

(2025) 11 DEL CK 1874
In the Delhi High Court
Case No : Criminal Appeal No.1039 Of 2014

State	Vs	APPELLANT
Inderpal		RESPONDENT

Date of Decision : 12-11-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 164, 313
Indian Penal Code, 1860 — Section 376, 376(2)(f)
Prevention of Children from Sexual Offences Act, 2012 — Section 29

Citation : (2025) 11 DEL CK 1874

Hon'ble Judges : Dinesh Mehta, J;Vimal Kumar Yadav, J

Bench : Division Bench

Advocate : Aman Usman, Kanhaiya Singhal, Shashwat Tiwari, Awantika Shankar, Rishabh Bhardwaj, Prasannr, Vani Singhal, Pulkit, Rajat Pandey, Rahul Bhaskar, Ajay Kumar, Vivedita

Final Decision : Allowed

Judgement

Dinesh Mehta, J

1. The instant appeal is preferred against the judgment dated 16.07.2013 passed by learned Additional Sessions Judge-01 (West), Delhi (hereinafter referred to as 'Trial Court') in SC No.74/12, whereby the learned Trial Court has acquitted the accused/respondent of the charges under Section 376 of Indian Penal Code ('IPC'), 1860.
2. The genesis of the case lies in the narration of an incident, which the prosecutrix 'M' gave to her mother Dropdi (PW-6) on 14.09.2011, informing, inter alia, that a person residing near their house held her, carried to his room, undressed her and sexually assaulted her.
3. The mother observed that the salwar of the girl M was having blood spots and noticed that her private part had turned red and was having some blood.
4. At about 9:00 p.m., when her father came home, they searched for the

accused, but failed. However, on the next day, at about 9:00 a.m. the girl and her mother Dropdi (PW-6) were standing outside their house, when she pointed towards the accused who was coming on his bicycle and said that he was the uncle who had taken her to his room and did the wrong.

5. The accused was immediately apprehended by Dropdi (PW-6) and her uncle Gopal; the police was called and then, the accused was handed over to the police.

6. Said call was noted by the police at Entry No. 19 (Ex.- PW11/A) of the Daily Diary dated 15.09.2011, in furtherance whereof, the police came, arrested the accused and got his medical examination done. Medical examination of the victim 'M' was also got conducted.

7. The police recorded the statement of Dropdi-mother of the victim (PW-6), landlady-Smt. Parvati (PW-9), Kailash-father of the victim (PW-7).

8. As the medical examination corroborated the allegations levelled by the victim, her statement under Section 164 Cr.P.C. was gotten recorded by the Judicial Magistrate.

9. On completion of the investigation, a charge-sheet inculcating the accused for the offence under Section 376 of the Indian Penal Code ('IPC'), 1860 was filed. As the accused denied the charge of 376 framed against him, the case was put to trial.

10. In order to bring home the charge, the prosecution examined 13 witnesses and exhibited various documents. The statement of the accused under Section 313 Cr.P.C was also recorded, wherein the accused denied the allegation and the evidence led by the prosecution, however, did not lead any evidence in his defence.

11. On going through the oral and ocular evidence on record, the Trial Court acquitted the accused of the charge of sexual assault, holding that the prosecution failed to prove the case beyond reasonable doubt. The reasons for which such conclusion was arrived at are outlined hereinfra:-

(i) In her Court statement, the prosecutrix stated that the uncle pulled off her underwear, laid her on the floor and thereafter laid upon her body and except that he did nothing; which act according to the Trial Court did not constitute 'sexual assault'.

(ii) During the cross-examination, the prosecutrix (PW-3) had deposed that she was asked by her mother to say that uncle laid upon her, which led the Trial Court to hold that the prosecutrix was tutored.

(iii) During her statement recorded under Section 164 Cr.P.C (Ex. PW-13/B, 13/C), she had stated that the uncle (accused) entered his urinal organ into her urinal organ and she felt pain, whereas, in her Court statement, she did not state the facts relating to actual assault. The Court held that the evidence recorded in the Court is a substantive piece of evidence, however, the statement under

Section 164 Cr.P.C is only corroborative in nature.

(iv) From the testimony of PW-3, the allegation of sexual act committed upon her is not proved.

(v) With regard to the identity of the accused, since in opening part of her cross-examination the prosecutrix had stated she did not know the uncle who had taken her from the street, the Trial Court concluded that the victim did not identify the accused.

