



[2026:RJ-JP:43128-DB]



HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Criminal Appeal (DB) No. 212/2023
CNR: RJHC020597862023 | URN: CRLAD / 351U / 2023



1. S/o , R/o ,
, Distt., Alwar, Rajasthan. (At Present In Central Jail, Alwar)
2. S/o R/o
, , Distt. Alwar, Rajasthan.(At Present In Central Jail, Alwar)
3. S/o R/o ,
, Distt. Alwar, Rajasthan.(At Present In Central Jail, Alwar)
4. S/o , R/o , , Distt. Alwar, Rajasthan.(At Present In Central Jail, Alwar)

----Appellants

Versus

State of Rajasthan Through P.P.

----Respondent

For Appellant(s)	:	Mr. Rajeev Surana, Sr. Adv. assisted by Mr. Sankalp Sogani-appellant nos.1 to 3. Mrs. Pankaj Sharma-appellant no.4.
For Respondent(s)	:	Mr. Rhishi Raj Singh Rathore, PP Mr. Dharmendra Kumar for Mr. Kapil Gupta

HON'BLE MR. JUSTICE MAHENDAR KUMAR GOYAL
HON'BLE MR. JUSTICE BHUWAN GOYAL

Judgment

Date of Conclusion of Arguments : : 14/10/2026
Judgment Reserved On : : 14/10/2026
Whether the full judgment or only the operative part is pronounced : : Full Judgment
Judgment Pronounced On : : 26/10/2026

Per Hon'ble Mahendar Kumar Goyal, J.



Under challenge in this appeal is the judgement of conviction and the order of sentence dated 02.06.2023 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and the Commission for Protection of Child Rights Act, 2005 No.2, Alwar, Rajasthan (for short-`the learned trial court), in Sessions Case No. ( ) whereby each of the accused-appellants (for short-`appellants') has been convicted and sentenced as under:

1. Section 363 IPC: Seven years' simple imprisonment and fine of Rs.50,000/-; in default whereof, six months' additional simple imprisonment.

2. Section 366 IPC: Ten years' simple imprisonment and fine of Rs.1,00,000/-; in default whereof, one year's additional simple imprisonment.

3. Section 366A IPC: Ten years' simple imprisonment and fine of Rs.1,00,000/-; in default whereof, one year's additional simple imprisonment.

4. Section 376 D IPC and Sections 5(G)/6 of the Protection of Children from Sexual Offences Act, 2012: Rigorous imprisonment for Life and fine of Rs.5,00,000/-; in default whereof, five years' rigorous imprisonment.

Sentences to run concurrently.

Succinctly stated, the relevant facts are that on at about 09.24 AM, the complainant/prosecutrix (for brevity



`complainant') submitted a written report-Ex.P1 at Police Station , Alwar wherein it was stated that she was 16 years of age and on the previous day at about 10.30 PM, she was taken away from her home in a vehicle by the appellants, who first subjected her to rape in a *bada* (enclosure) in Village and thereafter in a deserted place in the village river. It was averred that thereafter, she was dropped near her home wherefrom she straightway went to the Chowki and the Chowki personnel brought her to Police Station. It was alleged that she was threatened that a video made by them of the wrongful act done to her would be made viral. It was further alleged that she was also threatened that if she informed her family members, they would eliminate and would subject his sister to similar wrongful act. Based thereupon an FIR No. dated -Ex.P2 was registered for the offences under Section 376D IPC and Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (for brevity `the Act of 2012'). After investigation, the appellants were chargesheeted under Section 376D IPC and Sections 5/6 of the Act of 2012. Charges under Sections 363, 366, 366A, 376D IPC and Sections 5(g)/6 of the Act of 2012 were framed against them. The appellants pleaded not guilty. After trial, they have been convicted and sentenced, as stated hereinabove.

Assailing the impugned judgment, learned Senior Counsel Shri Rajeev Surana submitted that the learned trial court gravely erred in assessing the age of the complainant and treating her to be minor. Inviting the attention of this Court towards the ocular and documentary evidence tendered by the prosecution in this



regard, he contended that although, in her matriculation
marksheet-Ex.P11 her date of birth was shown as but,
the prosecution did not lead any evidence to establish its basis.
Referring to the school admission form of the complainant-Ex.P51
wherein the date of birth was mentioned as , Shri
Surana submitted that Smt. (PW3), mother of the
complainant, had stated that the date of birth at the time of
admission in the school was written by the complainant's father
but she was unaware as to its basis. He submitted that neither the
father of the complainant nor the concerned Headmaster nor any
concerned staff member from the school was examined by the
prosecution to prove the basis of recording her date of birth as
. He further stated that the PW3 had also admitted
during her cross-examination that when the complainant was sent
to school, her age was about 10-12 years.

Referring to and relying upon the judgments of Hon'ble
Supreme Court of India in the cases of **Rishipal Singh Solanki
vs. State of Uttar Pradesh & Ors.:AIR 2022 SC 630** and **Birka
Shiva vs. State of Telangana: MANU/SC/0931/2025**,
learned Senior Counsel asserted that it was obligatory upon the
prosecution to have proved the basis of recording the date of birth
in the matriculation mark-sheet and in the absence thereof, the
same could not have been treated as the conclusive proof of the
age of the complainant.

Learned Senior Counsel argued that the learned trial court
failed to appreciate that the written report-Ex.P1 was hit by
Section 162 Cr.P.C. In this regard, he referred to the statement of



the complainant (PW1) wherein she had stated that when the appellants dropped her near her home at about 2.00 AM, she straightaway went to the Police Chowki and submitted a report. He canvassed that a statement in similar terms was made by her sister namely (PW2), as also by her uncle (PW5) but, neither was any such report tendered in evidence nor was the Chowki In-charge or any police personnel from the Chowki examined to depose as to what was stated in the report. He contended that the Investigating Officer- Ms. (PW19) also admitted that before submitting the Ex.D1, the complainant had informed the Chowki In-charge about the incident. Referring to a judgment of the Hon'ble Supreme Court of India in the case of **Allarakha Habib Memon & Ors. vs. State of Gujarat-(2024) 9 SCC 546**, Shri Surana urged that in view thereof, the First Information Report was hit by Section 162 Cr.P.C.

