HIGH COURT OF JUDICATURE AT ALLAHABAD LUCKNOW

CRIMINAL APPEAL No. - 956 of 2006

Rajendra .....Appellant(s)

Versus

The State of U.P. .....Respondent(s)

Counsel for Appellant (s) : Virendra Moha, Ambica Tripathi, Avikshit Mishra, Raj Kumar Mishra, Rakesh K. Tripathi, Ram Avtar Singh, Ramkant Jayswal

Counsel for Respondent(s) : Govt. Advocate

Court No. -10

Reserved on 17.03.2026
Delivered on 27.05.2026

A.F.R.

HON'BLE RAJNISH KUMAR, J.
HON'BLE ZAFEER AHMAD, J.

(Per : Rajnish Kumar, J.)

(1) The instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as "***Cr.P.C.***") has been filed by the accused/convict/appellant, Rajendra, assailing the judgment and order dated 28.04.2006 passed by Additional District & Sessions Judge, Court No.4, Hardoi, in Sessions Trial No. 485 of 2005; *State Versus Rajendra,* emanating from Case Crime No. 112 of 2005, under Section 376/511 of the Indian Penal Code, 1860 (here-in-after referred to as "***I.P.C.***"), Police Station Beniganj, district Hardoi,

whereby the accused/appellant has been convicted and sentenced under Section 376 I.P.C. to undergo life imprisonment and a fine of Rs.10,000/-. In default in payment of fine, the accused/appellant would undergo one year's additional rigorous imprisonment.

(2) The prosecution case, in short, is that complainant, Smt. Rooprani, had submitted a written report at police station Beniganj, district Hardoi on 30.03.2005, alleging therein that she is the resident of village Bargadiya, hamlet of Atiya Majhigawan, police station Beniganj, Hardoi. Yesterday, in the afternoon of 28.03.2005, her husband had gone to his maternal village Akouhara to meet/greet 'Holi'. She was not well, therefore, she was lying at home. The son of her elder brother-in-law, Ravindra son of Ram Prasad, was present with her. At about 06:30 in the evening, upon hearing the cries of her daughter (here-in-after referred to as '**victim**') aged about 9 years coming from behind her house, she and Ravindra rushed behind the house and saw that her neighbour, Rajendra son of Rameshwar, was trying to commit a wrongful act with her daughter by removing her shorts, who, on seeing them, fled from the place of occurrence. Due to social shame, she remained silent. Today, when her husband returned, she told him everything. She has come to the police station along with her husband and her daughter. Appropriate action may be taken.

(3) On the basis of the aforesaid written report (Ext. Ka.1), F.I.R., bearing Case Crime No. 112 of 2005, under Sections 376/511 I.P.C. was registered at Police Station Beniganj, district Hardoi on 30.03.2005 at 02:30 P.M. against accused Rajendra.

(4) The investigation of the case was conducted by S.I. Raj Bahadur Singh on 03.03.2005. He, after inspecting the place of

occurrence on the pointing out of the complainant Rooprani, prepared the site-plan (Ext. Ka.7) and recorded the statement of complainant on 30.03.2005 and on the same day, he arrested the accused/appellant.

(5) The medical examination of the victim was performed on 30.03.2005 at 06:00 P.M. at District Hospital, Hardoi by Dr. Nisha Srivastava (P.W.4), who found that height of the victim was 128 cm; weight was 20 Kg; teeth were 12/12; she was average built; axillary hair not present; breast not developed and there was no mark of injury on any part of the body. On examination of private parts of the victim, doctor noted that pubic hair not present on private parts and P/V Hymen torn at 6 O'clock position margins red and inflammed. Slight oozing vagina admitting 1 finger with pain.

(6) After examining the victim, Dr. Nisha Srivastava took her vaginal smear and sent it to Pathological Department, Balrampur Hospital for ascertaining the presence of spermatozoa and also the victim was sent to X-ray Department, District Hospital, Hardoi for x-ray of right wrist joint (all carpal bones) for determination of age.

(7) On reference, the x-ray of the victim was conducted by Dr. I.K. Srivastava (P.W.5) at District Hospital, Hardoi on 01.04.2005, who found that only seven carpal bone has appeared, pisiform not appeared Epiphysis of lower end of radius and ulna and base of 1st meta carpal has appeared but not fused.

(8) Based on the Vaginal Smear Report No. 151 dated 23.04.2005 done by Senior Pathologist, Balrampur Hospital, Lucknow that no sperm smear and gonococci are not seen as well as aforesaid x-ray report, Dr. Nisha Srivastava had prepared supplementary report of the victim on 05.05.20005, wherein she, after

examining the Medical Report and vaginal smear report, opined that allegation of intercourse might have been done and according to physical appearance and x-ray report, age of victim is below 12 years.

(9) The Investigating Officer S.I. Raj Bahadur Singh, recorded the statement of victim on 05.04.2005 and after collecting the incriminating material and completion of the investigation, submitted the charge-sheet (Ext. Ka. 8) against the accused Rajendra under Sections 376, 511 I.P.C. on 05.05.2005.

(10) The Additional Chief Judicial Magistrate, Court No. 2, Hardoi took cognizance of the aforesaid charge-sheet and committed the case to the Sessions Court on 04.06.2005, wherein the case was registered as Sessions Trial No. 485 of 2005. The Additional Sessions Judge, Court No.4, Hardoi, had framed charges against the accused Rajendra under Sections 376/511 I.P.C. on 15.07.2005, which was denied by the accused and claimed to be tried. Thereafter, the charge was amended to Section 376 I.P.C. on 06.09.2005, which too was denied by the accused and claimed to be tried.