(vi) As per FSL report, no blood was found on the salwar and vaginal smear of the prosecutrix.

(vii) The Medico-Legal Report of the prosecutrix in relation to the hymen of the prosecutrix that "the hymen was found to be torn with red and inflamed margins" has been discarded by the Trial Court in light of the Judgment of the Delhi High Court reported in 2009 (111 DRJ 313 DB).

(viii) The landlady (PW-9), being the material witness has not supported the case of the prosecution.

12. Mr. Aman Usman, learned Additional Public Prosecutor (APP), impeaching the order passed by the Trial Court contended that the Trial Court showed scant regard to the tender age of the victim, who was merely seven year old and argued that, firstly, there was no discrepancy in the testimony of the prosecutrix (PW-3) and her mother (PW-6) and that even if so-called discrepancy is taken into account, remaining evidence coupled with the Medico-Legal report, is sufficient to conclude that the prosecutrix was sexually assaulted.

13. He took the Court through the prosecutrix' statement under Section 164 Cr.P.C (Ex. PW-13/B, 13/C), MLC (Ex. PW-12/B) and the deposition made in the Court and having read the entire deposition of the prosecutrix, so also the questions which were put to her in order to decipher her mental state, he argued that the Trial Court has seriously erred in picking the first line of the statement " I do not know the person standing in the dock" out of context and ignoring the remaining part.

14. He submitted that in the opening statement, what the prosecutrix meant to say through these words was, that she had not known the person standing in the dock, prior to the incident. He emphasised that in the latter part of the deposition (question), she clearly identified the accused by stating that, said uncle was the person, however, she did not know his name. He also highlighted the Court's observation, wherein, the prosecutrix had admitted that the person present in the Court is the person, who laid upon her.

15. Learned APP also pointed out that the prosecutrix has clearly deposed that the uncle gave her an amount of Rs.20, in the form of two currency notes of Rs.10 and warned her not to tell about the occurrence to her parents, lest she would be beaten. He argued that the Trial Court has concluded that there is

serious discrepancy in the version of the prosecutrix, ignoring the fact that the girl was hardly seven years of age, when her statement was recorded on 14.02.2012.

16. Mr. Aman Usman, learned APP, thereafter navigated the Court through the MLC (Ex. PW-12/B) of the Prosecutrix and highlighted that the victim was taken to the hospital in the morning of the very next day of the incident which took place on 14.09.2011 in which, it was recorded by the doctor that it was a case of sexual assault. He underscored that the Medical Report clearly shows that the hymen was torn and there were red inflamed margins and argued that the mother of the prosecutrix (PW-6) has clearly supported the case of the prosecution and therefore, the Trial Court could not have drawn the conclusion of innocence of the accused.

17. Learned APP argued that true it is, that the statements given under Section 164 Cr.P.C cannot be taken as an evidence, but the fact that the same were recorded on 16.09.2011 by a Judicial Magistrate, during which the prosecutrix had narrated the entire incident becomes relevant in the present factual matrix. He argued that in the instant case the statement under Section 164 needs to be given due weightage, given that the prosecutrix was only seven years of age. He also argued that may be, the prosecutrix had simply stated that the accused after undressing her had laid on her during her Court statement, but omission on her part to state the remaining part of the actual sexual assault could not have been ignored, when the medical evidence totally corroborated the sexual assault on her.

18. He also invited Court's attention towards the testimony of Dr. Supriya (PW-5), in which the doctor who conducted the medical examination, had clearly reported that-

"hymen of the patient was found torn with red and inflamed margins".

19. Learned Counsel for the appellant-accused, on the other hand, argued thus:-

(a) that it is a case where the accused has been chargesheeted under the provision of Section 376 of the IPC and not under the provisions of Prevention of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act'), obviously, because the POCSO Act had by that time not come into effect.

(b) That since the case would not be covered by the provisions of POCSO Act, the presumption given under Section 29 of POCSO Act would not be applicable and hence, the prosecution was supposed to prove its case beyond all reasonable doubt, which in the instant case it had failed.

(c) That police had not conducted any test identification parade which was necessary in the present case.

