During cross-examination**, she deposed that she had also stated in her statement before the police that on the day of occurrence, a function had been organized at the house of Puran Singh in connection with the birth of his grandson, whereas the same has not been recorded in her statement under Section 161 Cr.P.C. She had also stated in her statement under Section 161 Cr.P.C. before the police, that she had gone with her husband to purchase household articles at about 1:30/2:00 p.m., whereas the time of 1:30 p.m. has not been mentioned in her statement under Section 161 Cr.P.C. She had stated the time of reaching home from the shop as about 4:00 p.m., whereas no such time has been mentioned in her statement under Section 161 Cr.P.C. She had stated

the name of Ghulam Rasool's shop in her statement to the police, whereas his name has not been mentioned in the statement under Section 161 Cr.P.C. She had also deposed, in her statement under Section 161 Cr.P.C. that when they reached near the place of occurrence in search of the victim, the accused looked towards them for five minutes and thereafter ran away, whereas there is no mention of this fact in her statement under Section 161 Cr.P.C. She had also deposed, in her statement under Section 161 Cr.P.C. that they had seen the girl at the spot drenched in blood and there was also blood on her legs, whereas there is no mention of blood-stained clothes in her statement under Section 161 Cr.P.C. When the girl was brought home, no conversation took place with her at that time, and at Arnas Hospital, after regaining consciousness, the girl told them about the occurrence and the accused. She had mentioned in her statement to the police that after the victim regained consciousness at Arnas Hospital, on being asked by them, she had told them about the occurrence and the accused, whereas no such fact has been recorded in her statement under Section

161 Cr.P.C. She had also stated in her statement to the police that accused Rakesh had lifted the victim on his shoulder, whereas no such fact has been recorded in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that the victim's mouth was gagged, whereas this fact is not mentioned in the statement under Section 161 Cr.P.C. The next morning, they left their house for the police station while it was still dark and reached the police station by sunrise. At that time, her husband, son and daughters accompanied her. No one else was with them. When they went to the police station, the police recorded their statements. During winters, the sun sets at about 6-7 p.m. They had submitted a written application at the police station regarding the occurrence, which was submitted by her husband. First, they went from the police station to the hospital and thereafter her husband got the application written and submitted it at the police station. She does not remember her date of birth. At present, she does not remember the date of birth of the victim orally, whereas the record of the same was maintained at home. They had also given documentary proof

regarding the age of the victim to the police. She had stated in her statement to the police that one eye of the victim was not normal, and she could not see with that eye. The place of occurrence where the victim was lying unconscious was at a distance of 4-5 *jareeb* from her house. The house of Puran Chand was at a distance of about 2-4 *jareeb* from her house. They had made inquiries about the victim from the people residing in the nearby houses.

e. **PW-06 (Sister of the Victim)**, in her examination in chief stated that she knew the accused present in Court. The accused were residents of her village. Last year, on 16th November, there was function in the house of Puran Singh on the occassion of birth of his grandson. At about 1:00 p.m. that day, her parents went to Judda to purchase household articles. She was cleaning her new house and her paternal uncle's daughter (PW-7) was also with her, whose house was adjoining her house. At about 4:00 p.m. that day, her younger sister (victim) went to their land adjoining the house to bring leaves for the goats. When for half an hour, victim did not return home, they went in search of her. After searching for

about 10-15 minutes, her parents returned home and asked whom they were searching for, upon which she told them that victim had gone to bring leaves for the goats but had not returned. It was getting dark. Her parents kept the purchased provisions in the house and started searching for her in the land. During search, they saw three branches of the *kainthi* tree lying on the ground in the land and a sickle (*daraati*) was also lying there. They thought that she might have fallen from the tree and died, but when they went a little further, there were thick bushes and found the victim lying unconscious. Her clothes were soaked in blood. The accused present in Court were standing in front of her and, on seeing them, they ran away from there. Thereafter, they lifted the victim and brought her home. By then it had turned dark. They remained at home during the night and in the morning brought victim to Police Station Arnas. The police personnel told them that they should bring a written report, after which action would be taken. Thereafter, her father got the report written from the market, brought and submitted it at the police station. From there, the victim was taken to Arnas Hospital, where

she was treated. She regained consciousness at about 10:00 a.m. and thereafter told them that she had gone to bring leaves for the goats and had just cut three branches from the tree and thrown them on the ground, when the sickle slipped from her hand and fell on the ground. Three boys (accused) came. Rakesh Singh lifted her on his back and took her into the bushes. Sanjay closed her mouth. Firstly, Rakesh committed sexual assault upon her and thereafter Sanjay also committed sexual assault upon her, whereafter she became unconscious. Rakesh Singh had violated the victim. Her statement was recorded by the police at her house. **During cross-examination**, she stated that she had mentioned in her statement under Section 161 Cr.P.C. that on the day of occurrence, during the afternoon, there was a feast at the house of Puran Chand on the occasion of the birth of his grandson, and the accused present in Court also participated. There was no mention of this fact in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that at about 1:00 p.m. her parents had gone to purchase provisions, whereas there was no mention of this fact

in her statement under Section 161 Cr.P.C. She was present at her house in the afternoon when the feast was being held at the house of Puran Chand. She had also gone to the feast at the house of Puran Chand at about 11:00 a.m. She had got it recorded in her statement under Section 161 Cr.P.C. that on that day she, along with (PW-7), was cleaning her new house, whereas this fact has not been mentioned in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that when she went in search of her sister, three branches and one tree were lying on the ground, whereas there was no mention of this fact in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that she had searched for victim for about 15-20 minutes before her parents returned home, whereas there was no mention of this fact in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that next day she had gone to the police station along with her parents and her sister, whereas this fact has not been mentioned in her statement under Section 161 Cr.P.C. She had stated in her statement under

Section 161 Cr.P.C. that the police personnel at Police Station Arnas had asked her father to get an application written and thereafter her father got an application written from somewhere and submitted it to the police personnel, whereas there is no mention of this fact in her statement under Section 161 Cr.P.C. She had also stated in her statement under Section 161 Cr.P.C. that after going to the police station she had also gone with her sister to PHC Arnas and, after the victim regained consciousness at about 10:00 a.m. the following morning, the victim had informed her about the occurrence, whereas this fact has not been mentioned in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that she came to know from the victim that on the day of occurrence accused Rakesh Singh was wearing a black jacket, whereas this fact is missing in her statement under Section 161 Cr.P.C. She had stated in her statement under Section 161 Cr.P.C. that the victim was lifted on the back by accused Rakesh Singh and accused Sanjay had closed her mouth, whereas this fact again was missing in her statement under Section 161 Cr.P.C.

