# Dhanraj vs State Of Rajasthan on 7 September, 2026

## Author: Vikram Nath

## Bench: Vikram Nath

2026 INSC 958

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 135 OF 2026

DHANRAJ ….APPELLANT(S)

VERSUS

STATE OF RAJASTHAN ….RESPONDENT(S)

JUDGMENT

Mehta, J.

1. Heard.

2. The appellant-Dhanraj1 seeks to assail the judgment dated 20th August, 2025 rendered by the Division Bench of the Rajasthan High Court2 in D.B. Criminal Appeal No. 338 of 2019 whereby the appeal preferred by the accused-appellant was dismissed and the judgment dated 5th September, 2019 passed by the learned Special Judge, Protection of Children 1 Hereinafter referred to as "accused-appellant". 16:43:05 IST Reason: 2 Hereinafter referred to as "High Court".

from Sexual Offences Act, 2012 and the Commission for Protection of Child Rights Act, 2005 No. 2, Ajmer3 convicting and sentencing the accused-appellant as below, was affirmed:

| Offences | Sentence | Fine |
|---|---|---|
| Section 376 and 376(2)(i)(j) of the Indian Penal Code, 18604 | Life Imprisonment (which means rest of the period of his natural life) | To pay a fine of Rs. 50,000/-; in default thereof to further undergo 1 month's |

| | | |
|---|---|---|
| | | R.I. |
| Section 363 IPC | 7 years Rigorous Imprisonment | To pay a fine of Rs. 5,000/-; in default thereof to further undergo 1 months' R.I. |
| Section 323 IPC | 1 years Simple Imprisonment | To pay a fine of Rs. 1,000/-; in default thereof to further undergo 15 days' Additional Imprisonment |

Brief Facts

3. The complainant, 'B' (PW-3) lodged a written report (Exh. P/1) with the SHO, Police Station Kekri, Ajmer on 7th December, 2016 alleging inter alia that on 5th December, 2016, his wife 'M' (PW-1) and his 3 Hereinafter, referred to as "trial Court". 4 For short, "IPC".

CRIMINAL APPEAL NO(S). 135 OF 2026 two children, son aged about 11 years and daughter (victim) aged about 5 years, had gone to the house of his aunt-in-law (Bhua Saas) for attending some programme. His wife called him at his workplace and enquired whether their daughter was with him. Upon the complainant answering in negative, his wife raised a concern that the child was not traceable. The complainant immediately rushed back to the village and started searching for his daughter along with Bhopal Singh. Announcement regarding the child having gone missing was made through loudspeaker of the Masjid, pursuant to which the villagers joined the search for the child. After some time, two persons, namely, Kailash Keer (PW-4) and Prahlad Khati (PW-

5) came to his house with the child. His wife was present at that time and noticed that the victim was bleeding from her private parts. The victim was taken to the hospital at Juniya, however, feeling embarrassed and concerned due to societal backlash, they chose not to inform the police.

4. The victim told her parents that she had gone with Devraj and Khushi for buying toffee and when she was returning, a boy approached her and lured her towards the side of higher secondary school. She CRIMINAL APPEAL NO(S). 135 OF 2026 was pushed into the bushes where the boy removed her clothes and subjected her to sexual assault. When she tried to shout, the boy gagged her mouth and threatened to kill her. She started bleeding from her genitals owing to the assault, upon which the boy ran away from the spot. She noticed illumination in the distance and proceeded towards that direction, where Prahlad Khati met her. She was thereafter taken to the house of Kailash Keer and inquiries were made from her. Upon disclosing her father's name, the said two persons brought her back home.

5. On the basis of the aforesaid report, FIR No. 848 of 2016 (Exh. P/3) came to be registered at the Police Station Kekri, District Ajmer, on 7th December, 2016 against an unknown person for the offences punishable under Section 376 of the IPC and Sections 3/4 of the Protection of Children from Sexual Offences Act, 20125 and investigation was commenced.

6. The accused-appellant was arrested on 5th February, 2017. He was subjected to Test Identification Parade6 in which the victim identified 5 For short, “POCSO Act”.