Shri Rajeev Surana further canvassed that the allegation of subjecting her to rape, first in an enclosure at the village was disbelieved by the prosecution itself and the charge framed against them was confined only to subjecting her to rape in a four-wheeler near the village river. Inviting the attention of this Court towards the testimony of the complainant (PW1), learned Senior Counsel urged that the same was full of contradictions and improvements on material aspects of the case rendering the same not to be trustworthy. He submitted that her testimony could not be corroborated by the medical evidence though she was subjected to medical examination soon after the alleged incident.



Elaborating his submissions on this aspect, learned Senior Counsel contended that although in the Forensic Science Laboratory report-Ex.P101, the male DNA profile obtained from the blood samples of the appellants were accounted in mixed DNA profile obtained from the underwear, the salwar and the sanitary pad allegedly worn/used by the complainant at the time of incident as also obtained from the samples lifted from the driver seat of the car and the seat cover found in its carboot but, in this regard, the learned trial court did not appreciate that the prosecution was not able to prove the chain of their safe custody. He canvassed that no seizure memo of the blood samples collected from the appellants was produced. Further, as per the prosecution story, the samples were sent to FSL on _____ but, there was no evidence to demonstrate where the samples were kept from the date of their collection, i.e., _____, till they were sent to FSL on _____.

He also argued that similarly, the prosecution did not lead any evidence to demonstrate who had collected the samples from the car which was recovered from an abandoned place. Learned senior counsel, in this regard, also canvassed that before seizure of the car, no material was available with the prosecution to show its involvement in the offence. To buttress his submissions, Shri Surana relied upon the judgements in the cases of **Prakash Nishad vs. State of Maharashtra: AIR 2023 SC 2938** and **Meghraj vs. State of Rajasthan and connected matters : MANU/RH/1255/2023**.

Lastly, learned Senior Counsel argued that the prosecution could not prove that the complainant was abducted from her





home. Drawing the attention of this Court towards the testimony of the complainant (PW1) and her sister (PW2), he submitted that it proved that both were sleeping in a room at the relevant time, i.e., at about 10.30 PM on _____ when the complainant slipped out of the room without raising any alarm and had gone with the appellants in a car and, therefore, no case of abduction was made out.

In the aforesaid factual and legal context, learned senior counsel for the appellants prayed that the appeal may be allowed, the judgement of conviction and order of sentence may be quashed and set aside and they may be acquitted of the charges framed against them.

Smt. Pankaj Sharma, learned counsel for the appellant-Kumar adopting the arguments advanced by learned senior counsel for the other appellants, submitted additionally that although it was alleged that the incident of rape was captured by the appellants in a video but, no such video was recovered. She further contended that although, in the written report, it was alleged that she was threatened not to disclose the incident to the family members lest they would eliminate _____ and would subject his sister to the similar offence but as admitted by the Investigating Officer (PW19), no investigation in this regard was made. Inviting the attention of the Court towards the ocular testimony, she canvassed that though, the complainant knew at least two of the appellants but, she had painted a picture as if except one of the appellants, she knew none. She also prayed for relief in similar terms.



Shri Rhishi Raj Singh Rathore, learned Public Prosecutor, assisted by Shri Dharmendra Kumar, learned counsel for the complainant, opposing the submissions and supporting the findings recorded by the learned trial court, canvassed that the findings are well reasoned and based on cogent material available on record. Referring to the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for brevity- 'the Act of 2015'), he submitted that the date of birth recorded in the matriculation certificate has to be treated as conclusive proof of the date of birth and in view thereof, the learned trial court did not err in treating the complainant as a minor on the date of the incident. He also argued that from the testimony of the complainant (PW1) which stood corroborated by the scientific evidence in the shape of DNA report, it was proved beyond reasonable doubt that she was subjected to the offences of kidnapping and also of aggravated penetrative sexual assault. He, therefore, prayed for dismissal of the appeal.

Heard. Considered.

Whether the FIR was hit by Section 162 Cr.P.C.:

First, we would like to deal with the submission of the learned Senior Counsel for the appellants that the FIR was hit by Section 162 Cr.P.C.

The FIR-Ex.P2 is based on the written report-Ex.P1 submitted by the complainant at the Police Station on at 09.24 AM. In the written report and in her deposition as PW1, the complainant had stated that after subjecting her to the offence of gang rape, the appellants had





dropped her nearby her home at about 2.00 AM and from there, she straightaway went to the Police Chowki and submitted a report. Further, during her cross-examination conducted on 15.12.2020, she had stated that she orally informed the police personnel at the Police Chowki of the incident happened with her whereas in her cross-examination conducted on 17.12.2020, she had categorically stated that she submitted a report at the Police Chowki. Further, the PW1 had stated that after lodging the report-Ex.P1, first they went to the place where the site plan-Ex.P3 was prepared, thereafter, at the site where Ex.P4 was prepared and thereafter, at the river where the site plan-Ex.P5 was prepared. While, in her cross-examination dated 17.12.2020, she stated that thereafter, she went to Rajkiya Balika Grah, Alwar but, in her cross-examination dated 21.12.2022, contradicting her earlier statement, she stated that after preparation of the site plans, she was taken for medical examination. However, her sister as PW2 stated that her medical examination took place at the Police Station itself. Taking a somersault in her cross-examination, the PW2 stated that first the police took her to hospital and about half an hour or an hour thereafter, they lodged the report which was written by her sister in consultation with her in her presence. Further, her sister (PW2) had stated that on receipt of a telephonic call from the Police Chowki, she and her uncle went there and the complainant submitted a report at the Police Chowki. She very specifically stated that whatever the complainant disclosed to her and their uncle, was reduced to writing by the police personnel at



Chowki and she had also admitted that her sister had disclosed the entire incident which happened with her at the Chowki. However, their uncle (PW5) stated during his cross-examination that they did not lodge any report at rather, submitted it at Police Station .