(11) In order to prove its case, the prosecution examined seven witnesses, who are as under :-

P.W.1	Victim
P.W.2-Rooprani	complainant/mother of the victim
P.W.3-H.M. Krishna Pal Singh	Prepared the check F.I.R. on the basis of written report of the complainant
P.W.4-Dr. Nisha Srivastava	Conducted the medical examination of the victim and proved the medical examination reports
P.W.5-Dr. I.K. Srivastava	Conducted the x-ray and proved its report
P.W.6-Ravindra	Nephew of complainant/hostile witness
P.W.7-SSI Raj Bahadur Singh	Investigating Officer

(12) Apart from the aforesaid witnesses, the prosecution placed on record the documentary evidence and proved it, which are as under :-

Ext. Ka. 1	Written Report
Ext. Ka. 2	Check F.I.R.
Ext. Ka. 3	Copy of Rapat No. 22 (time 14:30 hours dated 30.03.2005)
Ext. Ka.4	Medical Examination Report of victim prepared by Dr. Nisha Srivastava
Ext. Ka. 5	Supplementary Medical Examination Report prepared by Dr. Nisha Srivastava
Ext. Ka. 6	X-ray report prepared by Dr. I.K. Srivastava
Ext. Ka.7	Site plan
Ext. Ka. 8	charge-sheet

(13) The prosecution has also produced material exhibit i.e. x-ray of the victim as material Exhibit 1.

(14) After completion of evidence of prosecution, the statement of the accused Rajendra was recorded under Section 313 of Cr.P.C., wherein he denied the prosecution story as false and concocted and stated that he has been implicated in the case due to enmity. He further stated that goat of brother-in-law of the complainant, namely, Lallaram was stolen, for which Lallram had made suspicion on him and on his asking, the complainant has falsely been implicated him. The defence has not led any documentary or oral evidence in support of his defence.

(15) After hearing learned Counsel for the parties and considering the evidence and material on record, the learned trial Court convicted and sentenced the accused/appellant Rajendra by means of the impugned judgment and order dated 28.04.2006 in the manner as stated in paragraph-1 here-in-above. Consequently, the convict/appellant, Rajendra, has preferred the instant appeal.

ARGUMENTS

(16) Heard Shri Avikshit Mishra, learned *Amicus Curiae* for the appellant and learned A.G.A. for the State.

(17) The learned *Amicus Curiae* appearing on behalf of the appellant submitted that the impugned judgment and order has been passed without considering the evidence and material available on record appropriately. He submitted that the FIR was lodged after delay of two days from the date of the alleged incident and the prosecution has failed to given satisfactory explanation for such delay and it has been lodged after consultation with embellishment, which is apparent from evidence of P.W.2. He next submitted that there are material contradictions in the statements of P.W.1 (the victim) and P.W.2, who is the mother of the victim, which goes to the root of the prosecution case and render it unreliable. He further submitted that the alleged eye witness, P.W.6–Ravindra, who is the cousin brother of the victim (P.W.1) and nephew of P.W.2, has not supported the prosecution case and turned hostile, which creates serious doubt on story.

(18) Learned *Amicus Curiae* for the appellant next submitted that the place of occurrence could not be established by the prosecution beyond reasonable doubt, therefore, it is doubtful. He next submitted that the medical evidence also does not support the prosecution case, therefore, prosecution case renders unreliable. However, learned trial Court failed to consider it and passed the impugned judgment and order on the basis of surmises and conjectures in an illegal manner without considering the lacunas in prosecution case and aforesaid, therefore, it was neither warranted in law nor on facts. Thus, it is liable to be set-aside and the appellant is liable to be acquitted.

(19) *Per contra*, learned A.G.A. opposed the submissions of the learned *Amicus Curiae* for the appellant and while supporting the impugned judgment and order, submitted that it has been passed after due appreciation of the evidence and material available on record and does not suffer from any illegality or infirmity. According to learned A.G.A., delay of two days in lodging the F.I.R. has been satisfactorily explained by the prosecution, which is natural and plausible in the facts and circumstances of the case. Moreso, mere delay in lodging the FIR is not fatal to the prosecution case, particularly in offences of such nature where hesitation in approaching the authorities is common. Thus, the contentions in this regard are not sustainable. He further submitted that the alleged contradictions in the statements of P.W.1 (the victim) and complainant (P.W.2-Rooprani) are minor in nature and do not go to the root of the prosecution case. He submitted that such discrepancies are bound to occur due to normal errors of observation, memory, lapse of time and village lady, which does not affect the core of the prosecution story. According to learned A.G.A., the testimony of the victim (P.W.1) is consistent and trustworthy on material particulars and inspires confidence and conviction could have been authored only on it. He further submitted that the mere fact that P.W.6-Ravindra has turned hostile does not demolish the entire prosecution case, especially when the testimony of the victim (P.W.1) is cogent, consistent and reliable.

(20) Learned A.G.A. next submitted that the place of occurrence has been duly established from the evidence available on record and there is no ambiguity in it. He submitted that the testimony of P.W.1 (the victim) clearly describes the place of occurrence and the same stands corroborated by the evidence of complainant

(P.W.2) and other material brought on record. He further submitted that the medical evidence on record fully supports the prosecution case and there is no inconsistency between the medical opinion and the ocular version of the prosecution witnesses. Even otherwise, minor variations, if any, between medical and ocular evidence are natural and do not affect the core of the prosecution story. According to learned A.G.A., the medical report cannot be read in isolation and has to be appreciated in conjunction with the testimony of the victim (P.W.1), which is consistent, reliable, and duly corroborated by other evidence on record. Thus, submission is that the argument of learned *Amicus Curiae* in this regard is not sustainable. There is no illegality, error or perversity in the impugned judgment and order and the learned trial Court has rightly convicted the appellant after considering the evidence and material on record and dealing it appropriately. The appeal has been filed on misconceived and baseless ground, which lacks merit and liable to be dismissed.

ANALYSIS

(21) We have heard learned Counsel for the parties and gone through the records as well as the impugned judgment and order passed by the learned trial Court.