6 Fort short, “TIP”.

CRIMINAL APPEAL NO(S). 135 OF 2026 him to be the assailant. Upon conclusion of the investigation, a chargesheet came to be filed against the accused-appellant for the offences punishable under Sections 363, 366A, 323, 376, 376(2)(i)(j) of IPC and Sections 3/ 4 and 5(m)/6 of the POCSO Act, in the Special Court (POCSO).

7. The Special Judge framed charges against the accused-appellant for the aforesaid offences. The accused-appellant abjured his guilt and claimed trial. The prosecution examined 10 witnesses and exhibited 21 documents in order to prove its case. The accused-appellant was questioned under Section 313 of the Code of Criminal Procedure, 19737 and, upon being confronted with the circumstances appearing against him in the prosecution case, he denied the same, claimed to be innocent and further stated that on the date of incident i.e. 5th December, 2016, he was not in the village and had gone with his wife to a place called Gangoj. 5 witnesses were examined and 9 documents were exhibited in defence to support his plea of alibi and false implication.

7 For short, “CrPC”.

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8. After considering the submissions advanced by the learned public prosecutor and learned defence counsel and upon analysis of the evidence available on record, the trial Court proceeded to convict and sentence the appellant as noted supra8.

9. The aforesaid judgment of conviction and sentence was assailed by the accused-appellant before the High Court in Criminal Appeal No. 338 of 2019, which stands rejected by the Division Bench vide impugned judgment dated 20th August, 2025.

10. Being aggrieved, the accused-appellant is before us by way of the instant appeal with special leave.

11. We may note that as per the custody certificate available on record, the accused-appellant has remained incarcerated in prison ever since the date of arrest, i.e. 5th February, 2017.

Submissions on behalf of the accused-appellant

12. Shri Namit Saxena, learned counsel appearing on behalf of the accused-appellant, urged that the appellant has been falsely implicated at the behest of the local MLA, with whom the accused-appellant was admittedly at enmity. He submitted that the victim 8 Para 2.

CRIMINAL APPEAL NO(S). 135 OF 2026 had not furnished any description or identifying features of the assailant in her earliest statements to the police. It was further submitted that the accused-appellant was a permanent resident of the same village, remained available throughout and did not evade arrest; therefore, the fact that he came to be apprehended only after a period of nearly two months without any basis for identification casts a grave doubt on the prosecution case.

13. Learned counsel submitted that the prosecution case is completely demolished by a bare look at the testimony of the victim (PW-2), who, though claimed that she could identify the accused if he came before her, did not actually identify the accused-appellant during her sworn testimony before the trial Court. It was urged that the prosecution has, thus, failed to establish the identity of the perpetrator through substantive evidence of identification.

14. Learned counsel further submitted that the prosecution cannot seek to overcome this fundamental deficiency merely by placing reliance upon the TIP, particularly when the victim and her mother admitted that the police had earlier disclosed the name of Dhanraj to them and that the accused-

CRIMINAL APPEAL NO(S). 135 OF 2026 appellant was present when an identification exercise was conducted at the police station. It was further contended that the prosecution version regarding identification is rendered even more suspect by the earlier identification exercise conducted in the village, wherein, according to the defence, the victim failed to identify the accused-appellant. Learned counsel submitted that this circumstance was specifically stated by mother of the victim (PW-1) in her testimony and was not properly considered by either of the Courts below. The subsequent TIP, therefore, could not have been treated as a credible corroborative circumstance for establishing the identity of the accused-appellant.

15. Shri Saxena contended that the prosecution itself withheld a material piece of evidence, namely, the sketch of the alleged assailant prepared at Jaipur with the assistance of the victim. The victim (PW-2) stated in her deposition that the police had taken her to Jaipur and had a sketch of the accused prepared, while PW-1 also referred to the preparation of such sketch. Yet, the said sketch being a crucial piece of corroborative evidence was neither made part of the chargesheet nor produced before the trial Court. It CRIMINAL APPEAL NO(S). 135 OF 2026 was urged that the non-production of this vital piece of primary evidence in the hands of prosecution assumes significance because the description allegedly furnished by the victim at the earliest stage could have afforded an objective means of testing the subsequent identification of the accused-appellant in the TIP.