Thus, we find material contradictions in the aforesaid testimony as to whether an oral or a written report was submitted at the Police Chowki or no report was submitted at all. The Investigating Officer (PW19) had admitted that the complainant had gone to the Police Chowki however; she neither obtained any report from the daily diary nor recorded the statement of the Chowki In-charge Shri

It is trite law that every police personnel is under a statutory duty to record a report if it discloses commission of a cognizable offence. In the instant case, as per the prosecution story, the complainant-a minor girl was subjected not only to the offence of kidnapping in the night but, also to gang rape and therefore, despite having her reached the Police Chowki in absence of any report or non-production of the daily diary or non-recording of the statement of the Chowki In-charge, casts a doubt on veracity of the written report-Ex.P1.

Further, we find that there were material contradictions as to the time at which the written report-Ex.P1 was submitted. As per the "*karyawahi police*" endorsed on it, it was submitted on at 09.24 AM. In her cross-examination, the complainant (PW1) had stated that though they had reached the Police Station at about 5-6.00 AM but, she informed the police



about the incident at about 9-10.00 AM. However, (PW5) stated during his cross-examination that after reaching the Police Station at about 4-5.00 AM, the report was lodged after half to three quarters of an hour. In this regard, the Investigating Officer (PW19) had stated that the family members were talking to each other before submitting the report.

From the aforesaid evidence, it is not proved beyond doubt as to when the written report-Ex.P1 was submitted despite endorsement on it that it was done so at 09.24 AM. Further, it is revealed that before its submission, the complainant had deliberated with her sister and her uncle, who, as per the PW2, was working in the police department still, it lacked essential details which raises a serious doubt as to its veracity.

There is one more important aspect of the matter. The FIR (Ex.P2) was registered on at 09.34 AM but, as per the endorsement on it, the same was received by the jurisdictional Court on , i.e., with a delay of almost three months for which no explanation was furnished.

Their Lordships have, in the case of **Allarakha Habib Memon & Ors.** (supra), held that if the actual complaint filed with the police seems to have been withheld, there are genuine reasons to hold that the FIR is a post investigation document. In that case, reliance was placed on the precedent of the Hon'ble Supreme Court in the case of **State of Andhra Pradesh vs. Punati Ramulu : 1994 Suppl 1 SCC 590** wherein it was held that once it is found that the Investigating Officer has deliberately failed to record the FIR on receipt of the information of a



cognizable offence of serious nature and had prepared the FIR after reaching the spot after due deliberation, consultations and discussion, the conclusion becomes inescapable that the investigation is tainted and it would, therefore, be unsafe to rely upon such a tainted investigation as one would not know where the Police Officer would have stopped to fabricate evidence and create false clues. Their Lordships also relied on the judgement in the case of **Babu Sahebagouda Rudragoudar vs. State of Karnataka : (2024) 8 SCC 149** wherein, in the backdrop that close relatives of the deceased had gone to the Police Station but, no FIR was lodged then and there, it was held that if the daily diary or the roznamcha entry of the Police Station corresponding to visit of the so-called relatives of the deceased was not brought on record, it created a grave doubt on the genuineness of the FIR. It was also held that the complainant admitted in the cross-examination that Poujadar came to his house and that he narrated the incident to the officer who scribed the same and thereafter, the complainant appended his signatures on the writing. However, the ASI testified on oath that the complainant had come to the Police Station and the written report submitted by him was taken as the complaint of the incident. He did not state anything about any complaint having been recorded at the house of the complainant prior to lodging the report. In that backdrop, the non-production of the daily diary maintained at the Police Station was reckoned of great significance and the FIR was treated as a post investigation document not inspiring confidence.





In the instant case also, almost similar facts exist. Indisputably, the complainant had first reached the Police Chowki the police personnel there summoned her family members whereupon her sister (PW2) and her uncle (PW5) reached the Police Chowki and there, the entire incident was narrated to the police personnel. However, as already observed, it is doubtful whether this was done in writing or orally. Be that as it may, neither was the daily diary of the Police Chowki produced nor, the Police Chowki In-charge or any other police personnel from there was examined by the prosecution the absence whereof does not inspire confidence as to genuineness of the report-Ex.P1, rendering the FIR-Ex.P2 to be hit by Section 162 Cr.P.C.

In the aforesaid factual context, we have no hesitation in recording a finding that the Investigating Agency has suppressed the true genesis of the case.

Age of the complainant:

The second important aspect involved in the matter is age of the complainant.

The prosecution has claimed her date of birth to be and therefore, below 17 years of age on the date of the incident. To prove her age, the prosecution has relied upon her matriculation mark-sheet-Ex.P11, school admission application form-Ex.P51 and her Transfer Certificate-Ex.P52 as the documentary evidence and the testimony of the complainant herself (PW1), her sister (PW2) and her mother (PW3).