(22) The first question we have to consider is the impact of delay of nearly two days in lodging the F.I.R. The learned trial Court, in the impugned judgment, has relied upon the judgment of Hon'ble Supreme Court rendered in the cases of **Vidyadharan vs State Of Kerala ;** AIR 2004 SC 536, **Amar Singh vs. Balwinder Singh and Others;** AIR 2003 SC 1164 and **Balram Singh Versus State of Punjab;** AIR 2003 SC 2213. In **Vidyadharan vs. State of Kerala (supra)**, Hon'ble Supreme Court has held that even if there is delay in lodging first

information report, that cannot be a ground to discredit the evidence of victim. The relevant paragraph-9 is extracted below :-

> *"9. …... It is seen that though there was some delay in lodging the FIR, it is but natural in a tradition-bound society to avoid embarrassment, which is inevitable when the reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained…... It is not that on account of enmity false implications are made. It would, however, be unusual in a conservative society that a woman would be used as a pawn to wreak vengeance. When a plea is taken of false implication, courts have a duty to make deeper scrutiny of the evidence and decide the acceptability or otherwise of the accusations. In the instant case, both the trial court and the High Court have done that. There is no scope for taking a different view."*

(23) Similarly, in the case of **Amar Singh vs. Balwinder Singh and others (supra)**, Hon'ble Supreme Court has held that there is no hard and fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. It depends upon facts and circumstances of each case as to whether there has been any such delay in lodging the FIR, which may cast doubt about the veracity of the prosecution case and for this a host of circumstances like the condition of the first informant, the nature of injuries sustained, the number of victims, the efforts made to provide medical aid to them, the distance of the hospital and the police station etc. have to be taken into consideration. There is no mathematical formula by which an inference may be drawn either way merely on account of delay in lodging of the FIR. In the case of **Balram Singh Versus State of Punjab (supra)**, Hon'ble Supreme Court has held that if the ocular evidence adduced by the prosecution is worthy of acceptance, the element of delay in registering a complaint or sending the same to the jurisdictional Magistrate by itself would not in any manner weaken the prosecution case.

(24) It will also be apposite to refer the decision of the Hon'ble Supreme Court rendered in the case of **Tulshidas Kanolkar v. State of Goa;** 2003 (8) SCC 590, wherein rape of a girl was committed, whose mental ability was undeveloped, considering the same, the Hon'ble Supreme Court in regard to delay in F.I.R., has held as under :-

> *"5...............In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render prosecution version brittle."*

(25) In the backdrop of the aforesaid principles, the question of delay in lodging the F.I.R. is to be examined in the facts and circumstances of the present case. As per prosecution, the alleged incident occurred on 28.03.2005 at 06:30 in the evening, whereas F.I.R. was lodged on 30.03.2005 at 02:30 p.m. at police station Beniganj, district Hardoi. Thus, there was a delay of nearly 02 (two) days in lodging the FIR. The contents of the written report (Exhibit Ka-1) contain the statement of complainant (P.W.2 Smt. Ruprani) that due to social shame, she remained silent and when her husband came, she narrated all the facts to him, whereupon she, her husband and her daughter (victim) went to the police station and lodged the report. It is also mentioned in the written report (Exhibit Ka-1) that at the time of the incident, husband of the complainant had gone to his maternal home for greeting Holi.

The victim (P.W.1) was subjected to rape and her age as mentioned in the written report, was only 9 years and the medical evidence also shows that she was below 12 years of age. It was, thus, obvious for the complainant to wait for husband as it has not been shown that any else major member was at home, to whom she could have told it. Generally, every person first tries to ensure that such a matter does not spread in society, particularly unless he/she decides to go for an action, looking to the future of minor and social stigma. In the instant case, when the husband of the complainant was away from home, it is probable that she would wait for her husband's return. The victim, who appeared as P.W.1, has also stated that her father had gone in relation to greet on 'Holi'. There is no cross-examination from P.W.1 and P.W.2 on this point. Learned trial Court, after considering the evidence and material on record, has recorded a finding that the instant case is of rape with a 9 year old girl and in such mater any person would lodge F.I.R., only after thinking over a lot, thus, sufficient explanation of delay is on record. This Court is in agreement with the finding recorded by learned trial Court.

(26) Highlighting the evidence of complainant (P.W.2-Rooprani), in cross-examination that "**मै रिपोर्ट इसलिए नही कि थी पहले सलाह कर लो फिर रिपोर्ट की जावे जब सलाह हो गयी तब मै रिपोर्ट करने थाना गयी। सलाह यही बनी की रिपोर्ट राजेन्द्र के नाम करनी है।**", learned *Amicus Curiae* for the appellant argued that it is apparent that the F.I.R. was lodged after consultation and deciding to lodge F.I.R. against the appellant. The contention of learned Counsel for the appellant is misconceived and not tenable for the reason that the complainant, who is a rustic village lady, waited for her husband to return and after return of her husband, she told him about the incident, whereupon they decided to lodge F.I.R. against the convict/appellant and accordingly, it was lodged.

There is no further cross-examination on the point. Thus, her evidence on this issue is quite natural as the pride and future of their minor daughter was involved. It does not in any manner indicates that consultation was made with the police for lodging false report against the accused/appellant. P.W.2-Rooprani, however, deposed in her statement that when she reached the police station, the Station House Officer called a person and asked him to write a report, which does not mean that the Station House Officer got a false report written. It only indicates that the Station House Officer called a person and the complainant got the report written through him as per what she stated. Furthermore, the defense has failed to show as to why the police would falsely implicate him by lodging a false report unless there is some enmity or motive behind it. There is no evidence of any prior enmity between the accused and the police personnel. At least the same has not been shown. Learned trial Court has also recorded a finding that there is no criminal history of accused, nor he has any enmity with any policeman, therefore, police personnel would have involved in lodging the false F.I.R. against him is not believable. Nothing contrary could be shown by learned Counsel for the appellant, on account of which a contrary view is possible on this issue. Thus, this Court does not find any illegality or error in it and there is no reason to disbelieve the version of F.I.R. and the prosecution has satisfactorily explained the delay in lodging the F.I.R.

(27) The next argument advanced by learned *Amicus Curiae* for the appellant was that there is material contradictions in the evidence of P.W.1-victim and P.W.2-Rooprani and an alleged eye-witness Ravindra (P.W.6) has not supported the prosecution case, which itself lends the prosecution case doubtful in as much as the presence of complainant (P.W.2) at the place of

occurrence doubtful, therefore, on the basis of sole testimony of child witness (victim, P.W.1) only, learned trial Court erred in convicting the appellant.