16. Shri Saxena further contended that the medical and forensic evidence does not furnish any nexus between the accused-appellant and the alleged offence. Though the forensic examination is stated to have detected sperm in the victim’s sample, no DNA examination or other scientific evidence was collected establishing that the biological material was that of the accused-appellant. Thus, even assuming that the medical evidence established that the victim had suffered the alleged assault, it does not establish that the accused-appellant was the perpetrator.

17. Shri Saxena lastly submitted that the accused- appellant had led substantial defence evidence in trial in support of his plea of false implication and alibi, which was not properly appreciated by the Courts below. According to him, the cumulative effect of the doubtful identification, non-production of the CRIMINAL APPEAL NO(S). 135 OF 2026 sketch, prior disclosure of the appellant's name by the police, the failure of the victim to identify the appellant in Court and absence of any DNA corroboration, creates a grave doubt regarding the appellant's involvement in the crime. He, therefore, urged that the conviction of the accused-appellant cannot be sustained and that he deserves to be acquitted by extending the benefit of doubt. Submissions on behalf of the respondent

18. Per contra, Mr. Kartikeya Asthana, learned counsel appearing on behalf of the State of Rajasthan, supported the impugned judgment and submitted that the prosecution has succeeded in establishing the guilt of the accused-appellant beyond reasonable doubt.

19. Learned counsel submitted that the victim had no reason whatsoever to falsely implicate the accused-appellant and that her testimony, read as a whole, inspires confidence. He contended that the victim had correctly identified the accused-appellant in the TIP conducted during the course of investigation and that such identification, coupled with her vivid account of the incident and the surrounding circumstances, establish the identity of CRIMINAL APPEAL NO(S). 135 OF 2026 the accused-appellant beyond reasonable doubt. The mere fact that the child could not specifically point out the accused-appellant from the witness box during her deposition, according to learned counsel, is at best an omission of a trivial nature and cannot outweigh the identification made during the TIP or render the otherwise consistent prosecution case doubtful.

20. It was further submitted that the victim was a tender aged child of about 5 years at the time of the incident and hence, minor discrepancies were bound to appear in her evidence. The fact regarding the victim having been subjected to grave sexual assault has been well-established by cogent testimony of the child and thoroughly corroborated by the medical jurist (PW-7). It was urged that the medical evidence, read with the testimony of the victim and the testimony of other prosecution witnesses, establishes that the victim had been subjected to grave sexual assault and materially corroborates the prosecution case.

21. Learned counsel further urged that the absence of DNA evidence cannot by itself discredit the otherwise reliable prosecution case, particularly CRIMINAL APPEAL NO(S). 135 OF 2026 when the ocular and medical evidence is sufficient to establish the commission of the crime and the involvement of the accused. He urged that the prosecution is not required to establish its case by scientific evidence in every case where trustworthy direct evidence is available.

22. Learned counsel lastly submitted that the alleged contradictions regarding the delay in the FIR, preparation of the sketch, TIP and other peripheral aspects are trivial and do not affect the core of the prosecution case, and that the Courts below have appreciated the evidence in an apropos manner and recorded concurrent findings of guilt which do not warrant interference by this Court in the exercise of jurisdiction under Article 136 of the Constitution of India. Thus, he implored the Court to dismiss the appeal and affirm the judgments of the Courts below. Analysis

23. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned judgment. We have, also carefully scrutinised the evidence available on record.

CRIMINAL APPEAL NO(S). 135 OF 2026 Infirmities in the investigation

24. Suffice it to say that the FIR pertaining to the incident dated 5th December, 2016 came to be lodged by the victim's father (PW-3) on 7th December, 2016, with a plausible explanation for delay that the family was apprehensive of public humiliation which prevented them from immediately approaching the police. The said explanation for delay is justified considering the fact that the parties hail from a rural background. We, therefore, do not consider the delay of about two days in lodging the FIR, by itself, as having any adverse consequence on the prosecution case.