Ex.P11 reflects her date of birth as and it is based on the date of birth recorded in her school admission



application form-Ex.P51. Smt. (PW3) had stated that the complainant's age was mentioned in the admission application form by her father and she was not aware of its basis. Another document, i.e., the Transfer Certificate-Ex.P52 only reiterates the date of birth as mentioned in the school admission application form. The documents-Ex.P51 and Ex.P52 have been exhibited by the Investigating Officer (PW19). Neither, father of the complainant nor, Headmaster of the school, nor any other concerned staff member from the school appeared in the witness box to prove the basis of the date of birth entered in the admission form. The evidentiary value of the date of birth in the matriculation mark-sheet, which was a derivative entry, was only as good as that of the entry from which it was copied. If its base entry was not proved and/or its source was not known, a later document that reproduced it added no corroborative/independent value to the date of birth in the matriculation mark-sheet. Though, it is a well settled legal principle that the admission form and the Transfer Certificate being certified copies of the original record of a Government school, were admissible in evidence under Section 35 of the Indian Evidence Act, 1872 (for brevity-`the Act of 1872`) but, mere admissibility would not entail proof of the contents thereof.

In the case of **Rishipal Singh Solanki** (supra), the accused (respondent no.2) was declared a juvenile delinquent by the Principal Magistrate (Juvenile Justice Board), Baghpat. The criminal appeal preferred thereagainst by the appellant was dismissed by the learned Additional District and



Sessions Judge, Special Judge, POCSO Act, which was unsuccessfully challenged before the High Court by way of a criminal revision petition. While dismissing the appeal taking into consideration a catena of precedents, their Lordships held that the basis of proof required before the Juvenile Justice Board while dealing with an application raising a claim of juvenility is different and is lower than that required in a trial before the concerned criminal court before which the case regarding commission of offence is pending. It was further held that when a claim of juvenility is raised, the burden is on the person raising the claim to satisfy the Court so as to discharge the initial burden. However, the documents mentioned either in the Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short- 'the Rules of 2007') or sub-section (2) of Section 94 of the Act of 2015 shall be sufficient only for prima facie satisfaction of the Court on the basis whereof a presumption of juvenility may be raised which would not be conclusive proof of the age and the same may be rebutted by the opposite side. It was specifically held that any document which is in consonance with the public document, such as the matriculation certificate, could be accepted by the Court or the Juvenile Justice Board provided such public document is credible and authentic as per the provisions of the Act of 1872 viz., Section 35 and other provisions.

In the case of **Birka Shiva** (supra), the criminal appeal was preferred by the accused-appellant who was convicted under Sections 376, 363 and 342 IPC by the learned Sessions Judge and the appeal preferred thereagainst by him came to be dismissed by





the High Court. Therein, the prosecution had relied on the birth certificate issued by the Zila Parishad High School to establish the minority of the victim. The Hon'ble Supreme Court held that though such an entry made in public or official registers is admissible in evidence under Section 35 of the Indian Evidence Act, 1872; however, admissibility is distinct from probative value.

It was observed that **the evidentiary weight of such a document would depend on proof of its authenticity and the source of underlying information. Mere production and marking of a document as exhibit by the Court does not amount to proof of its contents. Its execution has to be proved by leading substantive evidence, that is, by the evidence of those persons who can vouchsafe for the truth of facts in issue.**

The Hon'ble Supreme Court referred to and relied upon the judgement rendered in the case of **Birad Mal Singhvi vs. Anand Purohit:1988 Supp SCC 604**, wherein it was observed as under:

"14. ... If entry regarding date of birth in the scholar's register is made on the information given by parents or someone having special knowledge of the fact, the same would have probative value. ... The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or the scholar's register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value, but if it is given by a stranger



or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. ...

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

The courts have consistently held that the date of birth mentioned in the scholar's register or secondary school certificate has no probative value unless either the parents are examined or the person on whose information the entry may have been made, is examined..." (Emphasis supplied)

Another judgment of the Hon'ble Supreme Court in the case of **Allamelu vs. State: (2011) 2 SCC 385** was also referred wherein it was held that though, a transfer certificate issued by a Government school and duly signed by the Headmaster may be admissible under Section 35 but, it would not be of much evidentiary value to the prove age of the girl in absence of the material on the basis of which age was recorded. The date of birth mentioned in the T.C. would have no evidentiary value unless the person who made the entry or who gave the date of birth is examined.

Thus, after referring to a catena of judgements in this regard, their Lordships proceeded to hold that the evidentiary value of the date of birth in the certificate issued by the school was significantly undermined in absence of corresponding material inasmuch as the prosecution had failed to examine the person who had made the entry in the admission register to ascertain on what basis such an entry was made. It was observed that there was nothing on record to corroborate the date of birth of the





victim as recorded in the school birth certificate and, therefore, it could not be relied upon to definitely determine the age of the victim and hold with certainty that she was below 16/18 years of age at the relevant time.

From the aforesaid precedential law, we find that it has been authoritatively held by the Hon'ble Supreme Court that entries as to date of birth in the school register/documents, though are admissible in evidence under Section 35 of the Act of 1872, but their probative value would depend upon the authenticity and veracity of such entries which can be proved only by the underlying basis on which such entries were made. In the instant case, the learned trial court has relied upon the testimony of the complainant herself (PW1), her sister (PW2) and her mother (PW3) coupled with her matriculation mark-sheet-Ex.P11. However, we find that deposition of the complainant (PW1) as to date of birth is based solely upon the Ex.P11. She, during her cross-examination, feigned ignorance as to when she took admission in Class I. Although, PW2 had stated complainant's date of birth as but, she did not disclose the basis thereof. Smt. (PW3) had claimed the complainant to be aged 15-16 years, but in her cross-examination, she stated that complainant's father had recorded the date of birth in the admission form but she was unaware of its basis. She had further stated that when the complainant first went to school, her age was about 10-12 years. However, in the same breath, she had put a question mark on her own statement. As already observed, neither the father of the complainant nor the concerned



Headmaster or any staff member of the school was examined to disclose the underlying basis of the date of birth mentioned in the school admission application form which was, indisputably, the basis of recording the date of birth in the matriculation mark-sheet. In the conspectus of the aforesaid analysis, we are of the considered opinion that it was not safe to hold the complainant to be a minor on the date of incident relying upon the date of birth recorded in the Ex.P11 and we hold that the prosecution could not prove, beyond reasonable doubt, that she was a minor at the relevant time.