During winters, in the hilly area where she resides, it gets dark at about 8:00 p.m. When she went to the place of occurrence, she saw that the victim was wearing a kurta and her salwar was below her legs, and the salwar and kurta were soaked with blood. She had stated in her statement under Section 161 Cr.P.C. that the victim regained consciousness at Arnas Hospital, and she had got the same fact recorded in her statement under Section 161 Cr.P.C.; however, in her statement under Section 161 Cr.P.C., it was mentioned that her sister regained consciousness after she was brought from the spot. When she went out with her parents in search of the victim, she and her parents were loudly calling out the victim. She had stated in her statement under Section 161 Cr.P.C. that when she reached the spot along with her parents, the accused present in Court were standing nearby at the spot and the accused looked towards her and her parents for about two minutes. It is correct that when she went to the police station along with her parents the next day after the occurrence after bringing the victim, she had not regained consciousness and was unconscious. She and her parents came to know

about the occurrence for the first time at PHC Arnas when the victim regained consciousness. Her statement under Section 161 Cr.P.C. was recorded by the police 7-8 days after the occurrence.

f. **PW-07 (cousin of the victim)** stated that she knew the accused present in Court, who were the residents of her village. On 6-11-2014, Puran Chand, had arranged a feast (*Dawat*) at his house, and the accused also attended the said feast. That day, at about 2:00 p.m., the parents of the victim had gone to Judda for purchasing household articles. She was present at the house of the parents of the victim, who were related to her as her paternal uncle and aunt (*chacha, chachi*). They (the witness and others) sent the victim, to their land near the house to cut leaves for the goats. When the victim did not return till about 4:00 p.m., they started searching for her. At about 5:00 p.m., the parents of the victim also returned home. They informed her about the disappearance of the victim, whereafter they also joined them in searching for the victim. When they went to the land, they saw three cut branches of a tree lying on the ground and also

found one sickle (*draat*) lying there. They thought that she might have fallen from the tree. Thereafter, when they proceeded a little ahead, they saw the accused present in Court standing in thick bushes. On seeing them (the witness and others), the accused ran away from there. Thereafter, when they went near the bushes, the victim was found lying in an unconscious condition. Her clothes were soaked in blood. They lifted her from the spot and brought her home. Next morning, she along with her paternal uncle, aunt, Pw-6, brother of the victim and the victim, went to Police Station Arnas. The police personnel asked the father of the victim to bring a written application. The father of the victim got an application written from somewhere and brought it. Thereafter, she, along with other witnesses and the victim went to PHC Arnas, where the victim was treated and she regained consciousness. On being asked, the victim told them that she was cutting leaves for the goats and was sitting on the tree. She had cut only three branches when her sickle (*Draat*) fell down, and when she came down to pick up the sickle, the accused came there. Accused Rakesh Singh lifted her on his shoulder, whereas the other

accused-Sanjay closed the victim's mouth with his hands, and they took her into the bushes. There, accused Rakesh Singh first committed a wrongful act with the victim and thereafter accused Sanjay also committed a wrongful act with her, after which the victim became unconscious. By wrongful act, she meant that they had violated the victim. Her statement was recorded by the police. **During cross-examination**, she stated that she had stated in her statement recorded under Section 161 Cr.P.C. that on the day of occurrence, there was a feast at the house of Puran Singh, whereas this fact has not been mentioned in her statement recorded under Section 161 Cr.P.C. She had stated in her statement recorded under Section 161 Cr.P.C. that she had learnt from the victim that, on the day of occurrence, accused Rakesh Singh was wearing a black jacket and had lifted the victim on his shoulder, and that accused Sanjay had covered the mouth of the victim with his hand, whereas this fact has not been mentioned in her statement recorded under Section 161 Cr.P.C. The victim regained consciousness at about 10:00 a.m. on the following day at PHC Arnas. When the victim was found by them at the place of

occurrence, it had not yet turned dark. During winters, darkness sets in soon after sunset, though she could not state specifically at what time it occurs. She had stated in her statement recorded under Section 161 Cr.P.C. that, when she went along with the parents of the victim in search of the victim, three branches were lying on the ground, whereas this fact has not been mentioned in her statement recorded under Section 161 Cr.P.C. The victim had gone to her land at around 3:00 p.m. to cut leaves. Had anyone shouted or called out from her land, the sound could easily have been heard at the place of occurrence. When she reached the place of occurrence along with the parents of the victim, the accused present in the Court fled towards the other side. She could not state as to who was running ahead and who was behind, when they fled. At that time, accused Sanjay was wearing a white-coloured shirt and black-coloured *pyjama* (trouser). She had also stated about the clothes in her statement recorded under Section 161 Cr.P.C., whereas there was no mention of the clothes in her statement recorded under Section 161 Cr.P.C. It was correct that her parents had reached the place of occurrence

along with the parents of the victim, where the victim was lying naked without clothes on her body, and blood was coming from the private part of the victim. When the victim was brought to the hospital, blood was still coming from her private part. When they went to the Police Station, blood was still coming from private part of the girl. They had gone to the hospital and the Police Station on the following day of the occurrence.

g. **PW-08 Bansi Lal** and **PW-09 Sheeda** turned hostile and did not support the prosecution. Despite cross-examination by the learned P.P, no incriminating material could be extracted.

h. **PW-11 Dr Renu Sudha**, then consultant Gynecologist District Hospital Reasi, on examination by Ld. PP, stated that on 19.11.2014, she was posted as Gynecologist in District Hospital Reasi and had examined patient xxxxxxxx, who was referred from CHC Arnas to District Hospital Reasi for Gynae and obst examination and was accompanied by her mother and father. On General physical examination, she was found conscious, cooperative with left eye blindness, no mark of violence or injury seen on her body. Breast developed. Local examination: No mark of violence or injury seen on

external genitalia or inner side of the thighs. Hymen intact, Vaginal introitus did not allow one finger, two vaginal slides taken from vaginal introitus, sealed, packed and sent to FSL for presence of human Spermatozoa. On the receipt of FSL report dated 18.02.2015 it was found that there was no spermatozoa seen in the vaginal slides. She had also given her final opinion on the basis of general physical examination, local examination and FSL report to the effect that there was no finding suggestive of sexual assault seen on her at the time of the examination. The medical certificates dated 19.11.2014 and 30.04.2016 issued by her on the file, were in her handwriting and bore her seal and signatures also. The certificates were marked as EXTP-Dr R and EXTP-Dr R/1. **During cross- examination** by defence counsel, she stated that from her findings recorded in certificate EXTP-Dr. S and Dr.S/1, no case suggestive of sexual intercourse was made out.