25. However, the significance of the contents of the FIR, to be specific, the omissions therein, cannot be overlooked while examining the subsequent theory about identification of the accused-appellant. The FIR neither discloses the identity of the accused nor does it refer to any particular features of the accused which could have assisted the victim to identify the accused in the TIP. The identity of assailant was admittedly not known at the time when the FIR was lodged. Consequently, the manner in which the identity of the accused-appellant came to be CRIMINAL APPEAL NO(S). 135 OF 2026 ascertained subsequently assumes considerable importance.

26. The two witnesses, namely, Kailash Keer (PW-4) and Prahlad Khati (PW-5) who first came into contact with the victim after she had been assaulted, did not support the prosecution case and were declared hostile.

27. The accused-appellant was arrested on 5th February 2017, i.e. nearly two months after the alleged incident. The circumstances leading to his arrest are themselves not free from doubt.

28. The Investigating Officer (PW-8) was cross- examined on behalf of the defence, and a specific suggestion was put to him with reference to the complaints made by the accused-appellant and his family members regarding false implication of the accused-appellant at the behest of the local MLA. The Investigating Officer admitted that the complaints made on behalf of the accused and his family members, supported by affidavits, had been received by him, but he did not make any inquiry into such complaints.

29. This omission assumes significance because the defence was not merely putting forth a bare CRIMINAL APPEAL NO(S). 135 OF 2026 suggestion of false implication. It had specifically brought to the notice of the Investigating Officer that the accused-appellant and his family members had approached the authorities alleging that the appellant was being falsely implicated and targeted on account of political rivalry. Once such complaints were admittedly received during the course of investigation, the Investigating Officer was expected to undertake at least some verification before completely discarding the same. His failure to conduct any inquiry on these complaints deprives the Court of an important circumstance which could have either fortified or dispelled the defence plea.

30. As the identity of the assailant was not known, a pertinent question was put to the Investigating Officer as to how he could confirm the fact regarding the accused-appellant being the assailant, to which, he replied that the accused-appellant was arrested on the basis of source informer's report, but there was no foundation for this assumption.

31. The Investigating Officer further admitted that the victim and her father were taken to Jaipur, and that a sketch was prepared for the purpose of identifying the accused. However, he admitted that CRIMINAL APPEAL NO(S). 135 OF 2026 the said sketch was not available with him and had not been produced before the trial Court. This circumstance assumes considerable significance, as the sketch, having been prepared with the assistance of the victim at an early stage of the investigation, constituted an important corroborative material for ascertaining the identity and physical features of the then unknown assailant. The non-production of the said sketch deprives the Court of an opportunity to examine whether the description furnished by the victim at the earliest stage was consistent with the physical features of the accused-appellant.

32. Hence, it is safe to conclude that the Investigating Officer had no reliable evidence which could point the finger of suspicion towards the accused-appellant as being the perpetrator of the crime. Thus, there remains a serious doubt regarding the basis on which the accused-appellant came to be arrested and his subsequent identification as the assailant.

Medical evidence and absence of scientific corroboration

33. Dr. Archana Mithal (PW-7) examined the victim on 7th December, 2016 i.e., after two days of the CRIMINAL APPEAL NO(S). 135 OF 2026 incident as alleged by the prosecution and took note of some injuries on her body. The Doctor stated that she noticed a wound admeasuring one inch starting from the perianal region and extending till the vagina, from which foul-smelling pus was oozing and maggots were also present. The Doctor gave a pertinent opinion that these injuries were between 5 to 7 days old.

34. The duration of the injuries was stated by the doctor (PW-7) in her examination-in-chief itself. Hence, even as per the prosecution's own theory, the age of the injuries does not match with the time and date of the incident as alleged in the FIR and in the deposition of the prosecution witnesses. This significant gap between the age of the injuries and the time of the incident alleged in the FIR and the deposition of the witnesses cannot be reconciled and creates a significant dent in the prosecution case.