Whether the allegation of gang rape was proved:

Another contention raised by the learned Senior Counsel for the appellants was that the prosecution had failed to establish that the complainant was subjected to gang rape.

In her written report-Ex.P1, the complainant had alleged that she was subjected to gang rape by all the four appellants, first in an enclosure in the village and thereafter, in a deserted place in the village river. However, during her court deposition as PW1, she had stated that only the appellants and subjected her to rape in the first instance, that too in the vehicle and not in the enclosure. Thereafter, two other appellants joined them in the vehicle and all four of them took her to the river where they all subjected her to rape. However, the story of her being subjecting to rape, either in the enclosure by all four of them or in the vehicle by two of the appellants in the first instance was not accepted by the prosecution itself and the trial court had framed no charge against any of the appellants of subjecting her to rape twice, i.e,



in the first instance in the village and in the second instance near the river. The charge framed pertained only to gang rape in the vehicle near the river.

As PW1, the complainant stated that all the four appellants took her in a vehicle to the river, where the vehicle was parked and she was subjected to gang rape. She did not specifically allege rape in the vehicle. During her cross-examination, she admitted that it was not mentioned in the written report that after the vehicle reached the river, all the four appellants committed rape upon her. She further stated that it was wrongly mentioned in her police statement-Ex.D1 that she was subjected to rape in the river. She also admitted during her cross-examination that neither in the written report-Ex.P1 nor in her police statement-Ex.D1, was it mentioned that she was subjected to rape inside the vehicle. Though, the written report lodged at the Police Station at about 09.24 AM on the day following the incident, did not mention that the rape was committed inside the vehicle but, the sister of the complainant (PW2) stated in her examination-in-chief that at the Police Chowki, her sister had disclosed in detail the entire incident including that she was subjected to rape near the river inside a four-wheeler; but, very conspicuously, it was not mentioned in the written report which creates a grave doubt as to the veracity of the prosecution case.

Further, we noted that while passing the impugned judgement, the learned trial court held that the allegation of rape stood corroborated by the medical evidence. However, we find otherwise. In her medical examination report-Ex.P9 with regard to





sexual assault, it was reported that there were no injury marks on her body. On genitals, though no injuries were found but, a slight abrasion in the vagina was noted. Dr. (PW8), one of

the Members of the Medical Board who examined the complainant, stated that menstrual blood was present in the vagina and there were no marks of injuries. In her cross-examination, she stated that there was no mark of semen on the pubic hair. She also stated that the complainant did not inform her about any sexual intercourse. Another member of the Medical Board namely, Dr.

(PW9) had stated during her cross-examination that there was no fresh injury in the vagina and there was no sign of recent intercourse. She accepted the suggestion that the abrasion in the vagina could be on account of friction with cloth. It explains the minor abrasion in the vagina inasmuch as, as per the prosecution story, the complainant was in her menstrual cycle and was using a sanitary pad at the relevant time.

Moreover, PW9 had opined that since, as per the FSL report, no semen was found in the vaginal swab of the complainant, she was not subjected to rape. On that premise, we do not find that the allegation of gang rape stood corroborated medically.

The impugned judgement reflects that the learned trial court has heavily relied upon the Rajasthan State Forensic Science Laboratory (FSL) report-Ex.P101 as the corroborating piece of evidence with regard to the allegation of gang rape. We find it profitable to reproduce the relevant part of the report as under:

1. Male DNA profile obtained from exhibit no. 10 (Blood sample of accused 11 (Blood sample of accused





12(Blood sample of accused

& 13(Blood sample of accused

are accounted in the mixed DNA profile obtained from exhibit no. 2(Underwear of victim).

2. Male DNA profile obtained from exhibit no.11(Blood sample of accused is accounted in the mixed DNA profile obtained from stains detected on exhibit no. 1(Salwar of victim).
3. Male DNA profile obtained from exhibit no. 10 (Blood sample of accused and 12(Blood sample of accused is accounted in the mixed DNA profile obtained from exhibit no. 3(Pad of victim).
4. Male DNA profile obtained from exhibit no.12(Blood sample of accused is accounted in the mixed DNA profile obtained exhibit no. 14(Driver seat of the car).
5. Male DNA profile obtained from exhibit no.11(Blood sample of accused and 12(Blood sample of accused is accounted in the mixed DNA profile obtained exhibit no. 19(Seat cover found in carboot).

Thus, we find that as per the report, the male DNA profile obtained from the blood samples of all the appellants accounted in the mixed DNA profile obtained from the underwear of the victim. The male DNA profile obtained from the blood sample of appellant- @ accounted in the mixed DNA profile obtained from stains detected from the salwar of the victim. The male DNA profile obtained from blood samples of appellant and appellant accounted in the mixed DNA profile obtained from the sanitary pad of the victim. The male DNA profile obtained from the blood samples of some of the appellants accounted in the mixed DNA profile obtained from the Driver seat of the car and the seat cover found on the carboot.





Dr. _____ (PW14), the Medical Officer, Community Health Centre, _____, stated that he collected the blood samples of all the appellants on _____, sealed them separately and handed over all the sealed samples to the police. During his cross-examination, he stated that the letter given by him along with the samples bore neither his seal nor the dispatch number nor the date of the dispatch. Shri _____ (PW15), a Constable working in the Circle Office, _____, stated that he had taken the sealed samples on _____ and denied specifically to have received the same on _____. Although, Dr. _____ did not specify to which police person he handed over the sealed samples but, had categorically stated the same were handed over on _____ whereas, _____ claimed to have received the same on _____. Thus, there is contradiction as to when the blood samples were handed over to the police. Moreover, the prosecution is completely silent as to where the samples were kept from the time they were handed over by Dr. _____ to the police on _____ till they were seized at the Police Station on _____ vide memo-Ex.P30. Further, as per the Ex.P30, 4 sealed cloth bags containing the samples and 4 sealed envelopes were received but, they were marked only as "A", "B" and "C". The prosecution did not furnish any explanation as to who had marked the packets as "A", "B" and "C" and as to how the four sealed cloth bags and 4 sealed envelopes could only be marked as "A", "B" and "C".