(d) Highlighting the cross-examination of PW-6 (mother of the prosecutrix) in which she had said "I did not tell the fact to the police that I used to run a shop",

he contended that PW-6 cannot be treated to be a reliable witness and it supports the accused person's stand or the defence which he had set up that he had been falsely implicated because of the animosity which the mother had with the accused due to quarrel which had taken place between them.

(e) That during the cross-examination, PW-7 (father of the prosecutrix and husband of PW-6) clearly admitted the factum of quarrel between PW-6 (prosecutrix's mother) and the accused.

(f) The police had not recorded the time of arrest of the accused in Arrest Memo (Ex PW-4/C) and therefore the investigation & consequential proceedings had vitiated.

(g) That in the Medical Report, so also in their statements, Dr. Supriya (PW-5) and Dr. Brijesh Singh (PW-12), have not reported any sexual assault. He argued that simply because the hymen was found torn and there were red inflamed margins on the private part, it cannot be concluded with certitude that the prosecutrix was subjected to sexual assault.

(h) That the scope of interference of the High Court in an appeal against the acquittal is very limited and even if another view is possible, the same should be avoided, given that a period of more than 14 years has passed since the incident.

20. In rejoinder, learned APP submitted that the testimony of prosecutrix is required to be read in its entirety. He argued that simply because she could not tell the name of the accused, the prosecution case cannot be rejected when the questions which had been put to her in order to assess her understanding shows that the victim of 7 years of age was not even in a position to tell the name of the class teacher and the subjects which were being taught. He added that it cannot be expected of a victim of 7 years would narrate the entire story and if there is some omission, it cannot be taken as a discrepancy, fatal to the prosecution's case.

21. In response to the argument of learned counsel for the accused, it was argued by learned APP that, since the accused was arrested at the instance of the victim and the Magistrate had recorded the facts as narrated by her, on the very next day of the incident i.e. on 15.09.2011, test identification parade was not necessary.

22. He invited Court's attention towards the First Information Report and submitted that the arguments revolving around non-mentioning of the time of the arrest so also other contentions regarding test identification parade, cut no ice, because the FIR contains every such detail.

23. With respect to the testimony of landlord Parvati (PW-9), learned APP argued that a landlady who had even refused to tell the name of the accused, who was none other than her tenant cannot be treated as a trustworthy witness and her statement cannot be a reason to disbelieve the prosecution's case.

24. So far as the factum of accepting the suggestion of the disputes/quarrel between the mother of the victim (PW-6) and the accused is concerned, learned Assistant Public Prosecutor submitted that the statement of Kailash (PW-7) being husband of PW-6, is only hearsay evidence, inasmuch as he did not have any knowledge or nexus with the small business which PW-6, used to run as he was admittedly engaged in other field.

25. Heard learned counsel for the parties and perused the record.

26. On perusal of the Judgement of the Trial Court, we find that the same has been passed giving least regard to the nature of the offence and the victim's mental state on account of tender age and the trauma.

27. True it is, that the incident took place prior to the promulgation of POCSO Act and the presumption provided under Section 29 of the POCSO Act is not applicable, but in our opinion, the testimony of the victim of 7 years is required to be considered keeping in mind her age and the mental agony she was undergoing. Her trauma can well be felt if following part of her testimony is looked into.

“(Memorandum of explanation with regard to ascertain the understanding and memory of a child witness as she happens to be aged about 7 years old. She has been asked several questions like what is her name, where she has come today, how many brothers and sisters she has, in which class she reads. She answered these questions with not clear and perfect understanding. In view of this background, let her statement be recorded)

Before recording statement of PW M., following questions were put to the witness to satisfy the possible extent that witness is able to understand the questions put to her and to make a statement by her.

Q.1. In which class do you study?

Ans. I study in 1 standard.

Q.2 How many brother and sister you have?

Ans. I have two brothers and two sisters.

Q.3 Who else go along with you to your school?

Ans. My one brother and one sister go along with me to the same school where I study.

Q.4. Do you know the name of your class teacher ?

Ans. No.

Q.5. What subjects are taught to you in your class?

Ans. I do not know.

Q.6 Where have you come ?

Ans. I do not know.

Q.7 Do you know that one should tell a lie or one should speak the truth?

Ans. One should always tell truth. I have been taught this by my mother, brother and sister."

From the rationale of the question put to her and considering the tender age of the witness, witness is not being administered oath..

Without oath:

I do not know the person standing in the dock. I was playing the street.