(28) To consider the argument of learned *Amicus Curiae* for the appellant, firstly we will consider the evidence of the victim, who appeared as PW.1. The victim was a minor, below 12 years of age. P.W.5, Dr. I.K. Srivastava, who conducted the x-ray of P.W.1 (victim) has stated in cross-examination that age of injured (P.W.1) could not be more than 11 years and there may be a year's difference on either side. Thus, first it is to be seen as to whether she was competent to depose before the Court of law and as to how her evidence was required to be considered. Section 118 of the Indian Evidence Act, 1872 provides that all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions by tender years etc.

(29) Section 118 of the Indian Evidence Act, 1872 is extracted here-in-below :-

> "**118. Who may testify.—**All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind."

(30) In view of above, a child witness is not prevented from deposing before the Court of law unless he/she is prevented from understanding the questions put to him/her. Thus, it casts a duty upon the Court to first examine the witness so as to satisfy that the witness is capable of understanding the questions put to him/her and giving rational answers to those questions. The Hon'ble Supreme Court elaborately discussed as to how the testimony of a child witness should be looked into and

appreciated in the case of **State of Madhya Pradesh Vs Balveer Singh;** (2025) 8 SCC 545, wherein the Hon'ble Supreme Court, placing reliance on the cases of **Dattu Ramrao Sakhare v. State of Maharashtra*;*** (1997) 5 SCC 341, **Pradeep v. State of Haryana*;*** (2023) 19 SCC 221, **Ratansinh Dalsukhbhai Nayak v. State of Gujarat*;*** (2004) 1 SCC 64, ***Panchhi v. State of U.P.*** *;* (1998) 7 SCC 177, **Suryanarayana v. State of Karnataka;** (2001) 9 SCC 129, **Arbind Singh v. State of Bihar ;** 1995 Supp (4) SCC 416, **Digamber Vaishnav v. State of Chhattisgarh;** (2019) 4 SCC 522, **State of M.P v. Ramesh;** (2011) 4 SCC 786, has observed that

> ***"43.*** *From the above exposition of law, it is clear that the evidence of a child witness for all purposes is deemed to be on the same footing as any other witness as long as the child is found to be competent to testify. The only precaution which the court should take while assessing the evidence of a child witness is that such witness must be a reliable one due to the susceptibility of children by their falling prey to tutoring. However, this in no manner means that the evidence of a child must be rejected outrightly at the slightest of discrepancy, rather what is required is that the same is evaluated with great circumspection. While appreciating the testimony of a child witness the courts are required to assess whether the evidence of such witness is its voluntary expression and not borne out of the influence of others and whether the testimony inspires confidence. At the same time, one must be mindful that there is no rule requiring corroboration to the testimony of a child witness before any reliance is placed on it. The insistence of corroboration is only a measure of caution and prudence that the courts may exercise if deemed necessary in the peculiar facts and circumstances of the case."*

(31) The Hon'ble Supreme Court, in **State of Madhya Pradesh Vs Balveer Singh (supra)**, summarized the principles pertaining to the appreciation of evidence of a child witness from Para 67.1 to para 67.12 as under :-

> "**67.1.** *The Evidence Act does not prescribe any minimum age for a witness, and as such a child witness is a competent witness and his or her evidence and cannot be rejected outrightly.*
>
> ***67.2.*** *As per Section 118 of the Evidence Act, before the evidence of the child witness is recorded, a preliminary examination must be conducted by the Trial Court to ascertain if the child-witness is capable of understanding sanctity of giving evidence and the import of the questions that are being put to him.*

67.3. *Before the evidence of the child witness is recorded, the Trial Court must record its opinion and satisfaction that the child witness understands the duty of speaking the truth and must clearly state why he is of such opinion.*

67.4. *The questions put to the child in the course of the preliminary examination and the demeanour of the child and their ability to respond to questions coherently and rationally must be recorded by the Trial Court. The correctness of the opinion formed by the Trial Court as to why it is satisfied that the child witness was capable of giving evidence may be gone into by the appellate court by either scrutinizing the preliminary examination conducted by the Trial Court, or from the testimony of the child witness or the demeanour of the child during the deposition and cross-examination as recorded by the trial court.*

67.5. *The testimony of a child witness who is found to be competent to depose i.e., capable of understanding the questions put to it and able to give coherent and rational answers would be admissible in evidence.*

67.6. *The Trial Court must also record the demeanour of the child witness during the course of its deposition and cross-examination and whether the evidence of such child witness is his voluntary expression and not borne out of the influence of others.*

67.7. *There is no requirement or condition that the evidence of a child witness must be corroborated before it can be considered. A child witness who exhibits the demeanour of any other competent witness and whose evidence inspires confidence can be relied upon without any need for corroboration and can form the sole basis for conviction. If the evidence of the child explains the relevant events of the crime without improvements or embellishments, the same does not require any corroboration whatsoever.*

67.8. *Corroboration of the evidence of the child witness may be insisted upon by the courts as measure of caution and prudence where the evidence of the child is found to be either tutored or riddled with material discrepancies or contradictions. There is no hard and fast rule when such corroboration would be desirous or required, and would depend upon the peculiar facts and circumstances of each case.*

67.9. *Child witnesses are considered as dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded and as such the courts must rule out the possibility of tutoring. If the courts after a careful scrutiny, find that there is neither any tutoring nor any attempt to use the child witness for ulterior purposes by the prosecution, then the courts must rely on the confidence-inspiring testimony of such a witness in determining the guilt or innocence of the accused. In the absence of any allegations by the accused in this regard, an inference as to whether the child has been tutored or not, can be drawn from the contents of his deposition.*

67.10. *The evidence of a child witness is considered tutored if their testimony is shaped or influenced at the instance of someone else or is otherwise fabricated. Where there has been any tutoring of a witness, the same may possibly produce two broad effects in their testimony; (i) improvisation or (ii) fabrication.*

(i) Improvisation in testimony whereby facts have been altered or new details are added inconsistent with the version of events not previously stated must be eradicated by first confronting the witness with that part of its previous statement that omits or contradicts the improvisation by bringing it to its notice and giving the witness an opportunity to either admit or deny the omission or contradiction. If such omission or contradiction is

admitted there is no further need to prove the contradiction. If the witness denies the omission or contradiction the same has to be proved in the deposition of the investigating officer by proving that part of police statement of the witness in question. Only thereafter, may the improvisation be discarded from evidence or such omission or contradiction be relied upon as evidence in terms of Section 11 of Evidence Act.