Further, as per the testimony of Shri _____ (PW12), a Constable in the CO Office, _____, on _____ the blood





samples were again sent after addressing the objection raised. As per the seizure memos-Ex.P32 to Ex.P39, the packets marked 'A', 'B' and 'C' were brought to the Police Station by Shri

along with the objection letter of the FSL and were seized there in presence of motbir witnesses Shri and

both Constables.

(PW12) had stated that the

sealed packets were received by the CO on . During his cross-examination, he stated that an objection was raised (by the FSL) as all the packets belonging to all the four appellants were sent in one packet which were to be remitted again after segregating them. He further stated that after getting the objection removed, he brought the samples from M.O. and thereafter the samples were sent again on . He feigned

ignorance as to whether the samples were sealed again by the MO. Another motbir witness (PW16) corroborated the statement of PW12 to the extent that the samples were received in the CO office on . However, during his cross-examination, he feigned ignorance as to when brought these articles. He further feigned ignorance as to the custody of these articles from to . The Investigating

Officer (PW19) had also stated that she received the packets marked 'A', 'B' and 'C' on which were seized vide memos Ex.P32 to Ex.P39. During her cross-examination, she admitted that she did not put any seal impression on these seizure memos, but stated that there was a seal impression by the Doctor on these documents. However, a perusal of the seizure memos, i.e., Ex.P32 to Ex.P39, does not reflect that the packets were



sealed again with the seal impression either of the Investigating Officer or the Medical Officer as claimed by the prosecution.

Further, the prosecution led no evidence to corroborate the statement of (PW12) that he brought these samples

from the MO after getting the objection rectified. As a matter of fact, there is no evidence on record to show as to when, in the first instance, the blood samples of the appellants were sent to the FSL for examination, who took the same, when the samples reached the FSL and what objection was raised by the FSL except the oral testimony of PW12 that it pertained to sending of the samples in one packet. However, no such objection letter was produced by the prosecution. Further, there is no letter from the MO rectifying the objection as claimed by PW12. It is also not reflected that after receipt of the samples back in the CO office, when the packets were opened, when the samples were segregated and whether the same were sealed again properly or not? As per (PW12), the samples were sent again on

after addressing the objection, but as per Ex.P21-the receipt of the FSL, 22 sealed packets were received on through Constable along with a letter of the SP Alwar dated .

(PW6) stated that he deposited 22 sealed packets on after receiving them from the malkhana. However, the Investigating Officer feigned ignorance during her cross-examination as PW19 as to when the samples were sent to the FSL. Furthermore, as per the FSL report-Ex.P101, the blood





samples constituted a part of the 22 packets received on

Thus, from the aforesaid prosecution testimony, we find that there were contradictions with regard to the date on which the samples were re-sent to FSL. As per PW12, the samples were sent back on whereas, as per PW6 and the receipt Ex.P21, the same were sent and received at the FSL on while the Investigating Officer feigned ignorance as to the date when the same were re-sent.

There is another important aspect of the matter. As per the testimony of (PW6), he collected 22 sealed packets from the malkhana and deposited the same at the FSL on along with the even dated forwarding letter of the SP Alwar. His testimony stood corroborated by the FSL receipt-Ex.P21. However, the malkhana register-Ex.P50 did not reflect that the packets containing blood samples of the appellants marked 'A', 'B' and 'C' seized vide memo-Ex.P30 on , were ever deposited in the malkhana. Further, as per the prosecution case, on , they were received back from the FSL with an objection letter. At the cost of repetition, we may observe here that the prosecution did not lead any evidence to show that as to when, by whom and from where these samples were taken to the FSL in the first instance. Even the objection letter of the FSL was not produced. The malkhana register did not show that they were deposited in the malkhana after the same were remitted back by the FSL. However, an entry in it shows that vide receipt /DNA/ , 22 sealed packets were deposited at the



FSL by the Constable . In these circumstances, it becomes highly doubtful as to how collected these samples from the malkhana and how the samples constituted part of the 22 sealed packets deposited by him with the FSL on . Furthermore, the malkhana In-charge was not examined by the prosecution to dispel all these ambiguities. Even otherwise, the entries in the malkhana register do not inspire confidence as to genuineness of the Ex.P50. The first two entries are dated . Thereafter, the entries are dated and . However, entry made thereafter shows that the sealed packets 1, 2 and 3 were received on . If the entries were made in chronological order, we find no explanation on record as to how after , the samples could have been received and deposited on .

We need not underline the significance and importance attached to the chain of safe custody of the samples before any scientific report based thereupon can be relied upon by the courts. Their Lordships have, in the case of **Prakash Nishad** (supra), held that the samples collected by the Investigating Agency must be sent to the FSL with promptitude and without any delay to rule out the possibility of contamination and the concomitant prospect of diminishment in value and the prosecution must establish the chain of custody, which implies that right from the time of taking of the samples to the time their role in the investigation and processes subsequent is complete, each person handling such a piece of evidence must duly be acknowledged in the documentation, so as to ensure that the integrity is



uncompromised. It was observed that the alertness with which the samples are sent to the FSL and the maintenance of the chain of custody are vital aspects which are indispensable to the vitality of such evidence. It was further held that a document should be duly maintained, cataloging the custody and the document should include name or initials of the individual collecting the evidence, each person or entity subsequently having custody of it, dated the items were collected or transferred, agency and case number, the victim's or the suspect's name and the brief description of the item. Relying upon the aforesaid precedent, a co-ordinate Bench of this Court, in the case of **Meghraj** (supra), held that it was necessary for the prosecution to establish that the blood sample was taken, kept in the malkhana and sent to the FSL. In the absence of a seizure memo of the blood sample and entry in the malkhana register, this Court found the FSL report to be doubtful.