i. **PW-No.12 I.A. Malik Scientific Officer Biology/Serology FSL Jammu**, in examination in chief stated that on 13-12-2014, he had received two sealed packets through ASI Om Parkash No.826354/EXJ P/S Arnas in connection with case FIR No.89/2014 U/S 376/109/RPC P/S-Arnas. Packet marked A was sealed with Nine intact seals Along with the stamp impression

of the Naib Tehsildar Executive Magistrate Arnas. On opening it was found to contain a brick red colour Salwar which was marked as Exhibit No.M-60/2015. The exhibit was apparently stained with blood /semen like stains and when examined under U/V light source showed fluorescence characteristics of seminal stain. Packet marked B was sealed with eight intact seals. On opening it was found to contain a dirty brownish colour lady's shirt which was marked as Exhibit No.M-61/2015. The Exhibit was apparently stained with only blood like stains and when examined under U/V light source did not show fluorescence characteristics of seminal stain. However, the stained portions from the Exhibit M-60/2015 and suspected portions from the Exhibit M-61/2015 were subjected to chemical and microscopical examination for the presence of semen/human spermatozoa. Both the above-mentioned Exhibits were also subjected to chemical, microscopical and serological examination for the presence, origin and groups of blood.

1. Various chemical and microscopical examinations revealed the presence of semen /human spermatozoa in the Exhibit no. M-60/2015 only.
2. Various chemical and microscopical examinations revealed the presence of Blood in the Exhibits Nos. M-60/2015 and M-61/2-15.

Result of Serological examination is as under :

Exhibit No.	Origin	Groups
M-60/2015	Human	Stain insufficient for Grouping.
M-61/2015	Human	Inconclusive due to Presence of interfering Substances.

The FSL report was marked as EXTP-12.

During cross-examination by defence counsel, the witness has stated that he has not mentioned the description of the seal in his Report with which these packets were sealed by Police as well as Executive Magistrate. He does not remember the number of stains/patches found in Exhibit No. M-60/2015. He has not mentioned in the FSL report the size and dimension of the stains found on Exhibit No. M-60/2015. The packets mentioned above received by him in FSL were not accompanied by any CFSL Form, but he had received a letter from SDPO Arnas and the Authority letter of Executive Magistrate Arnas to break open the seal for carrying out the desired chemical analysis. He has not mentioned the colour of the sealed packets which he received for chemical examination. He had not received any copy of the FIR along with above mentioned packets.

j. **PW-16 S.I Ranjeet Singh No. 066743/EXJ**, presently posted at In-charge Police Post, Hari Market Jammu, in his examination in chief, stated that he knew the

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accused present in the Court. The occurrence was of November, 2014, when he was posted as SHO, Police Station Arnas. The occurrence was dated 18-11-2014, when complainant submitted a written application at Police Station Arnas. On the basis thereof, FIR No. 89/2014, for offences under Sections 363, 376 and 109 RPC, was registered at Police Station Arnas and investigation of the case was set into motion. During investigation, he (witness) seized the clothes of victim for the purpose of chemical examination, recorded the statements of the witnesses under section 161 Cr.P.C. He got the medical examination of the victim conducted from Reasi Hospital and obtained the medical opinion/report. He prepared the site plan of the place of occurrence at the spot and, after making inquiries regarding the circumstances of the occurrence, recorded the statements of other witnesses under Section 161 Cr.P.C. He also made inquiries from the victim regarding the occurrence and brought the same into the investigation. During the course of investigation, all the three accused were taken into police custody. Thereafter, he went on leave and further investigation was entrusted to the then SHO, Sanjeev Gupta. The site plan, seizure memo, seizure memo of

shirt and supurdnama of ring are in his handwriting and bear his signatures. **During cross-examination**, he stated that during his investigation, it had not come to his notice who scribed the application in Urdu for the complainant. The complainant had come to the Police Station at about 6:30 p.m. The complainant is a resident of a far-flung area and a poor person, who was hesitant to come to the Police Station, due to which there was a delay in lodging the report. The challan was presented before the Court by the subsequent Investigating Officer, although there was no mention of this fact in the police diary. He had recorded the statement of complainant under Section 161 Cr.P.C. on 18-11-2014. During his investigation, he had not made any inquiry from any shopkeeper where the parents of the victim had gone for shopping on the day of occurrence. However, from their statements it was revealed that on the day of occurrence, the parents of the victim had gone to Judda for purchasing household articles. His investigation revealed no evidence indicating that, on the date of the incident, the accused and the complainant had attended a function at the house of the complainant's relative. No cut branch or axe was recovered from the land surrounding the place

of occurrence. Accused Rakesh Singh had committed rape by holding her from legs, while accused Sanjiv Sharma had covered the mouth of the victim. However, accused Rashpal son of Nanak Chand was standing at some distance, which fact had been disclosed by the victim during the inquiry made from her. When he had handed over the case file to Inspector Sanjeev Gupta, he held no discussion with the Inspector regarding this case. During investigation, he had not got the statement of the victim recorded under Section 164-A Cr.P.C. It is incorrect that the words spoken by the victim could not be understood. According to his investigation, the commission of rape, as per the site plan and the statement of the complainant, was found to have taken place in the bushes. There was no residential house around the place of occurrence. The place where the victim had been cutting leaves was at a distance of approximately 150 feet from the place of occurrence. It is correct that the victim had gone into the fields to bring leaves etc. for the goats. He was busy on election duty, due to which he had deputed Head Constable Mushtaq to get the medical examination conducted. The medical examination of the victim was conducted on 19-11-2014. It is incorrect that the victim and her parents had

gone to the Police Station on 17-11-2014 to lodge the report. While he conducted the investigation of the present case, he had not taken into possession any seizure memo relating to any of the accused. During the course of investigation, from the enquiry regarding the circumstances of the occurrence and from the statements of the witnesses, it was found that on the day of occurrence, the victim was lying unconscious at the place of occurrence, her salwar was opened and there were bloodstains on her clothes. He had not sent the clothes of the victim to the FSL. When the complainant and the victim had come to the Police Station, he had not made any inquiry from them regarding any treatment etc. The complainant had identified the place of occurrence.

k. **PW-17 Inspector Sanjeev Gupta,** No.4745/NGO, stated that on 15-01-2015, he was posted as In-charge SHO Police Station Arnas. He obtained a copy of the statement of PW-1 recorded under Section 164-A Cr.P.C. from the competent Court and placed the same on the case file. **During cross-examination**, the witness stated that in connection with this case, he had only obtained the remand of the accused and, apart from

that, he had not conducted any proceedings in this case.