When I was playing in the street, I was taken by one uncle to a nearby room. That uncle used to reside in that room. No other person was present in that room. That uncle put off my Kachchi, laid me on the floor and thereafter that uncle laid his body upon my body. Except this he did nothing. That uncle gave me an amount of Rs.20/- in the form of two currency notes of Rs.10/- denomination and thereafter that uncle stated not to tell about the said occurrence to my parents, otherwise my parents would beat him and me as well. Thereafter, that uncle opened the gate of the room and then I came out from the room. I went to my house and I stated all the things to my mother. My mother searched for that uncle but that uncle could not be traced at that time. But on the next day, that uncle met. I identified that uncle. That uncle is present today before the court. I do not know his name.

Court Observation:

At this stage, it is observed that witness on being asked whether the person who laid upon her, is present in the court or not, she replied in positive indicating through the sign moving her head in affirmative. However, she refused to see towards the accused, to my view on account of fear and apprehension from the accused.

Previously also my statement was recorded by one lady Magistrate and at that time I put my thumb impression on the statement, the same is Ex.PW3/A which bears my thumb impression at point A. I do not know as to on which part of my body, I felt pain when that uncle laid upon me. One lady police official had taken me to hospital for medical examination.

XXX by Sh. Aparbal Singh, Ld. Counsel for accused.

I have been told by my mother to give my evidence in the court. I have also been told by my mother to say that that uncle laid upon me. I do not know that uncle who had taken me from the street.

28. A bare look at the questions put to her before recording her testimony reveals, that the girl 'M' could not even tell the name of her teacher and the

subjects that were being taught to her. This Court would also like to highlight the observation the Trial Court had made:

"However, she refused to see towards the accused, to my view on account of fear and apprehension from the accused."

(emphasis supplied)

29. According to us, having made such observation, it was imperative for the trial court to remain considerate towards her oral deposition and exhibit desired degree of sensitivity. The ill-fated girl had clearly deposed that the uncle pulled off my kachhi (underwear), laid me on the floor and thereafter laid his body upon my body.

30. Although she stated that except this he did nothing, but the fact that the victim had narrated almost the entire story, including that uncle gave me an amount of Rs. 20/- in the form of two currency notes of Rs. 10/-denomination and threatened not to tell about the occurrence to her parents, called for holistic view of the evidence and simply because she stopped short of telling the actual assault by the accused, after laying her totally undressed, it can't be concluded that no offence of rape was committed. The Trial Court has completely overlooked the medical evidence, which pointed towards guilt of the accused.

31. It is to be noted that in the statement under Section 164 Cr.P.C., which were recorded immediately after the incident, she had narrated the entire story. The statement given by the prosecutrix under Section 164 Cr.P.C. are reproduced hereinfra:

"The statements given by Statement of prosecutrix Muskan D/O Sh. Kailash Chand, aged about 7 years R/O B-421/10, Chandan Vihar, Nihal Vihar-

Yesterday I was playing with other Kids when an uncle called me. Uncle had called only me. I was reluctant to go. Uncle held my hand and then he took me to his house. Nobody was there in his house .Uncle took off his clothes and then he took off my clothes. Thereafter, he laid me on the ground and laid on top of me. Uncle inserted his urinal organs into my urinal organs. It hurt me and I started screaming. The landlady (old lady) came to see what happened when the uncle opened the door. Uncle had given me 20 Rupees and said that if I told them he and I will be beaten. I ran outside of the room. My mother clothed me and I narrated the incident to her. My brother called the police. In the morning when the police came the uncle tried to run away. The landlady locked him in the room so that he could not escape. Thereafter the uncle was caught by police."

32. In the peculiar facts of the case, when the victim had been observed rather held to be under trauma and fear even after months of the incident, the omission on her part to aver the actual act of sexual assault cannot be said to be a discrepancy. It was at the best an omission. In case of a child in her preteens, the omission cannot be taken as a discrepancy.