A three-Judge Bench of the Hon'ble Supreme Court of India, in the case of **Manoj & Ors. vs. State of Madhya Pradesh: (2023) 2 SCC 353**, held that if DNA evidence is not properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirement for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving DNA evidence for, it can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or



other part of the face and then touches an area that may contain the DNA to be tested.

From the aforesaid authoritative pronouncements, a clear legal position emerges that to establish the integrity of the samples collected for DNA examination, the prosecution is under an obligation to show a chain of safe custody in absence whereof, the DNA report cannot be relied upon. As is apparent from the evidence analysed hereinabove, in the instant case, the prosecution has miserably failed to lead evidence to show that an unbroken chain of custody qua the blood samples of the appellants was maintained and therefore, we do not find it prudent to rely upon the DNA report to prove complicity of the appellants in the crime leaving explained large gap in the prosecution case.

Although the aforesaid observations are sufficient to deal with the DNA examination qua the samples collected from the car allegedly used in commission of the offence as well but, we would like to examine the same to demonstrate the reckless and irresponsible manner in which the investigation was conducted in the instant case leaving explained large gap in the prosecution case.

A white Datsun car was seized vide memo-Ex.P41 on _____ from village _____ in an abandoned condition on verification of the appellant- _____ @ _____. It is worth noting here that neither was any disclosure statement of the appellant _____ recorded nor, was any site plan of the seizure prepared by the Investigating Agency. The seizure memo was



proved by S/Shri (PW12) and (PW13), both Constables. Conspicuously, neither in the seizure memo nor in the testimony of the aforesaid two witnesses, there was even a whisper of averment with regard to the seizure of the car along with the key. In the mechanical inspection conducted by Shri (PW18) vide memo-Ex.P43, no incriminating evidence was found in the car. The car was taken to FSL by Shri

(PW17) on as is evident from the FSL receipt-Ex.P42. Though there is an entry of the receipt dated in the malkhana register-Ex.P50 but, there is no corresponding entry of the car's deposit in the malkhana. Be that as it may, a while Datsun car was seized by the Investigating Agency on .

In the written report-Ex.P1, the complainant had simply stated that the appellant took her in a vehicle from her home. She, as PW1, denied having disclosed in her police statement-Ex.D1, that the subject vehicle was a Maruti and feigned ignorance as to why it was so mentioned therein. None of the other prosecution witnesses had disclosed before , i.e., seizure of the subject car, that it was a white Datsun car leaving a gap in the prosecution story as to how the investigating agency came to know that it was the same car which was used in the commission of the offence. When the Investigating Officer (PW19) was confronted on this aspect, while admitting that neither in Ex.P1 nor in Ex.D1 nor in the Section 164 statement was even the word 'car' or its make mentioned, stated that it was so revealed from Ex.P22 and the statement of the wife of . Ex.P22 is



the notice issued to Smt. _____ W/o _____ under Section 133 of the Motor Vehicles Act, 1988. Conspicuously, it is dated

_____, i.e., 14 days after the date of the seizure of the subject car. Her police statement-Ex.P25 was also recorded on

_____. Smt. _____ had turned hostile as PW7.

However, nothing emerges from her cross-examination by the learned Special Public Prosecutor to demonstrate that on or before

_____, it was revealed to the police that the subject car was used by the appellants in the commission of the offence. On that premise, we find the allegation of the use of the subject vehicle in the commission of the crime to be doubtful.

Furthermore, as per the FSL report-Ex.P101, the mixed DNA profile obtained from the driver seat of the car and the seat cover found in the carboot accounted for in the male DNA profile obtained from the blood samples of the three appellants. However, the prosecution did not lead any evidence to show as to when and by whom the samples from the car were collected. No seizure memo of the samples was produced. The malkhana register-Ex.P50 also does not reflect that any such samples were ever deposited in the malkhana. In view thereof, we are of the considered opinion that the learned trial court erred in relying upon the FSL report to record a finding that the complainant was subjected to gang rape by the appellants in the car recovered vide Ex.P41.

There is one more important aspect of the matter. Indisputably, the FSL report was not proved by the expert(s) who had prepared it. While dealing with an identical situation, a three-



Judge Bench of the Hon'ble Supreme Court of India in the case of

Irfan alias Bhayu Mevati vs. State of Madhya Pradesh: 2025

INSC 150, held as under:

"22. It is an admitted position that the DNA profiling report (Exhibit-157) was formally exhibited by the Superintendent of Police(PW-31) in his evidence. None of the scientific experts involved in the process of conducting the DNA profiling examination and issuing the report have been examined by the prosecution.

23. The DNA profiling report is a document on which the entire fulcrum of the prosecution case is based. The defence has claimed grave prejudice on account of non-examination of these scientific witnesses and the non-production of the experts in evidence, thereby creating a grave doubt on the probative value of the report.