35. It is also relevant to note that the prosecution did not lead any corroborative scientific evidence in the form of any serological report, DNA profiling or any other forensic evidence which could corroborate the testimony of the child victim and establish a nexus between the accused-appellant and the crime.

CRIMINAL APPEAL NO(S). 135 OF 2026 The medical evidence may establish the factum of injuries associated with sexual assault, but it does not help in establishing the identity of the person who caused such injuries. In the absence of any DNA profiling or other serological evidence connecting

the biological material recovered from the victim with the accused-appellant, the prosecution has failed to establish the necessary link between the crime committed and the involvement of the accused- appellant therein.

36. The aforesaid circumstances assume significance when considered alongside the other infirmities in the investigation and, more importantly, the lackadaisical effort in identification of the accused, and thereby create a significant doubt regarding the genuineness of the prosecution version. Non-identification of the accused-appellant

37. The most significant, and, in our view, fatal flaw in the prosecution case emerges from the deposition of the child victim (PW-2) herself. The entire deposition of the child victim (PW-2) is reproduced hereinbelow: -

> "Examination-in-chief We are two siblings. My brother's name is Axxx. My father drops the children off at school. He CRIMINAL APPEAL NO(S). 135 OF 2026 takes them in a van. We went to my aunt's house two years ago. A DJ was playing there. Then, my aunt's son, Dxxx, and my maternal grandmother's sons went to the store to buy something. We were returning when Dxxxx said, a ghost has come, I said there are no ghosts. Thereafter, Dxxxx and he left. Then a boy took me behind the big school. He removed my clothes and started giving on my stomach and cheeks. He started having intercourse with me. The witness touched her private parts and said it hurted a lot here. Then he ran away. His mobile phone was left there which he came back to get. I know the accused. His name is Dhanraj. A report was filed against him, which is Exhibit P1, on which I have my signatures from C to D. The FIR exhibit is P-3 on which my signatures are from C to D. The site map is exhibit P-4 on which my signatures are from A to B. The site map is exhibit P-5 on which my signatures are from A to B. The police took my clothes for which a report was made which is exhibit P-2 on which my signatures are from C to D. My medical examination was done which is exhibit P-6 on which my signatures are from A to B. My injuries were also medically examined. My statement was taken by the judge. I study in Balaji school. The police had got the face of accused Dhanraj made. I can identify accused Dhanraj if he comes in front of me.
>
> Cross-examination After the incident, we went to Kekri police station. The police had gathered several men and Dhanraj at the police station and asked me to identify them. I described the wrong done to me in statements given to Judge in (Exhibit D-4) and to police in (Exhibit D-3). It is correct to say that we went to the hospital on the day of the incident, and the doctor examined me, made a prescription, and prescribed medication. It is CRIMINAL APPEAL NO(S). 135 OF 2026 correct to say that when the police took me, I described the boy's appearance to the police. It is correct that the police told me Dhanraj's name. The suggestion that I mentioned Dhanraj's name in my chief examination is false." (Emphasis supplied)

38. A careful reading of the aforesaid testimony reveals a material infirmity bearing directly upon the identification of the accused-appellant.

39. The victim (PW-2) in her examination-in-chief stated that she knew the accused and that his name was Dhanraj. She further stated that she could identify Dhanraj if he came before her. However, in her cross-examination, she stated that after the incident, the police had gathered several persons, including Dhanraj, at the police station and asked her to identify them. More significantly, in response to a pertinent question put by the defence, she categorically admitted that the police had told her the name of Dhanraj.

40. The accused was admittedly not named in the FIR and the victim herself admitted that his name had been disclosed to her by the police. In this backdrop, the evidentiary worth of the identification CRIMINAL APPEAL NO(S). 135 OF 2026 made by the victim during the TIP has to be examined in light of the settled legal position governing the distinction between substantive and corroborative identification. We may note that the trial Court as well as the High Court seem to have been significantly swayed by the fact that the child victim (PW-2) correctly identified the accused in the TIP.