33. A case involving almost similar facts came up for consideration before Hon'ble the Supreme Court (*State of Rajasthan v. Chatra*, (2025) 8 SCC 613) wherein, the child victim did not utter even a single word and had just shed her tears in the court at the time of her deposition. Dealing with the traumatic condition which the girl victim had undergone, Hon'ble the Supreme Court set aside the order of acquittal passed by Rajasthan High Court and restored the conviction and sentence awarded to the accused by the Trial Court. Dealing with the condition of a child victim, the Hon'ble Supreme Court observed that even if the child victim could not depose what had actually happened with her, the other corroborated evidence, including the medical report should be taken into account and in case of a child victim; her testimony alone cannot play a decisive role. It would not be out of place to reproduce relevant part of the above-referred judgment in the case of *Chatra* (supra), which we deem appropriate to reproduce herein infra:

"26. Having considered the principles of law as above, let us now proceed further. We have independently examined the evidence of the witness, by placing reliance on whom the trial court recorded the conviction of the respondent-accused, which was erroneously appreciated by the High Court, the same was reversed by the High Court. The child witness (victim), it is true, has not deposed anything about the commission of the offence against her. When asked about the incident, the trial Judge records that 'V' was silent, and upon being further asked, only shed silent tears and nothing more. Nothing could be elicited from the testimony regarding the commission of the offence. This, in our view, cannot be used as a factor in favour of the respondent. The tears of 'V', have to be understood for what they are worth. This silence cannot accrue to the benefit of the respondent. The silence here is that of a child. It cannot be equated with the silence of a fully realised adult prosecutrix, which again would have to be weighed in its own circumstances.

27. It has been held in *Hemudan Nanbha Gadhvi v. State of Gujarat* [*Hemudan Nanbha Gadhvi v. State of Gujarat*, (2019) 17 SCC 523 : (2020) 3 SCC (Cri) 400] , that a nine year old prosecutrix turning hostile would not be a fatal blow to the prosecution case when other evidence can establish the guilt of the accused. In these facts, 'V' has not turned hostile. Trauma has engulfed her in silence. It would be unfair to burden her young shoulders with the weight of the entire prosecution. A child traumatised at a tender age by this ghastly imposition upon her has to be relieved of being the basis on which her offender can be put behind bars. In almost all other cases, the testimony of the prosecutrix is present and forms an essential part of the conviction of an accused, but at the same time, there is no hard-and-fast rule that in the absence of such a statement a conviction cannot stand, particularly when other evidence, medical and circumstantial, is available pointing to such a conclusion. Reference can be made to *State of Maharashtra v. Bandu* [*State of Maharashtra v. Bandu*, (2018) 11 SCC 163 : (2018) 2 SCC (Cri) 458] , wherein the prosecutrix was "deaf and dumb and mentally retarded". The Court held that even in the absence of her being

examined as a witness, other evidence on record was sufficient to record conviction of the accused. The principle of law, therefore, is that if the prosecutrix is unable to testify, or for some justifiable reason remains unexamined, the possibility of conviction is automatically excluded. At this stage, it is important to record that we should not for a moment be understood saying that a person with a disability is by definition an incompetent witness.”

34. Pertinently, Victim’s mother PW-6 had clearly supported the prosecution’s story; she had clearly deposed about the sexual assault. Besides thus, medical evidence in the form of medical report in which it has been stated that her hymen was torn and there were red inflamed margins, clearly corroborates what has been set up by the prosecution.

35. The statement of the prosecutrix, that after undressing her, the uncle laid upon her read in conjunction with the medical report is enough to conclude that she was subjected to sexual assault. Ruptured hymen and red and inflammation of the margins of the private part cannot be a coincidence-it had to be a consequence of some external force which she suffered when the accused laid upon the hapless undressed victim.

36. So far as the argument of learned counsel for the accused that test identification parade was not conducted is concerned, we are of the view that since the accused was arrested by victim’s mother and uncle, at the instance of the victim immediately the morning following the incident, and he was handed over to the police at the spot itself, the fact that the test identification parade was not conducted is of no avail to the accused. Moreso, the victim had unequivocally identified the accused while he was in the court.

37. With respect to the alleged enmity between the accused and mother of the prosecutrix (PW-6), it is to be noted that in response to a suggestion made during the cross-examination, the mother (PW-6) of the victim had clearly denied the allegation of enmity and no evidence to this effect was led by the defence. Hence, it cannot be said that the accused was falsely implicated because of the animosity, simply because the father of the victim (PW-7) during cross examination had accepted the suggestion given by the defence lawyer. He was a hearsay witness as far as this aspect is concerned, because neither he was present nor he had any role in the wife’s business.