24. The aspect concerning evidentiary value of DNA report has been explained by this Court in Rahul v. State of Delhi, Ministry of Home Affairs MANU/SC/1455/2022: 2022: INSC:1176: (2023) 1 SCC 83, wherein it was held as under: -

"36. The learned Amicus Curiae has also assailed the forensic evidence i.e. the report regarding the DNA profiling dated 18-4-2012 (Ext. P-23/1) giving incriminating findings. She vehemently submitted that apart from the fact that the collection of the samples sent for examination itself was very doubtful, the said forensic evidence was neither scientifically nor legally proved and could not have been used as a circumstance against the appellant-accused. **The Court finds substance in the said submissions made by the Amicus Curiae. The DNA evidence is in the nature of opinion evidence as envisaged under Section 45 and like any other opinion evidence, its probative value varies from case to case.**

38. It is true that PW 23 Dr B.K. Mohapatra, Senior Scientific Officer (Biology) of CFSL, New Delhi had





stepped into the witness box and his report regarding DNA profiling was exhibited as Ext. PW 23/A, **however mere exhibiting a document, would not prove its contents.** The record shows that all the samples relating to the accused and relating to the deceased were seized by the investigating officer on 14-2-2012 and 16-2-2012; and they were sent to CFSL for examination on 27-2-2012. During this period, they remained in the malkhana of the police station. Under the circumstances, the possibility of tampering with the samples collected also could not be ruled out. Neither the trial court nor the High Court has examined the underlying basis of the findings in the DNA reports nor have they examined the fact whether the techniques were reliably applied by the expert. In the absence of such evidence on record, all the reports with regard to the DNA profiling become highly vulnerable, more particularly when the collection and sealing of the samples sent for examination were also not free from suspicion." (emphasis supplied)

Although, in the aforesaid judgement, the Hon'ble Supreme Court was pleased to remand the matter to the learned trial court to examine the expert(s) who had prepared the DNA report but, we do not find it just and expedient to do so in the instant case for the reason that the prosecution could not prove the chain of custody of the samples before they were sent to the FSL.

It is a well settled legal principle that a conviction for the offence of rape can be recorded on the sole testimony of the prosecutrix provided it is trustworthy, of sterling worth, natural and consistent right from the inception till her deposition in the Court. However, in the present case, we do not find deposition of the complainant (PW1) to be so rather, to be suffering from





contradictions and improvements on material aspects of the case. Further, the allegation is not found to be corroborated medically or scientifically or by any other evidence.

In view of the aforesaid discussion, we are not convinced that the prosecution was able to prove, beyond reasonable doubt, that the complainant was subjected to offence of gang rape / rape by the appellants.

Offence of kidnapping/abduction:

Now we are left with the issue as to whether the appellants are guilty of kidnapping/abduction. Since, we have already held that the prosecution could not prove the complainant to be minor on the date of incident, we will examine the evidence in that light.

In the written report, it was stated that on the previous day, i.e., at about 10.30 pm, four appellants took her away from home with no allegation that it was forcible or against her wishes or after enticing her. In her court statement, she stated that on that day, she received a phone call at about 01.30 PM from asking her not to inform anybody that he used to talk to her. She further averred that the same night, at about 10.30 PM, he again telephoned and asked her to come out of the home failing which she would be defamed in society on account of her relationship with her friend 's brother , whereas she had no relationship with him. Under threat, she came out of the house where she found a white car. When she reached the car, she noticed a person sitting inside whose name, she later came to know, was . pushed her inside the car from behind and took her to . There,



and both subjected her to rape in the vehicle and thereafter, two more persons came in the car from the bada, who disclosed their name as and . She, during her cross-examination, admitted that all these averments were absent in her written report-Ex.P1. She further admitted that was sitting in driver seat who was brother-in-law of her cousin “. She denied to have stated in her police statement-Ex.D1 that she asked why he had come at night and said if her family members were alarmed, she would be defamed. Thus, according to her deposition as PW1, she came out of the house under threat of being defamed in the society on account of her relationship with but, not only she had denied to have any relationship with but, also no investigation was carried out by the Investigating Agency in this regard as admitted by the Investigating Officer (PW19). She had further denied to have stated in Ex.D1 that two boys namely R/o and were following the car on a motorcycle. She had also stated that when she sat in the car, she raised an alarm but, covered her mouth. Further, she admitted that she and her sister were sleeping in a room. In the same breath, she stated that her sister was studying and accepted the suggestion that she had come out of the house at 10.30 PM without informing anybody. Moreover, she feigned ignorance when suggested that she had talked to the appellant on his mobile number from her sister’s mobile phone for about 28 minutes on . She had stated that the appellant has two sisters who are her sisters-in-law being wives of her cousins. Her sister (PW2), during her cross-examination, denied



having stated in her police statement-Ex.D2 that the complainant asked her to sleep and that at about 10.00 PM, she slept. She further denied to have stated in Ex.D2 that her sister looked towards her many times lifting the bedsheet. She also admitted that the room in which they were sleeping, was latched from inside but she did not hear any sound of it being opened.

In the conspectus of the aforesaid evidence, a grave doubt is raised as to the prosecution case that the complainant was kidnapped/abducted from her home either forcefully or by enticing her. On that premise, we do not concur with the findings recorded by the learned trial court with regard to the guilt of the appellants under Sections 363, 366 or 366A IPC.

In the conspectus of the aforesaid analysis, we are of the considered view that the prosecution could not establish the guilt of the appellants, beyond reasonable doubt, for the offences with which they were charged and the appeal deserves to be allowed.

In the result, the appeal filed by the appellants is allowed, the judgement of conviction and order of sentence dated 02.06.2023 passed by the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commission for Protection of Child Rights Act, 2005 No.2, Alwar, Rajasthan in Sessions Case No. () is quashed and set aside. The appellants are acquitted of the charges framed against them. Since, they are in jail, they shall be set at liberty forthwith if not required to be detained in any other case.

In view of the provisions of Section 437-A CrPC (Section 481 Bharatiya Nagarik Suraksha Sanhita, 2023), each of the appellants



are directed to furnish a personal bond in the sum of Rs.25,000/- and a surety in the like amount within four weeks before the Registrar (Judl.) of this Court which shall be effective for a period of six months with the stipulation that in the event of a Special Leave Petition being filed against this judgement or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.



(BHUWAN GOYAL),J

(MAHENDAR KUMAR GOYAL),J

1/RAVI SHARMA