(ii) Whereas the evidence of a child witness which is alleged to be doctored or tutored in toto, then such evidence may be discarded as unreliable only if the presence of the following two factors have to be established being as under: -

- ***Opportunity of Tutoring of the Child Witness in question-** whereby certain foundational facts suggesting ordemonstrating the probability that a part of the testimony of the witness might have been tutored have to be established. This may be done either by showing that there was a delay in recording the statement of such witness or that the presence of such witness was doubtful, or by imputing any motive on the part of such witness to depose falsely, or the susceptibility of such witness in falling prey to tutoring. However, a mere bald assertion that there is a possibility of the witness in question being tutored is not sufficient.*

- ***Reasonable likelihood of tutoring-** wherein the foundational facts suggesting a possibility of tutoring as established have to be further proven or cogently substantiated. This may be done by leading evidence to prove a strong and palpable motive to depose falsely, or by establishing that the delay in recording the statement is not only unexplained but indicative and suggestive of some unfair practice or by proving that the witness fell prey to tutoring and was influenced by someone else either by cross-examining such witness at length that leads to either material discrepancies or contradictions, or exposes a doubtful demeanour of such witness rife with sterile repetition and confidence lacking testimony, or through such degree of incompatibility of the version of the witness with the other material on record and attending circumstances that negates their presence as unnatural.*

***67.11.** Merely because a child witness is found to be repeating certain parts of what somebody asked her to say is no reason to discard her testimony as tutored, if it is found that what is in substance being deposed by the child witness is something that he or she had actually witnessed. A child witness who has withstood his or her cross-examination at length and able to describe the scenario implicating the accused in detail as the author of crime, then minor discrepancies or parts of coached deposition that have crept in will not by itself affect the credibility of such child witness.*

***67.12.** Part of the statement of a child witness, even if tutored, can be relied upon, if the tutored part can be separated from the untutored part, in case such remaining untutored or untainted part inspires confidence. The untutored part of the evidence of the child witness can be believed and taken into consideration or the purpose of corroboration as in the case of a hostile witness."*

(32) Adverting to the facts of the instant case, this Court finds that trial Court, in order to testify as to whether the child witness P.W.1 (victim) is capable of understanding and answering the questions rationally, first put certain questions to her. The trial

Court asked as to whether she studies, she replied that she studies in Class-5. In regard to the question as to in which direction the sun rises, she stated that she do no know. She also in regard to the question as to whether she knows that to speak lie is sin, she stated that she does not know. However, she further, on examination, stated that we are three sisters and two brothers. Her three brothers and sisters are studying in School. She will speak truth today. The man should speak truth. The sun rises in the morning. Thereafter, the trial Court recorded its observations that the witness is witless (नासमझ) and on being asked, unable to give answer of the questions in one go and on repeated impressing upon answers with difficulty. Thus, the trial Court's observation indicates that the witness is capable of answering the questions, but with difficulty. Thus, after satisfying itself about the capability of child witness to answer the questions put to her, the trial Court proceeded to record her evidence in accordance with law. Thereafter, she was examined.

(33) In the examination-in-chief, P.W.1 (victim) deposed that she knows the accused Rajendra, who is present in Court. He is a resident of her village. About 6 months ago, it was 06:00 in the evening. She had gone for call of nature behind her house. Her mother was lying inside the house. Her father had gone to greet 'Holi in his relation. Accused Rajendra came near her and took her lifting under eucalyptus trees and took off her underwear and committed wrongful act. When she cried, her mother arrived. Then, accused left her and ran away and no one else had come. Her mother lifted her and brought home. When her father returned after greeting Holi, her mother had gone to police station. Upon a question put separately by the Court, her explanation was that the accused also became naked and laying down on her, he rubbed his penis on her vagina and thereafter

pushed off, upon which she cried out. What emerges from the aforesaid examination-in-chief of the victim (P.W.1) that she is acquainted with the accused and proved presence of the accused at the place of occurrence and she has satisfactorily explained chronology of the incident. Her testimony establishes that the accused took her to a secluded place under the eucalyptus trees, removed her undergarments and not only subjected her to sexual assault but committed rape also, and on her cry, her mother immediately reached on the spot, whereupon the accused fled away from the place of occurrence.

(34) In cross-examination, the victim; P.W.1 stated that the place of occurrence is a eucalyptus grove. There are very big trees as well as some small trees, where the land is uneven and there are pits at places. In the evening, she had gone to defecate. It had become a little dark. She sat in the same eucalyptus grove for defecation. This grove is adjoining to the house of Munne. Due to the darkness, she did not go farther and sat there for defecation. She had gone for defecation by taking a plastic container. As soon as she raised an alarm, the accused ran away. The accused fled towards the north, passing through mango grove. As soon as the accused ran away, her mother arrived some time thereafter. She sustained injury in her private part. There was no visible injury on the body. Her mother and her elder aunt (*badi mummi*) have come along with her. Her mother and elder aunt told her that whatever had happened to her, she should state the truth in Court. She further, in cross-examination, deposed that blood had stained on her clothes. The Inspector (Daroga Ji) had not made any inquiry from her. She had gone to the police station. The blood-stained clothes were seen by the police personnel at the police station. She further deposed that it is wrong to say that she is deposing against the accused Rajendra on asking of her mother. It is also wrong to

say that she is giving false evidence on telling of her mother. It is also wrong that such incident would not have happened with her. She further deposed that accused remained lying on her for sometime.

(35) The aforesaid evidence of the victim shows that her testimony is consistent on every material particulars, particularly with regard to identity of the accused and the manner of occurrence. Nothing material could be extracted in cross-examination, on account of which, her testimony can be discarded. In **State of Madhya Pradesh Vs Balveer Singh (supra)**, the Hon'ble Supreme Court has held that the testimony of a child witness, if found to be natural, consistent and free from tutoring, can be relied upon and form the sole basis of conviction. The Hon'ble Supreme Court, however, emphasised that such evidence must be evaluated with caution and the Court must be satisfied that the child possesses sufficient intelligence and understands the duty to speak the truth. Applying the said principles to the facts of the present case, it is evident that P.W.-1 has given a cogent and consistent account of the occurrence not only with regard to accused and incident, but with regard to the description of the surroundings, including the uneven land, presence of pits, grove and lanes, which lends assurance to her testimony. The so-called contradictions pointed out by the defence pertain only to peripheral details such as exact distances, directions and layout of surrounding houses and lanes. In view of the dictum laid down by the Hon'ble Supreme Court, such minor discrepancies are bound to occur, particularly in the testimony of a child witness and if the core of the prosecution case is in corroboration, her testimony cannot be said to be unreliable.