41. Law is well-settled by a catena of decisions of this Court that the substantive evidence for establishing the identity would be that of identification of the accused by the witness in the Court and test identification proceedings conducted during investigation are merely corroborative in nature.

42. In this regard we may gainfully refer to the following observations made by a 3-Judge Bench of this Court in Rameshwar Singh v. State of J&K9 wherein this Court observed as follows: -

> "6. Before dealing with the evidence relating to identification of the appellant it may be remembered that the substantive evidence of a witness is his evidence in Court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to 9 (1971) 2 SCC 715.

CRIMINAL APPEAL NO(S). 135 OF 2026 the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards are effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned who was a stranger to the accused because in that event the chances of his memory fading are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is thus and thus alone that justice and fairplay can be assured both to the accused and to the prosecution. The identification during police investigation, it may be recalled, is not substantive evidence in law and it can only be used for

corroborating or contradicting evidence of the witness concerned as given in Court. The identification proceedings, therefore, must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in Court of the identifying witness." (Emphasis supplied)

43. The principle assumes particular significance in the facts of the present case. TIP is intended to test the memory and capacity of a witness to identify a person whom the witness claims to have seen during CRIMINAL APPEAL NO(S). 135 OF 2026 the occurrence and to lend corroboration to the identification subsequently made before the Court. The test identification proceedings undertaken during investigation cannot be treated as substantive proof of identity. Substantive proof would be the identification of the accused by the witnesses while testifying on oath or dock identification in common parlance.

44. In the instant case, the trial Court convicted the accused-appellant, inter alia, on the basis of the identification made by the victim during the TIP, totally ignoring the fact that no effort was made to get dock identification of the accused-appellant by the victim. This omission assumes even greater significance in the peculiar facts of the present case. The accused was not named in the FIR; the victim had admittedly been told his name by the police; the sketch allegedly prepared with the assistance of the victim was not produced on record; and the prosecution's primary thrust for connecting the accused-appellant with the offence was the identification made by the victim during the TIP. In these circumstances, the absence of dock identification cannot be treated as a mere technical CRIMINAL APPEAL NO(S). 135 OF 2026 or insignificant omission. The prosecution was under

> an obligation to lead substantive evidence establishing that the person standing trial was indeed the person whom the victim claimed to have seen and identified as her assailant. Failure to undertake this exercise during recording of substantive evidence would completely demolish the prosecution case which is based on the sole testimony of the victim (PW-2).
>
> Duty of the Court to ensure a fair and effective examination

45. A criminal trial is not merely an adversarial contest between the prosecution and the accused. The ultimate obligation of the Court is to discover the truth and ensure that the finding of guilt rests upon legally admissible and reliable evidence. The Court is not expected to remain a mute spectator where an aspect of evidence bearing directly upon the guilt or innocence of the accused is left unattended. The role of the Court is not confined to passively recording the evidence as presented by the parties; it is required to ensure that the material evidence necessary for a just adjudication is properly brought on record.

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46. Section 165 of the Indian Evidence Act, 1872 (Corresponding to Section 168 of the Bharatiya Sakshya Adhiniyam, 2023) confers wide powers upon the Court to put questions to witnesses and to direct production of documents or things in order to discover or obtain proper proof of relevant facts. In Zahira Habibulla H. Sheikh v. State of Gujarat10, this Court held that Section 311 of the CrPC (Corresponding to Section 348 of the Bharatiya Nagarika Suraksha Sanhita, 2023) and Section 165 of the Evidence Act, 1872 confer vast and wide powers upon the Presiding Officer and that the Courts are not expected to function as mere recording machines, passively receiving whatever the parties choose to place before them. The Court is required to take a participatory role in the trial, evince active interest and elicit all material necessary for arriving at the truth.

47. The need for such intervention was particularly manifested in the present case. We have perused the proceeding sheet of the trial Court dated 2nd November, 2018, on which date, the depositions of 10 (2004) 4 SCC 158.