l. **PW-18 S.I Ghulam Mohd No.795756/EXJ**, in his examination in chief stated that on 16-11-2014, he was posted at police station Arnas. He, along with SHO Sanjeev Gupta came to the court of CJM Reasi to record the statement of the victim. The victim spoke in a stammering manner, and the learned Judge could not understand her. Thereupon, the learned Judge passed a written order directing that the victim be produced before the Principal of the Deaf and Dumb School, Shastri Nagar, Jammu. Accordingly, he produced the victim before the Principal of the Deaf and Dumb School. The principal spoke with her, and the next day, he also accompanied him to the Reasi Court. The Court then recorded the victim's statement under the Principals supervision. The victim stated that Rakesh Kumar, Sanju and Rashpaul had committed rape upon her. He got the medical examination of the victim conducted from ENT at Sarwal Hospital and obtained the physical examination report regarding rape from the Hospital, Reasi, made part of the case file. The challan was in his handwriting. He had seen it and it bore his

signatures and seal. He identified the same. He had prepared the challan, on the basis of Annexure, marked as EXTP-1. **During cross-examination**, he stated that, apart from what he has stated in his statement today, he had not conducted any other investigation. He had no knowledge about the statement of the victim before the Court of the learned CJM, as at that time he was outside the Court. Since the victim spoke in a stammering manner and neither the learned CJM nor the police could understand what she was saying, the learned CJM got her statement recorded in the presence of the Principal. Application EXTP-1 had been given to him at the Police Station by the victim and her father. He did not remember whether this application had been submitted on 17-11-2014 or not. When this application was submitted, the victim was admitted in Arnas Hospital and the same day, she shifted to Reasi Hospital. He had not enquired as to who drafted the said application for the victim's father.

Appreciation:

13) It was vehemently contended by learned counsel for the appellants that the learned Trial Court, while recording the testimony of the victim, has failed to comply with the

mandate of Section 119 of the Evidence Act, as neither was the statement videotaped, nor were the appellants granted an opportunity to cross-examine the interpreter. Although the Trial Court initially allowed the appellants' application to summon the interpreter for cross-examination and issued a summons, it subsequently closed the evidence without recording his statement solely because the witness was elderly and unable to appear due to personal difficulties. It was further submitted that the learned Public Prosecutor had himself moved an application under Section 540 Cr.P.C., thereby admitting to an irregularity in recording the victim's statement.

14) The record reveals that the victim was initially examined by a Medical Officer on 19.11.2014, when she was brought by her parents for a medical examination. Subsequently, on 05.02.2015, she was examined by the Chief Medical Officer (CMO), Government Hospital, Sarwal, who noted that she exhibited stammering speech and referred her to an ENT Specialist. On 06.02.2015, the ENT Specialist examined her and opined that she suffered from dysphonia (difficulty in speaking). She was further examined on 11.02.2015 by the Audiologist and Speech Pathologist at ASCOMS Hospital, Sidhra, who opined that while she was

not dysphonic, she possessed low intellectual abilities with borderline intelligence and misarticulated speech. It is pertinent to note that neither the ENT Specialist nor the Audiologist was examined as a witness; however, the fact remains that the victim suffered from speech impairment, as is evident from the statement of PW-1, PW-3 and PW-18.

15) During investigation of the case, statement of the victim was recorded before the learned Magistrate in terms of Section 164-A of Cr.P.C with the assistance of PW Roshan Bhan, who acted as an interpreter. The learned trial court has observed that as the victim was minor, deaf and dumb, therefore, services of the interpreter, Roshan Bhan, Principal Hearing School, Jammu, were requisitioned as interpreter. The victim was minor at the time of incident, and she was not deaf but had speech impairment only. The victim could not have been labelled as 'deaf and dumb' by the learned trial court.

16) Section 119 of the Evidence Act is extracted as under:

> **119. Witness unable to communicate verbally**. — A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be written and the signs made in open Court, evidence so given shall be deemed to be oral evidence:
> Provided that if the witness is unable to communicate verbally, the Court shall take the assistance of an

> interpreter or a special educator in recording the statement, and such statement shall be video graphed

17) In terms of Section 119 (supra), the statement of the victim was required to be video graphed, which has not been done in the instant case. The appellants seek rejection of the testimony of the victim on the ground that neither Section 119 of the Evidence Act was complied with at the time of recording statement of the victim nor the interpreter, Shri Roshan Bhan, was allowed to be cross-examined and in fact, not produced by the prosecution despite the orders passed by the learned trial court and, as such, the evidence of the victim becomes doubtful and deserves to be rejected.

18) The record depicts that prior to recording of statement of the victim on 9th July, 2015, Shri Roshan Bhan was examined by the court, wherein he has deposed about his qualification, experience and expertise in the education of deaf and dumb students and he had sworn before the learned trial court that he would translate statement of the victim in an impartial manner. After satisfying itself about the competence of the interpreter, the learned trial court proceeded to record statement of the victim. Certain questions were put by the trial court to the victim, which were duly replied to by her and thereafter the learned trial court recorded the statement of the victim without

administering oath to her on account of her physical disability. It is not the case of the appellants that the interpreter was not independent. In her statement before the trial court, the victim, by pointing towards appellant Rakesh Singh and other accused Sanjeev Sharma, stated that they took her to the stream and committed shameful act with her, though she could not furnish a satisfactory reply with regard to her statement recorded under Section 164-A of Cr. P. C. It needs to be noted that the victim was cross-examined only by accused No.2 and 3 i.e. appellants No.1 and 2 and not by appellant No.3. She was confronted with her statement recorded under section 164-A Cr.P.C during cross-examination that in her statement recorded under Section 164-A of Cr. P. C, it was not mentioned that the victim was taken to Nallah and that the stream was near the field where she was cutting leaves and there were no residential houses near the Nallah.

19) It is pertinent to note that while the victim's statement was being recorded, no objection was raised by the appellants regarding any difficulty in cross-examining her. Furthermore, when the victim's testimony was put to them during the recording of their statements under Section 342 of the Cr.P.C., they merely stated that she had made a false

statement and they had been falsely implicated. Even in the present appeal, the appellants have nowhere pleaded that they were unable to properly cross-examine the victim, thereby causing any prejudice to them.

20) It is true that the victim's statement was not video graphed by the learned Trial Court; however, the appellants have failed to demonstrate, either before the Trial Court or before this Court, that non-compliance with the proviso to Section 119 of the Evidence Act has resulted in a miscarriage of justice. Although the victim does not fall strictly within the category of a 'deaf and dumb' witness, given that she merely suffered from speech impairment, her statement was nonetheless recorded with the assistance of an interpreter, Roshan Bhan.