38. The fact that the arrest memo does not bear the time of the arrest is also irrelevant in the instant case in as much as the accused was caught hold of by the victim’s mother and her relatives, when she identified him out of many people. The F.I.R. and the facts clearly unravel that the accused was arrested when the police reached the house of the prosecutrix, pursuant to the information received and recorded vide Daily Diary Entry No. 19 (Ex.-PW11/A), dated 15.09.2011.

39. The argument on behalf of the accused which found favour with the Court below that the mother of the prosecutrix had tutored her to depose against the

accused doesn't hold much weight, as the testimony of the prosecutrix cannot be discarded because her mother had refreshed her memory that too perhaps at her residence and obviously, before her statement was recorded. Admittedly, the mother did not prod the prosecutrix during deposition. Hence, it cannot be said that the victim was tutored.

40. The Prosecutrix 'M' was able to describe in detail how the events unfolded, implicating the accused in her statements made under Section 164 of Cr.P.C. so also in her oral deposition in the Court; some minor omissions can not by itself affect the credibility of such child witness who was merely 7 years of age. A similar view has been taken by Hon'ble the Supreme Court in the judgment rendered in the case of State of Madhya Pradesh v. Balveer Singh (2025) 8 SCC 545 in Criminal Appeal No. 1669 OF 2012. Relevant part of the judgment is reproduced hereinfra:

"58.....(V) 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. (XI) 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."

41. The Trial Court has wrongly taken minor omission of the minor victim to be discrepancy. Had it been a case of over implication, perhaps that part could have been ignored but when important aspect of the actual act was not deposed in Court; the Trial Court could not have discarded her testimony on the count of discrepancy. The court was supposed to read her deposition holistically in light of other evidence, including medical report, statement of her mother and in backdrop of her statement under Section 164 Cr.P.C. though it is not substantive piece of evidence.

42. In normal circumstances, much credence could not have been given to the testimony of victim's mother as it was hearsay evidence but since she had the first hand information of the incident, immediately after it had happened which incident she had narrated in the Court including the act which contribute a rape, we feel that her testimony not being that of an eye witness deserves to be accepted in view of the age of the victim and the mental condition which she was undergoing. Such omission that too in the atmosphere of a Court was quite natural.

43. The arguments of learned counsel for the accused do not convince us that since the doctor had not reported anything about the rape, prosecution's case

must fail. According to us, the doctor conducting medical examination has rightly reported about the status of the private part of the girl and other parts of the body in light of the fact, that the victim had complained of alleged sexual assault. The medical report is a corroborative piece of evidence, which needs to be examined in light of other evidence and the surrounding circumstances.

44. Above discussions make us to form a firm opinion that the Trial Court has not appreciated the oral and ocular evidence in correct perspective and with the desired degree of sensitivity, which has resulted in palpably erroneous conclusion and the findings are therefore perverse. Now we have to consider whether we should reverse the order of acquittal to an order of conviction?

45. For the above purpose, we would take guidance from the judgment rendered in Babu Sahebgouda Rudragoudar and Ors. Vs. State of Karnataka (2024) 8 SCC 149, wherein Hon'ble the Supreme Court dealt with the principles governing the scope of interference by the High Court in an appeal filed by the State for challenging the acquittal of the accused recorded by the Trial Court. The relevant part of the judgment is reproduced hereinfra:

"39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record."

46. In the present case, we find a clear perversity and misreading of the oral & ocular evidence by the Trial Court, which clearly points towards the guilt of the accused. According to us the only possible view was to conclude the guilt of the accused. We are firmly of the view that the trial court has wrongly acquitted the respondent of the charge under Section 376 of the IPC, inter alia, holding that the prosecution has failed to prove its charge beyond all reasonable doubts.

47. The appeal therefore succeeds; the impugned judgement and order dated 16.07.2013 is quashed and set aside.

48. The respondent-accused is convicted for the offence under Section 376 of the IPC to undergo sentence of ten years with fine of Rs. 20,000/- (as provided under clause (f) of sub-section (2) of Section 376 of IPC as it existed on the date of offence). In default of payment of fine, he shall further undergo simple imprisonment for two months. The period of sentence already undergone shall be reduced from the sentence of 10 years awarded vide order instant.

49. Accordingly, the concerned SHO is directed to take the accused, who is on

bail, in custody with immediate effect.