CRIMINAL APPEAL NO(S). 135 OF 2026 the victim's mother (PW-1) and the victim (PW-2) were recorded. From the said proceedings, we find that the accused-appellant was produced in Court from judicial custody on that day and was accordingly present in the Court when the victim (PW-2) entered the witness box and specifically stated, in her examination-in-chief, that she could identify Dhanraj if he came before her.

48. Yet, owing to the sheer negligence on the part of the Public Prosecutor concerned and the gross ignorance exhibited by the learned Presiding Officer, no effort was made to have the accused-appellant identified by the victim during her deposition, so as to confirm the fact that the person standing trial was indeed the assailant. The omission was neither occasioned by any unavoidable circumstance nor beyond the control of the Court. It was a simple step that could readily have been undertaken in the course of recording the substantive evidence, particularly when the identity of the accused was itself a crucial issue in the case.

49. In the peculiar facts of the present case, the failure to undertake this exercise assumes serious significance, as the prosecution ultimately sought to CRIMINAL APPEAL NO(S). 135 OF 2026 rely upon the identification made during the TIP to connect the accused-appellant with the crime. Cumulative effect of the infirmities

50. In this background, we are of the firm opinion that the case of prosecution has to fail on the following grounds:

51. Firstly, there is a material discrepancy in the medical evidence and the deposition of the witnesses regarding the time of the incident which goes to the root of the matter affecting the veracity of the prosecution case.

52. At the cost of repetition, we may mention that as per the deposition of the medical jurist (PW-7), the injuries on the body of the victim were 5-7 days old. The medical jurist examined the victim on 7th December, 2016. Hence, the incident could not have taken place on 5th December, 2016 as alleged in the FIR and must have taken place at least 2-3 days earlier. The presence of pus and

maggots in the wound noticed by the doctor on the perianal region of the victim, is also indicative of the fact that the injuries were at least 5-7 days old.

53. Secondly, and more importantly, there is a fatal flaw in the prosecution case on account of the failure CRIMINAL APPEAL NO(S). 135 OF 2026 to get identification of the accused done by the victim during her deposition before the trial Court.

54. We feel that the presiding officer of the trial Court as well as the Public Prosecutor were equally responsible for this fatal omission. The significance of this omission is further amplified by the fact that the accused was not named in the FIR; the victim categorically stated that the police had disclosed his name to her and; the prosecution merely relied upon the TIP to establish the identity of the accused.

55. The prosecution case thus suffers from serious infirmities regarding the identification of the accused; grave contradiction between the medical evidence pertaining to the age of the injuries and the alleged time of the incident as set out in the FIR and the depositions of the prosecution witnesses.

56. We also take note of the fact that the accused- appellant has remained in custody for more than nine years. In the peculiar facts and circumstances of the case, no useful purpose would be served by remanding the matter to the trial Court for recording the testimony of the victim afresh. The fatal flaw on the aspect of identification cannot be cured at this belated stage even if we were to consider remanding CRIMINAL APPEAL NO(S). 135 OF 2026 the case for de novo trial. The material evidence and deposition of key witnesses is already before us and, upon a careful examination thereof, we are of the firm opinion that the deficiencies noted above go to the root of the matter and the prosecution has failed to prove its case beyond reasonable doubt so as to bring home the charges against the accused-appellant. Conclusion

57. As a consequence of the above discussion, we are of the firm opinion that the trial Court as well as the High Court fell in grave error in convicting and affirming the conviction of the accused-appellant. The findings recorded by the trial Court and affirmed by the High Court holding that the prosecution case stands on credible and reliable evidence are ex facie untenable in facts and in law.

58. The judgment dated 5th September, 2019 passed by the trial Court and impugned judgment dated 20th August, 2025 passed by the High Court do not stand to scrutiny and are hereby set aside.

59. The appellant is acquitted of the charges. He is in custody and shall be released from prison forthwith, if not wanted in any other case.

60. The appeal is allowed in these terms.

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61. Pending application(s), if any, shall stand disposed of.

.....J. (SANDEEP MEHTA) .....J. (MANMOHAN) NEW DELHI;

SEPTEMBER 07, 2026.

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