21) Needless to say, even a 'deaf and dumb' person is a competent witness, and the testimony of such a witness can legally form the basis for convicting an accused. In this context, it would be appropriate to take note of the judgment of the Hon'ble Supreme Court of India in the case of **State of Rajasthan** v. **Darshan Singh**, **(2012) 5 SCC 789**, wherein the Hon'ble Apex Court has held as under:

> **26. The object of enacting the provisions of Section 119 of the Evidence Act reveals that deaf and dumb persons were earlier contemplated in law as idiots.**

However, such a view has subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent, and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the court, the court has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of an oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law requires that there must be a record of signs and not the interpretation of signs.

27. In *Meesala Ramakrishan* v. *State of A.P.* [(1994) 4 SCC 182 : 1994 SCC (Cri) 838], **this Court has considered the evidentiary value of a dying declaration recorded by means of signs and nods of a person who is not in a position to speak for any reason and held that the same amounts to a verbal statement and, thus, is relevant and admissible. The Court further clarified that "verbal" statement does not amount to "oral" statement. In view of the provisions of Section 119 of the Evidence Act, the only requirement is that the witness may give his evidence in any manner in which he can make it intelligible, as by writing or by signs and such evidence can be deemed to be oral evidence within the meaning of Section 3 of the Evidence Act. Signs and gestures made by nods or head are admissible and such nods and gestures are not only admissible but possess evidentiary value.**

28. Language is much more than words. Like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting to convey. **But a dumb person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing, if literate or through signs and gestures, if**

he is unable to read and write. A case in point is the silent movies which were understood widely because they were able to communicate ideas to people through novel signs and gestures. Emphasised body language and facial expression enabled the audience to comprehend the intended message.

29. To sum up, a deaf and dumb person is a competent witness. If in the opinion of the court, oath can be administered to him/her, it should be so done. Such a witness, if able to read and write, it is desirable to record his statement giving him questions in writing and seeking answers in writing. In case the witness is not able to read and write, his statement can be recorded in sign language with the aid of interpreter, if found necessary. In case the interpreter is provided, he should be a person of the same surrounding but should not have any interest in the case and he should be administered oath.

(emphasis added)

22) From the aforementioned judicial pronouncements of the Hon'ble Supreme Court of India, it is clear that a speech and hearing-impaired person is a competent witness. If such a witness is unable to read or write, his/her statement may be recorded in sign language with the assistance of an interpreter, if deemed necessary. Where an interpreter is appointed, he/she should ideally belong to the witness's local environment or surroundings, have no interest in the outcome of the case, and be duly administered an oath.

23) In the instant case, the learned Trial Court did not administer oath to the victim as it was not found feasible. However, the statement of the interpreter was recorded on

oath, and the interpreter was independent having no interest in the outcome of the trial. Though pursuant to the application filed by the appellants, PW No.10-Roshan Bhan was summoned, but could not be examined for the reasons already mentioned above.

24) It was contended by learned counsel for the appellants that the prosecution had itself submitted an application dated 24.03.2022 under Section 540 Cr.P.C. for the re-examination of the victim along with the interpreter, Roshan Bhan and since the prosecution itself conceded an infirmity in the victim's evidence, the Trial Court erred in convicting the appellants on the basis of testimony that was inherently doubtful by the prosecution's own admission.

25) A perusal of application filed by the prosecution reveals that the same was filed on the premise that the evidence of the victim was not recorded in accordance with the procedure laid down under Section 119 of the Evidence Act. It is important to note that neither before the learned Trial Court nor before this Court have the appellants demonstrated that the victim's testimony was unintelligible or that its recording caused them any prejudice. At the risk of repetition, this Court reiterates that even in their statements recorded under Section 342 Cr.P.C., the

appellants raised no plea alleging any prejudice or procedural irregularity in the recording of the victim's statement that could affect the merits of the case.

26) The contention of the appellants that they were denied the opportunity to cross-examine the interpreter is equally misconceived. An interpreter is not a witness to the facts constituting the prosecution's case; rather, his sole function was to interpret the statement made by the victim. Significantly, the victim was not deaf, but merely speech-impaired. The learned Trial Court, prior to recording the victim's testimony, satisfied itself regarding the interpreter's qualifications and competence, and only after administering an oath to him did it proceed to record the evidence. In **Shivanarayan Kabra v. State of Madras, 1966 SCC OnLine SC 36,** when the accused raised an issue that interpreter was not provided to him, Hon'ble Apex Court observed as under:

> **"It was said that the evidence of the prosecution witnesses was given either in Tamil or in the English Language and the appellant did not know either of the languages and so he was not able to take part in the trial.** Mr. Naunit Lal contended that there was a breach of the requirement of Section 361 (1), Criminal Procedure Code and the trial was vitiated. We do not think there is any substance in this argument. **Even if it is assumed that the appellant did not know English or Tamil the violation of S. 361 (1), Criminal Procedure Code was merely an irregularity and it is not shown in**

> **this case that there is any prejudice caused to the appellant on this account. It is pointed out by the Sessions Judge that the appellant did not make any objection at the time the evidence was given** and it appears that he was represented by two eminent advocates-Sri V. T. Rangaswami Iyenger and Sri R. Krishnamoorthy Iyer-in the trial Court who knew both these languages and who would not have allowed the interest of the appellant to be jeopardised even to the smallest extent. In our opinion, the irregularity has not resulted in any injustice and the provisions of S. 537, Criminal Procedure Code are applicable to cure the defect."
>
> **(emphasis added)**

27) Accordingly, this Court is of the considered view that there is no force in the contention of the appellants that the testimony of the victim deserves to be rejected on account of non-compliance of the provisions contained in Section 119 of the Evidence Act.

28) In ***Patan Jamal Vali v. State of A.P.***, **(2021) 16 SCC 225**, the Hon'ble Supreme Court has elaborately considered the heightened vulnerability of women and girls with disabilities to sexual exploitation, laying down principles regarding the judicial approach to evaluating and appreciating the evidence of such witnesses. It would be apt to take note of the following relevant paras:

> **C.2. *Disability and gender : Twin tales of Societal Oppression***
>
> **29. For many disabled women and girls in India, the threat of violence is an all-too-familiar fixture of their lives, contracting their constitutionally guaranteed freedom to move freely and curtailing their ability to lead full and active lives. This threat of violence can translate into a nagging feeling of powerlessness and lack of control, making the**

realisation of the promises held by Parts III and IV of our Constitution a remote possibility for women with disabilities.