(36) The defence has attempted to suggest that P.W.1 has been tutored by her mother. However, P.W.1 has categorically denied

the said suggestion and nothing could be extracted in cross-examination nor any material has been brought on record to substantiate the plea of tutoring. On the contrary, her testimony appears spontaneous and bears the ring of truth. Moreso, the absence of visible external injuries on other parts of the body is also not of such a nature as to discredit her version, particularly when she has specifically deposed about injury to her private part and presence of blood on her clothes. Even otherwise, it is trite in law that if the ocular evidence is worthy of credence, any discrepancy or contradiction in medical evidence is not sufficient to belie the ocular evidence. In **State of U.P. vs. Naresh**; 2011 (4) SCC 324, it has been held that minor contradictions regarding injuries do not discredit otherwise reliable evidence.

(37) Thus, this Court is of the view that the testimony of P.W.-1 is credible, trustworthy and free from material contradictions. The minor inconsistencies highlighted by the defence are insignificant and do not affect the substratum of the prosecution case. Accordingly, the testimony of the victim (P.W.-1) is held to be reliable and worthy of acceptance.

(38) The complainant, who is the mother of victim, has been examined as P.W.2. She deposed that she knew the accused Rajendra, who is present in Court. The incident is about six months old. Her husband had gone to relatives for greeting 'Holi'. She was not well. She was lying at home. Her children and the son of her husband's elder brother (jeth), Ravindra was also lying there. It was 6:00–6:30 in the evening. Her daughter (victim) had gone for defecation. She heard the cries of her daughter (victim) from behind her house. On hearing the noise, she and Ravindra rushed to the spot. Then, Rajendra ran away leaving her daughter. She saw Rajendra running away. Her

daughter told her that Rajendra had committed a wrongful act with her. She further deposed that when her husband returned from the relation, then, she went along with her husband and daughter to the police station. Outside the police station, she, on her dictation, got the written report (तहरीर) written by one person. Whatever she stated was written by him. It was read over and explained to her and thereafter, she affixed her signature on it. She proved her signature on the written report (Ext. Ka.1). She handed over the written report to the Moharrir (clerk) and the Moharrir registered her report. Her daughter was medically examined and her X-ray was conducted at Hardoi Hospital. The Investigating Officer (Daroga Ji) made inquiries from her.

(39) In cross-examination, P.W.2 stated that her husband is Rajpal. Lalaram and Ram Prasad are his brother. Ravindra, son of Ram Prasad is a witness in this case. Rajpal and Lalaram frequently visit to eat and drink with each other. The house of her husband and his brothers is situated in close to each other. She further deposed that goat of her husband's elder brother (jeth), Lalaram, had been stolen prior to this incident. One goat had been stolen. The wife of Lalaram is her elder sister-in-law (jethani). She does not know as to whether Lalaram had any quarrel with the accused Rajendra on account of the theft of the goat or not. She further deposed that it is incorrect to say that she is concealing the fact of quarrel between Lalaram and Rajendra. She further deposed that the eucalyptus grove was planted by her husband about 5 years ago. There are also mango trees in that grove. She further deposed that on the day of the incident, she was suffering from fever. She had been having fever for about 2–3 days prior to the incident. In the evening, her husband's elder brother (jeth) and her small children were present. Her daughter had gone to defecate. On hearing her

cries, Ravindra rushed and she also rushed. She saw Rajendra running away towards the north. At that time, she was standing on the bank of pond. The accused was at about 50 steps towards north of her grove at that time. Her grove is about 100 steps long north–south. In the entire field, eucalyptus trees are planted. Adjacent to her grove, there is also a mango grove. Her daughter was found near the house of her jeth Lalaram. The door of Lalaram's house is towards the east of her eucalyptus grove, where several people from the neighbourhood were present at that time, including her elder sister-in-law (jethani) Seema. She did not have any conversation with those witnesses nor did she tell them anything. Thereafter, she brought her daughter and went to home. She did not have any conversation with her daughter at that time. She further deposed that she did not lodge the report as she wanted to consult first and lodge report thereafter. When consultation was made, then, she went to police station for lodging the report. Upon consultation, opinion was formed that the report should be lodged against Rajendra. Thereafter, she went to the police station at about 8:00 a.m. by tempo, which was at a distance of about 1½ *kosh* from her village and reached there in about half an hour. At the police station, police personnel and the Inspector (Daroga Ji) were present, called the person who had written her report, on which she put signature. She further deposed that from the injuries sustained by her daughter, blood was oozing out. The Inspector made inquiries from her on the same day, when the report was written. Thereafter, no further inquiry was made from her nor she met again. The back of her daughter was scratched and the hand was also scratched at some places. Her daughter was medically examined at Hardoi. Her daughter showed all the injuries to the doctor. The blood-stained clothes were taken to the police station as well as to the hospital and

those clothes were shown to the Inspector and the Moharrir. She further deposed that she had informed the Inspector that her daughter had gone to defecate and if the same has not been written in her statement by the Investigating Officer, she could not tell the reason thereof. She further deposed that it is wrong to say that she is giving false evidence. It is also wrong to say that no such incident occurred as she is telling. It is also wrong to say that due to village enmity or *partybandi,* she, in collusion with her husband and Lalaram, got a false report written against the accused. It is also wrong to say that no such incident took place at the alleged place and time. It is also wrong to say that she did not see the accused running away.