30. In saying so, we do not mean to subscribe to the stereotype that persons with disabilities are weak and helpless, incapable of charting the course of their lives or to deprive them of the agency and bodily autonomy that we all possess and are entitled to exercise. Such a negative presumption of disability translating into incapacity would be inconsistent with the forward-thinking conceptualisation of disabled lives embodied in our law and, increasingly, albeit slowly, in our social consciousness. As Saptarshi Mandal notes, in critiquing the fashion in which the Punjab and Haryana High Court dealt with the testimony of a mentally disabled and partially paralysed prosecutrix [*Samitri* v. *State of Haryana*, 2010 SCC OnLine P&H 2245] , stamping a prosecutrix with the badge of complete helplessness, merely on the basis of disability, is an inapposite course of action. He notes:

> **"the entire rationale behind the conviction of the accused turned on sympathy for the helpless prosecutrix and her inability to physically resist the aggressor. Even if one agrees with the Judge that there cannot be a single standard of burden of proof for the disabled and the able-bodied, a differentiated scale of burden of proof must be based on the concept of vulnerability, not victimhood**." [Saptarshi Mandal, "The Burden of Intelligibility : Disabled Women's Testimony in Rape Trials", Indian Journal of Gender Studies, 20 No. 1 (2013) : 1-29, p. 20 ("Mandal, Disabled Women Testimony in Rape Trials").]

31. Instead, our aim is to highlight the increased vulnerability and reliance on others that is occasioned by having a disability which makes women with disabilities more susceptible to being at the receiving end of sexual violence. As the facts of this case make painfully clear, women with disabilities, who inhabit a world designed for the able-bodied, are often perceived as "soft targets" and "easy victims" for the commission of sexual violence. It is for this reason that our legal response to such violence, in the instant case as well as at a systemic level, must exhibit attentiveness to this salient fact.

32. As the analysis by the Sessions Judge and the High Court makes clear, a critical feature of this case is the fact that PW 2 is blind since birth. **It would be overly simplistic and reductionist to reduce her personality to her disability alone. Equally, however, the Court has to exhibit sensitivity to the heightened risk of violence and abuse that she was rendered susceptible to, by reason of her disability.** We would like to utilise the facts of this case as a launching point to explore a disturbing trend that this case brings into sharp

focus and is symptomatic of — that of sexual violence against women and girls with disabilities and to set in motion a thought process for how the structural realities resulting in this state of affairs can be effectively addressed. In this part of the judgment, we will first highlight the unique reasons that make these women more vulnerable to being at the receiving end of sexual violence, with the help of some illustrations. Thereafter, we will outline some challenges that are faced by such women in accessing the criminal justice system generally and the judicial system in particular. We will then outline some measures that can be taken to lower the barriers faced by them. We will finally conclude by outlining the judicial approach which should be adopted for assessing their testimony.

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Testimony of disabled prosecutrix

44. Another feature of the case that we would like to dwell on relates to the testimony of the prosecutrix, PW 2. In his judgment, the Sessions Judge noted as follows:

> "21. ***Identification of the accused by the victim girl*** : It is needless to say that identifying the accused basing on the voice is weak type of evidence. Coming to the present facts and circumstances of the case, PW 2 is blind by birth as the access of the accused to victim proved by the prosecution she can easily identify the accused by hearing his voice. Moreover, PW 1, PW 3, PW 4 and PW 5 and some others caught hold of the accused when he opened the door of the house of PW 1, on the date of the incident and the evidence of the police officials also corroborates with the witnesses who caught hold of the accused and handed over him to PW 11 and on the instructions of PW 11, the accused was taken to Mahanandi Police Station. It was suggested to PW 2 that her statement that she identified the accused with his voice is false. In view of the categorical evidence of PW 1, PW 3 and PW 4, so also the admission made by the accused in Section 313CrPC examination that he used to visit the house of PW 1 to call the brothers of the victim for doing coolie work, the above suggestion has no legs to stand. The above evidence would amply prove that the victim has successfully identified the accused and her evidence cannot be doubted simply because she is a blind girl."

45. In the High Court, the defence sought to cast doubt on the testimony of the prosecutrix by arguing that she would have been unable to identify the accused due to her disability. While the above plea was not pressed by the appellant in this Court, we would like to take this opportunity to affirm the

conclusion of the Sessions Judge and to clarify the position of law on this point.

46. There have been instances where the testimony of a disabled prosecutrix has not been considered seriously and treated at an equal footing as that of their able-bodied counterparts. One such instance is the judgment of this Court in *Mange* v. *State of Haryana* [*Mange* v. *State of Haryana*, (1979) 4 SCC 349 : 1979 SCC (Cri) 985] , where the testimony of a thirteen-year-old girl who was deaf and mute was not recorded and the conviction was confirmed on the account of an eyewitness and supported by medical evidence. This Court in affirming the conviction noted that the non-examination of the prosecutrix was not a major infirmity in the prosecution's case "apart from being a child witness, she was also deaf and dumb and no useful purpose would have been served by examining her". (SCC p. 350, para 2) **We are of the considered view that presumptions of such nature which construe disability as an incapacity to participate in the legal process reflect not only an inadequate understanding of how disability operates but may also result in a miscarriage of justice through a devaluation of crucial testimonies given by persons with disabilities. The legal personhood of persons with disabilities cannot be premised on societal stereotypes of their supposed "inferiority", which is an affront to their dignity and a negation of the principle of equality.**

47. A survey and analysis of the High Court judgments by Saptarshi Mandal indicates that the testimony of the disabled witnesses is devalued by not recording the testimony of the prosecutrix at all; or recording it without adherence to correct legal procedure, thereby rendering it ineffectual; dismissal of the testimony for its lack of intelligibility or for not being supported by the condition of her body. [Saptarshi Mandal, "The Burden of Intelligibility : Disabled Women's Testimony in Rape Trials", Indian Journal of Gender Studies, 20 No. 1 (2013) : 1-29, p. 6 ("Mandal, Disabled Women Testimony in Rape Trials").]

48. This kind of a judicial attitude stems from and perpetuates the underlying bias and stereotypes against persons with disabilities. We are of the view that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered weak or inferior, only because such an individual interacts with the world in a different manner, vis-à-vis their able-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight. It goes without saying that the court appreciating such testimony needs to be attentive to the fact that the witness' disability can have the consequence of the testimony being rendered in a different form, relative to that of an able-bodied witness. In the case at hand, for instance, PW 2's blindness meant that

she had no visual contact with the world. Her primary mode of identifying those around her, therefore, is by the sound of their voice. And so PW 2's testimony is entitled to equal weight as that of a prosecutrix who would have been able to visually identify the appellant.

(emphasis added)

29) It was next contended that the victim in her deposition before the Court had shown the place of occurrence to be a stream, whereas in her statement under Section 164-A of Cr.P.C, she had stated that the occurrence took place on the roof of a house. The perusal of the site plan prepared by the Investigating Officer would reveal that the place of incident has been shown as an open space surrounded by bushes and trees. This Court cannot lose sight of the fact that the victim is having low intellectual abilities with borderline intelligence, as is evident from the report dated 11.02.2015. The victim in her cross-examination before the Court admitted that she was taken to Nallah where the act of shame was committed with her, but it was not found mentioned in her statement recorded under Section 164-A of Cr. P. C. She also admitted that the nallah was near the field from where she was cutting the grass and there were no residential houses near the Nallah, but there were trees and plants. She also stated that there was no water in the Nallah. PW-1 also has stated that the incident took place in the land where there were thick bushes. Victim also stated when the

shameful act was committed with her, she had pain in her abdomen and there was bleeding also. The pain continued till next day and no bleeding occurred from any place other than her abdomen. She also stated that Keshu (Rakesh Singh) and Sanju (Sanjeev Sharma) used to talk to each other and that is why she knew their names. It would be apposite to take note of the judgment of the Hon'ble Apex Court in ***State of H.P. v. Asha Ram*, (2005) 13 SCC 766,** and the relevant para is extracted as under:

> **5.** We record our displeasure and dismay, the way the High Court dealt casually with an offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on minor girls. **The High Court was swayed by the sheer insensitivity, totally oblivious of the growing menace of sexual violence against minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now a well-settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is also a well-settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant**

> **discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.**
>
> **(emphasis added)**

30) The victim has clearly narrated the mode and manner in which she was kidnapped by appellants Sanjeev Sharma and Rakesh Singh, as well as the heinous act committed upon her. Her detailed account of the occurrence demonstrates that she was intellectually capable of testifying regarding the illegal acts of the appellants, Sanjeev Sharma and Rakesh Singh. Notably, she also categorically stated that a man with a short beard was standing on the roof of the house but did nothing. Thus, while her testimony directly implicates the appellants Sanjeev Sharma and Rakesh Singh, it effectively exonerates appellant Rashpal.

31) It was also urged by learned counsel for the appellants that the medical evidence has not supported the evidence of victim. The incident took place on 16.11.2014, whereas the victim was examined by Medical Officer on 19.11.2014 and absence of spermatozoa after 72 hours is but natural. In ***Wahid Khan v. State of M.P.*, (2010) 2 SCC 9,** the Hon'ble Apex Court has observed as under:

> **20.** It is appropriate in this context to reproduce the opinion expressed by Modi in *Medical Jurisprudence and Toxicology* (22nd Edn.) at p. 495 which reads thus:
>
> "**Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and**

> **rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law**. **It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.** In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. *Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.*"
>
> (emphasis supplied)

32) In ***Ranjit Hazarika v. State of Assam*, (1998) 8 SCC 635,** the Hon'ble Apex Court has held that "*Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake".*

33) It was also contended that seizure of clothes has not been proved by the marginal witnesses to the seizure memos, as such, prosecution story has become doubtful. The record reveals that the red coloured trouser carrying blood and seminal stains was seized vide seizure memo (Ext P-16/1), whereas one shirt carrying blood stains was seized vide seizure memo (Ext P-16/2). Father and Mother of victim have been cited as marginal witnesses to both these seizure

memos. Both Father and Mother of victim, i.e. PW-1 & 3 respectively have deposed nothing about the seizure memos and neither the seizure memos nor the clothes seized pursuant thereto were shown to these witnesses. It appears that the Prosecutor for reason unknown did not examine the above-mentioned witnesses regarding the seizure of clothes. He ought to have examined both these witnesses regarding the seizure of clothes. However, the appellants can't derive any benefit of this remiss on the part of the Prosecutor. PW-16 Ranjeet Singh S/o (IO) has proved both the seizure memos marked as (Ext P-16/2) & (Ext P-16/3). Even otherwise, the marginal witnesses have not stated that clothes were not seized in their presence or they have turned hostile, but they have simply not been examined by the Public Prosecutor regarding the seizure of clothes. The appellants also cannot derive any benefit from the statement of prosecutrix that her clothes were lying in Arnas, particularly when there is positive statement of PW-16 that he seized the clothes of victim. It is not the case of the prosecution that clothes were recovered from the victim. Rather, the perusal of seizure memos would reveal that complainant had handed over clothes to IO. The defence did not cross examine PW-16 regarding the seizure memo of clothes and as such, his testimony regarding the seizure of

clothes has remained unchallenged. Therefore, the appellants cannot derive any benefit of the non-examination of the marginal witnesses to the seizure memos of clothes. In this context, it would be apt to take note of the judgment of the Hon'ble Apex Court in **Mallikarjun v. State of Karnataka, (2019) 8 SCC 359**, and the relevant para is extracted as under:

> **23.** As pointed out earlier, based on the disclosure statement of Accused 1, MO 1 dagger which was kept hidden in the haystack of fodder in the loft of the cattle shed behind the house of Accused 1 had been seized under Ext. P-9 panchnama in the presence of panch witnesses PW 8 Chandrappa and PW 9 Mahadevappa Needgera. The said panch witnesses have not supported the prosecution case and turned hostile. MO 2 dagger and MO 3 handle of the axe were recovered from the scene of occurrence under Ext. P-7 spot panchnama. **On behalf of the accused, the learned Senior Counsel contended that the evidence of PW 17 PSI as to the recovery of MO 1 dagger at the behest of Accused 1 is doubtful and when PWs 8 and 9 have turned hostile, no weight could be attached to the alleged recovery of MO 1 dagger. There is no merit in the contention that merely because the panch witnesses turned hostile, the recovery of the weapon would stand vitiated. It is fairly well settled that the evidence of the investigating officer can be relied upon to prove the recovery even when the panch witnesses turned hostile.** In *Rameshbhai Mohanbhai Koli* v. *State of Gujarat* , it was held as under:
>
> > "*33*. In *Modan Singh* v. *State of Rajasthan,* it was observed that **where the evidence of the investigating officer who recovered the material objects is convincing, the evidence as to recovery need not be rejected on the ground that seizure witnesses did not support the prosecution version.** Similar view was expressed in *Mohd. Aslam* v. *State of Maharashtra* [*Mohd. Aslam* v. *State of Maharashtra*, (2001) 9 SCC 362 : 2002 SCC (Cri) 1024] .
>
> *34*. In *Anter Singh* v. *State of Rajasthan*, it was further held that:
>
> > '*10*. … **even if panch witnesses turn hostile, which happens very often in criminal cases, the evidence of the person who effected the recovery would not stand vitiated.**'
>
> *35*. **This Court has held in a large number of cases that merely because the panch witnesses have turned hostile is no ground to reject the evidence if the same is based on the testimony of the investigating officer alone. In the instant**