(40) What emerges from the evidence of P.W.2 is that she is the mother of the victim and a natural witness to the immediate aftermath of the incident. She has narrated the incident in examination-in-chief and as to when she went and how to lodge the F.I.R. and also proved the written report and as to how it was written and medical examination of the victim. It further transpires from her testimony that she noticed injuries on the person of the victim and blood on her clothes. She has denied the suggestion that the report was lodged falsely due to village enmity or prior disputes. Thus, the testimony of P.W.-2, the mother of the victim, lends corroboration to the version of P.W.1 on material particulars, particularly with regard to the immediate conduct, fleeing of the accused, the disclosure made by the victim and lodging of the FIR. Nothing could be extracted in cross-examination, which may create doubt about veracity of the testimony. The minor discrepancies or contradiction or delay in lodging F.I.R., which has sufficiently been explained, does not materially affect the substratum of the prosecution case. The emphasis of learned *Amicus Curiae* for the appellant on consultation for F.I.R. in cross-examination to

show concoction in prosecution case is totally misconceived for the reason that the evidence is of a village lady, who is unaware and unmindful of the effect of words in law, otherwise, her contention was that family members formed opinion for lodging F.I.R. against the accused, otherwise, it may cause a social stigma on minor daughter, which may affect her future also.

(41) In view of above and upon a close and comparative evaluation of the testimonies of P.W.-1 (victim) and P.W.-2 (mother of the victim), it is to be seen as to whether minor inconsistencies as pointed out by learned *Amicus Curiae* for the appellant are such, which may affect the substratum of the prosecution case.

(42) The Hon'ble Supreme Court, in the case of ***Leela Ram* vs *State of Haryana;*** (1999) 9 SCC 525, observed as follows :-

> *"9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in State of U.P. v M.K. Anthony [State of U.P. v M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105] . In para 10 of the Report, this Court observed : (SCC pp. 514-15)*
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> *'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the*

main incident because power of observation, retention and reproduction differ with individuals.'

10. In a very recent decision in Rammi v. State of M.P. [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26] this Court observed : (SCC p. 656, para 24)

'24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.'

This Court further observed : (Rammi case [Rammi v. State of M.P., (1999) 8 SCC 649 : 2000 SCC (Cri) 26] , SCC pp. 656-57, paras 25-27)

'25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below:

*"**155. Impeaching credit of witness**.—The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the court, by the party who calls him—*

*(1)-(2)****

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;"

26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness.

27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide Tahsildar Singh v. State of U.P. [Tahsildar Singh v. State of U.P., 1959 SCC OnLine SC 17 : AIR 1959 SC 1012])."

(43) The Hon'ble Supreme Court has cautioned about attaching too much importance on minor discrepancies in the evidence of the witnesses in ***Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat;*** (1983) 3 SCC 217 as follows :-

"5. … We do not consider it appropriate or permissible to enter upon a reappraisal or reappreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious:

'(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guesswork on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him — perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.' "

(44) Similarly, in the case of ***Appabhai v. State of Gujarat***; 1988 Supp SCC 241, the Hon'ble Supreme Court observed as under :-

"13. … The court while appreciating the evidence must not attach undue importance to minor discrepancies. The discrepancies which do not shake the basic version of the prosecution case may be discarded. The discrepancies which are due to normal errors of perception or observation should not be given importance. The errors due to lapse of memory may be given due allowance. The court by calling into aid its vast experience of men and matters in different cases must evaluate the entire material on record by excluding the exaggerated version given by any witness. When a doubt arises in respect of certain facts alleged by such witness, the proper course is to ignore that fact only unless it goes into the root of the matter so as to demolish the entire prosecution story. The witnesses nowadays go on adding embellishments to their version perhaps for the fear of their testimony being rejected by the court. The courts, however, should not disbelieve the evidence of such witnesses altogether if they are otherwise trustworthy. Jaganmohan Reddy, J. speaking for this Court in Sohrab v. State of M.P. [Sohrab v. State of M.P., (1972) 3 SCC 751 : 1972 SCC (Cri) 819] observed : (SCC p. 756, para 8)

'8. … This Court has held that falsus in uno, falsus in omnibus is not a sound rule for the reason that hardly one comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishments. In most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered….' "

(45) It is pertinent to note that the scene of crime was in a rural area and the witnesses being rustic, their evidence has to be appreciated in the light of the behavioural pattern in the rural environment. In this regard, we may refer to the decision of Hon'ble Supreme Court, in ***Shivaji Sahabrao Bobade* v. *State of Maharashtra;*** (1973) 2 SCC 793, wherein it was held that :-

> *"8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered. The learned Sessions Judge has at some length dissected the evidence, spun out contradictions and unnatural conduct, and tested with precision the time and sequence of the events connected with the crime, all on the touchstone of the medical evidence and the post-mortem certificate. Certainly, the court which has seen the witnesses depose, has a great advantage over the appellate Judge who reads the recorded evidence in cold print, and regard must be had to this advantage enjoyed by the trial Judge of observing the demeanour and delivery, of reading the straightforwardness and doubtful candour, rustic naiveté and clever equivocation, manipulated conformity and ingenious inveracity of persons who swear to the facts before him. Nevertheless, where a Judge draws his conclusions not so much on the directness or dubiety of the witness while on oath but upon general probabilities and on expert evidence, the court of appeal is in as good a position to assess or arrive at legitimate conclusions as the court of first instance. Nor can we make a fetish of the trial Judge's psychic insight."*

(46) This Court is also of the view that while dealing with the evidence of witnesses who are rustic, because of minor inconsistencies, their evidence should not be ignored and discarded on material points, if the core of prosecution case or substratum of the prosecution case is not affected. It is apposite to refer the following paragraphs of ***Prabhu Dayal* v. *State of Rajasthan;*** (2018) 8 SCC 127 by Hon'ble Supreme Court, dealing with testimony of witnesses from rustic background :-

> *"18. It is a common phenomenon that the witnesses are rustic and can develop a tendency to exaggerate. This, however, does not mean that the entire testimony of such witnesses is falsehood. Minor contradictions in the testimony of the witnesses are not fatal to the case of the prosecution. This Court, in State of U.P. v. M.K. Anthony [State of U.P. v. M.K. Anthony, (1985) 1 SCC 505 : 1985 SCC (Cri) 105] , held that inconsistencies and discrepancies alone do not merit the rejection of the evidence as a whole. It stated as follows : (SCC p. 514-15, para 10)*
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> *'10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly*

necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals. Cross-examination is an unequal duel between a rustic and refined lawyer. Having examined the evidence of this witness, a friend and well-wisher of the family carefully giving due weight to the comments made by the learned counsel for the respondent and the reasons assigned to by the High Court for rejecting his evidence simultaneously keeping in view the appreciation of the evidence of this witness by the trial court, we have no hesitation in holding that the High Court was in error in rejecting the testimony of witness Nair whose evidence appears to us trustworthy and credible.'

*19.****

20. The Court can separate the truth from the false statements in the witnesses' testimony. In Leela Ram v. State of Haryana [Leela Ram v. State of Haryana, (1999) 9 SCC 525 : 2000 SCC (Cri) 222] , this Court held as follows : (SCC p. 534, para 12)

'12. It is indeed necessary to note that one hardly comes across a witness whose evidence does not contain some exaggeration or embellishment — sometimes there could even be a deliberate attempt to offer embellishment and sometimes in their over anxiety they may give a slightly exaggerated account. The court can sift the chaff from the grain and find out the truth from the testimony of the witnesses. Total repulsion of the evidence is unnecessary. The evidence is to be considered from the point of view of trustworthiness. If this element is satisfied, it ought to inspire confidence in the mind of the court to accept the stated evidence though not however in the absence of the same.'

21. Moreover, it is not necessary that the entire testimony of a witness be disregarded because one portion of such testimony is false. This Court observed thus in Gangadhar Behera v. State of Orissa [Gangadhar Behera v. State of Orissa, (2002) 8 SCC 381 : 2003 SCC (Cri) 32] : (SCC p. 392, para 15)

'15. To the same effect is the decision in State of Punjab v. Jagir Singh [State of Punjab v. Jagir Singh, (1974) 3 SCC 277 : 1973 SCC (Cri) 886] and Lehna v. State of Haryana [Lehna v. State of Haryana, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] . Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded.' "

(47) Keeping the aforesaid principles of law laid down by Hon'ble Supreme Court in mind, the evidence of the victim (P.W.1) and mother of the victim (P.W.2) are to be seen and considered. The trial Court has meticulously examined the evidence of P.W.1 and P.W.2 before coming to the conclusion that their evidence is reliable and credible.

(48) It is also to keep in mind that P.W.-1 is a child witness, and some variation in narration is natural. In **State of M.P. v. Balveer Singh (supra)**, the Hon'ble Supreme Court has held that the testimony of a child witness, if found natural and trustworthy, can be relied upon notwithstanding minor inconsistencies. Even otherwise, minor discrepancies in evidence of prosecutrix are bound to occur on account of trauma faced by her. In **State of Punjab Vs. Gurmit Singh**; 1996 (2) SCC 384, it has been held that minor inconsistencies in the testimony of the prosecutrix are not fatal when the overall version inspires confidence.

(49) In the present case also, both P.W.-1 and P.W.-2 are consistent on the core aspects. Contradictions highlighted by the defence pertain only to peripheral matters and do not shake the foundation of the prosecution case. Significantly, the medical evidence also lends assurance to the prosecution case. P.W.4, Dr. Nisha Srivastava, who examined the victim (P.W.1), has opined that in all probabilities, the intercourse might have been done with the victim. In cross-examination, she (P.W.4) deposed that parts of vagina were slight bloody. In a query from the trial Court, she deposed that hymen may torn by cycling or playing, but injuries would not come in the manner sustained by the injured. Though the opinion is expressed in cautious terms, however, it does not negate the prosecution case and is

consistent with the version of the victim. It is well settled that medical evidence is corroborative in nature and where the ocular testimony is clear and reliable, minor inconsistencies with medical opinion do not override such evidence. Thus, medical evidence also supports the prosecution case. Even otherwise, the presence of injuries is not a *sine qua non* for determining as to whether the offence of rape has been committed or not. It has been observed by the Hon'ble Supreme Court in ***Lalliram & Anr. V State of M.P.***, (2008) 10 SCC 69 that injury is not a sine qua non for deciding whether rape has been committed but it has to be decided on the factual matrix of each case. Thus, the contention of learned *Amicus Curiae* for the appellant that the medical evidence does not support the prosecution case as no external injuries were found, is misconceived and not tenable. In view of the aforesaid discussion, declaration of hostile of P.W.6-Ravindra has no bearing on the case. Even otherwise, normally relatives avoid to give evidence in such cases, particularly when they are known to each other.

(50) In view of the aforesaid discussion and the law laid down by the Hon'ble Supreme Court, this Court is of the view that the contradictions in the statements of P.W.-1 and P.W.-2 are minor, natural, inconsequential and without any embellishment, which do not create any reasonable doubt in the prosecution case. The evidence of both the witnesses remains reliable, consistent with the prosecution case and among themselves and trustworthy. We are in full agreement with the view taken by the learned trial Court, which has appropriately appreciated the evidence on record and rightly held that such minor contradictions do not affect the prosecution case.

(51) The other official formal witnesses have also proved the procedure followed by them and nothing could be extracted from them, which may create any doubt about their testimony and affect in any manner the prosecution case.

(52) In view of the clear, cogent, and reliable testimony of the victim (P.W.1), duly supported by medical and other corroborative evidence on record, we are of the view that the prosecution has successfully proved the guilt of the appellant beyond all reasonable doubt for the offence punishable under Section 376 I.P.C. The learned Trial Court has rightly appreciated the evidence and material on records in its proper perspective and has arrived at a well-reasoned finding for conviction. The view taken by the Trial Court is neither perverse nor suffers from any illegality or error warranting interference by this Court. Thus, the appeal is liable to be dismissed.

(53) The appeal is hereby **dismissed**. The conviction of the appellant under Section 376 I.P.C. as recorded by the learned Trial Court is upheld. The sentence awarded is also maintained. The appellant is in jail. He shall serve out the sentence awarded by the trial Court.

(54) Pending application(s), if any, stands disposed of accordingly.

(55) Let a copy of this judgment and the trial Court's record be transmitted to the Court concerned forthwith and in any case within two weeks from today for information and compliance.

(Zafeer Ahmad, J.) **(Rajnish Kumar, J.)**

May 27, 2026
Ajit/-