> **case, it is not the case of defence that the testimony of the investigating officer suffers from any infirmity or doubt.** (Vide *Modan Singh case* [*Modan Singh* v. *State of Rajasthan*, (1978) 4 SCC 435 : 1979 SCC (Cri) 56] , *Krishna Gopal case* [*State of U.P.* v. *Krishna Gopal*, (1988) 4 SCC 302 : 1988 SCC (Cri) 928] and *Anter Singh case* [*Anter Singh* v. *State of Rajasthan*, (2004) 10 SCC 657 : 2005 SCC (Cri) 597] .)"
>
> PW 17 PSI has clearly spoken about the recovery of MO 1 dagger at the behest of Accused 1 and MO 2 dagger and MO 3 handle of the axe from the scene of occurrence and **his evidence cannot be discarded merely because panch witnesses have turned hostile.**
>
> **(emphasis added)**

34) It was also contended that in absence of blood grouping and DNA report, it cannot be conclusively established that the appellants have committed offence of rape. FSL report (Ext-P-12) reveals that trouser (shalwar) of victim had blood and seminal stains, whereas the shirt had blood stains only. This is true that groups could not be ascertained and report has not conclusively established the complicity of the appellants, FSL report, nonetheless, establishes the presence of spermatozoa on the trouser of the victim. It is difficult to believe, in the light of evidence brought on record, that seminal and blood stains on the trouser of the victim and blood stains on the shirt, were managed to falsely implicate the appellants.

35) It was also urged that the other witnesses examined by the prosecution besides the victim have made contradictory statements and few witnesses have made the statements with regard to the incident for the first time in the Court. So

far as the father of the victim, i.e. PW No.1, is concerned, he has stated that after he was informed by his children about missing of the victim, he along with others searched for the victim and he found the appellants running from spot. Thereafter, he went towards the bushes and found the victim was lying there with no clothes on her body. During his cross-examination, he admitted that his statement under Section 164-A CrPC wherein he had stated that when his daughter regained consciousness, she stated that one boy wearing black jacket had lifted her on his shoulder, another gagged her mouth and took her into forest and thereafter she did not know what happened to her, was correct statement and the statement made by him in the Court today that when the victim recovered to some extent, he and police personnel asked her what had happened to her, thereafter the victim told them about the occurrence, is not correct. The contradiction as pointed out by learned counsel for the appellants is not of such nature that can be said to have discredited the statement as a whole made by father of the victim, in the light of statement made by the victim regarding the occurrence. It needs to be noted that though at the time of concluding the cross-examination of father of the victim, an attempt was made to falsify the prosecution case by posing a question as to whether any of his daughters had

instituted any case against any person of the locality before the Court at Reasi, which was denied by father of the victim, but the appellants did not bring any material on record to probabilize their defence. It would be apt to take note of the observations made by the Hon'ble Apex Court in ***State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384,** which are extracted as under:

> **8. -------- The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable.** Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that

> he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. **Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.**--------"
>
> **(emphasis added)**

36) The appellants are correct in their submissions that the other witnesses i.e. mother (PW-1), real sister (PW-6) and cousin (PW-7) have made improvements in their statements before the court but the improvements made by them in neither deposition before the court cannot wipe out the statement made by the victim. All the witnesses in one voice have stated that the victim had gone to the fields to cut the leaves for goats, when the incident took place. The victim is blind by one eye. As per the report of ENT specialist, the victim is having difficulty in speaking but at the same time, the report dated 11.02.2015 of Audiologist reveals that the victim is not dysphonic. The fact remains that the victim suffers from a serious disability, but her disability cannot be

a disability of the Court to decipher the truth from her statement. Rejecting her statement merely on account of her disability would be unjustified, particularly when there is no material to give even an inkling of false implication, nor any history of enmity between the appellants and the victim's father to suggest a false or frivolous case.

37) As already mentioned above, the victim has not made any incriminating statement against the appellant-Rashpal Sharma, though the other witnesses have deposed about his involvement but not in the commission of offence of rape. He was charged with commission of offence under section 363/109 RPC but has been convicted for commission of offences under sections 363 and 376 RPC. Appellant Rashpal was required to be given the benefit of doubt in view of the statement of the victim.

38) This Court has examined the judgment rendered by the learned Trial Court and finds that the Trial Court wrongly categorized the victim as 'deaf and dumb.' She is, in fact, a minor with partial visual impairment in one eye and severe stammering, whose speech cannot be understood by an ordinary person but only by specialists and her family members. Further, this court finds that the learned trial court has not properly appreciated the evidence while

convicting appellant-Rashpal Sharma. Given the unreliable nature of the evidence and the victim's own exculpatory testimony, the appellant-Rashpal ought to have been granted the benefit of the doubt.

39) The judgments relied upon by the learned counsel for the appellants are distinguishable. In **Ram Singh's case (supra)**, no blood was detected on the clothes of victim and also no semen was detected on the Chitai and Baithak, whereas in the present case, the blood and semen stains were found as per the FSL report, as such the judgment is not applicable in the present case. In **Munna Pandey v. State of Bihar** (supra), the seized articles were not sent for Forensic Science Laboratory (FSL) examination, and there were several other distinguishing circumstances such as the accused not being named in the FIR and incriminating material evidence not being put to the accused during examination. In contrast, the facts of the present case are entirely distinct. In **Dola's case**, the accused was identified by voice even though the victim had no prior acquaintance with him. Additionally, the victim was forcibly abducted from a busy area, and the allegations of false implication were found to be well-founded. Whereas the facts in the present case are entirely different.

Conclusion:

40) In view of the above discussion and analysis, **the appeal preferred by the appellants- Rakesh Singh and Sanjeev Sharma against the judgment of conviction and order of sentence dated 30.07.2022 is dismissed**, **whereas the appeal preferred by the appellant-Rashpaul Sharma is allowed and the judgment of conviction and order of sentence dated 30.07.2022 are set aside. The appellant-Rashpaul Sharma is acquitted of the charges and be released forthwith, if not required in any other case.**

(Rajnesh Oswal)
Judge

Srinagar,
31.10.2026
"Bhat Altaf-Secretary"

Whether the **judgment** is reportable: **YES/NO**

HIGH COURT
JAMMU & KASHMIR AND LADAKH