

GAHC030000232019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CrI.A./10/2019

C. Laldingliana
Siata, Saiha

VERSUS

State of Mizoram and Anr.
Aizawl2:Smt. Khawpuimawii
D/o Siangpa
R/o Mauza
Siata
Siaha District
Mizora

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei (Amicus Curiae)

Advocate for the Respondent : PP/Addl.PP, Mizoram for R1

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

Date of Hearing : 09.09.2024.

Date of Judgment : 03.10.2024.

JUDGMENT & ORDER (CAV)

(Kaushik Goswami, J)

Heard Mr. Joseph L. Renthlei, learned Amicus Curiae for the accused/appellant. Also heard Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent and Mr. C. Tlanthianghlina, learned Legal Aid Counsel for the respondent No. 2.

2. This appeal is preferred against the Judgment & Order dated 11.10.2017 passed by the Special Court, POCSO Act, Siaha District, Mizoram in SR No. 13/2017 Ref: Siaha P.S Case No. 58/2017 dated 24.06.2017, whereunder the accused/appellant was convicted under Section 6 of the Prevention of Children under Sexual Offences Act, 2012 (hereinafter to be referred as "POCSO Act, 2012") and sentenced thereof by Order dated 13.10.2017 to undergo Rigorous Imprisonment for a period of 10 (ten) years and to pay fine of Rs. 10,000/- (Rupees Ten Thousand) and, in default payment of fine, to undergo Simple Imprisonment for another period of 100 (hundred) days.

3. The case of the prosecution in brief is that an FIR was lodged on 24.06.2017 by one "X" of aged about 13 years alleging inter alia that her step-father accused/appellant of Siata used to rape her whenever her mother is not around and that he last raped her on March, 2017 before she entered the

hostel. It is further alleged that the accused/appellant had altogether raped her 3 (three) times. Accordingly, the FIR was received and registered as Siaha P.S Case No. 58/2017 under Section 6 of the POCSO Act, 2012.

4. Upon receiving the aforesaid FIR, PW-4/Investigating Officer was endorsed to investigate the same and he accordingly proceeded to the place of occurrence and arrested the accused/appellant and upon interrogation, the accused/appellant admitted his guilt and accordingly, recorded the statement of the victim and other witnesses and also sent the victim for medical examination and for recording her judicial statement.

5. Upon completion of the investigation, charge-sheet was submitted and the case being committed to the Court of Special Judge, POSCO Act, the Trial Court framed charges under Section 6 of the POSCO Act, 2012 against the accused/appellant on 02.08.2017, to which the accused/appellant pleaded not guilty and claimed to be tried.

6. Thereafter, the prosecution examined 6 (six) witnesses and exhibited 14 (fourteen) documents and after the closure of the prosecution evidence, the incriminating circumstances were put to the accused/appellant under Section 313 of the Code of Criminal Procedure, 1974 (hereinafter to be referred as "Cr.PC"), wherein he denied the said incriminating circumstances and adduced 5 (five) witnesses including himself.

7. List of the witnesses and exhibits on behalf of the prosecution and the defence are reproduced hereunder for ready reference:-

A. WITNESSES

For the prosecution:-

1. Ms. X (Victim)
2. Smt. Remveli
3. Dr. K. Lalchhanhimi
4. Mr. Chhuanthianghlina
5. Mr. Daniela
6. Ms. C.H. Sechunga

For the defence:

1. Mr. C.H. Dingliana
2. Ms. Dingdi
3. Ms. Hmangaihsangi
4. Mr. C. Ramlina
5. Mr. V. Sangbi

B. EXHIBITS

For the prosecution:-

1. Ext. P- 1 is charge sheet

2. Ext. P-1 (a) is the signature of case I/o
3. Ext. P-2 is FIR in prescribed form
4. Ext. P-3 is original FIR
5. Ext. P-3 (a) is the signature of victim
6. Ext. P-4 is Crime Detail form
7. Ext. P-4 (a) is the signature of case I/o
8. Ext. P-5 is prayer for judicial remand
9. Ext. P-5 (a) is the signature of case I/o
10. Ext. P- 6 is Arrest Memo
11. Ext. P- 6 (a) is the signature of case I/o
12. Ext. P-7 is Seizure Memo
13. Ext. P-7 (a) is the signature of case I/o
14. Ext. P- 8 is statement of victim
15. Ext. P-9 is statement of witness Mr. Daniel
16. Ext. P-9 (a) is the signature of case I/o
17. Ext. P-10 is statement of the witness Mr. C.H. Sechunga
18. Ext. P-10 (a) is the signature of case I/o

- 19. Ext. P- 11 is judicial statement of victim
- 20. Ext. P- 11 (a) is the signature of victim
- 21. Ext. P- 12 is Medical Requisition in respect of the victim
- 22. Ext. P. 12 (a) is the signature of case I/o
- 23. Ext. P- 13 is medical examination report of the victim
- 24. Ext. P- 13 (a) is the signature of medical doctor
- 25. Ext, P. 14 is birth certificate of victim

For the defence:-

NIL

8. After conclusion of the trial, the Trial Court rendered its Judgment & Order on 11.10.2017, wherein the accused/appellant was found guilty of the offence charged and accordingly, he was sentenced.

9. Mr. Joseph L. Renthlei, learned Amicus Curiae for the accused/appellant submits that the accused/appellant during his examination under Section 313 Cr.PC, having answered that the case evolved owing to family feud as his wife's family wanted her to be separated from him, discharged the reverse burden of proof and proved his innocence and the Trial Court ought to have accepted the aforesaid explanation and acquit the accused/appellant.

10. He further submits that considering the evidence of the defence, the

version of PW-1/victim based on which the conviction has been returned against the accused/appellant appears not to be of trustworthy or sterling quality and hence, the impugned conviction and sentence awarded by the Trial Court is totally erroneous.

11. He further submits that due to the non-examination of the brother and DW-3 by the prosecution, the trial stands vitiated.

12. Per contra, Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondent submits that it is evident from the evidence of DW-3 that before she entered the house of the accused/appellant, her mother called her back and therefore, there is no inconsistency whatsoever in the version of PW-1/victim and that of DW-3.

13. She further submits that there is no enmity between the accused/appellant and PW-1/victim and that the prosecution has proved the offence beyond reasonable doubt and therefore, there is no occasion to doubt the version of PW-1/victim.

14. She further submits that there is no reason whatsoever to falsely implicate the accused/appellant and that they live in a small society where they were all related and hence, the version of PW-1/victim stood the test of a sterling witness.

15. Mr. C. Tlanthianghlina, learned Legal Aid Counsel for the respondent No. 2 submits that the version of PW-1/victim right from the stage of lodging

the FIR to her testimony in Court stands consistent and therefore, such testimony being wholly trustworthy, the conviction based on such testimony warrants no interference from this Court.

16. He further submits that the medical report further corroborates the version of PW-1/victim. In support of his submission, he relies upon the following decision of the Apex Court, which is reproduced hereunder for ready reference:-

- (i) ***State of Himachal Pradesh Vs. Manga Singh***, reported in ***(2019) 16 SCC 759***.
- (ii) ***Ganesan Vs. State represented by its Inspector of Police***, reported in ***(2020) 10 SCC 573***.

17. I have given my prudent consideration to the arguments made by all the learned counsels for the parties and have perused the materials available on record including the citations cited at the bar.

18. PW-1/victim lodged the FIR alleging that her step-father committed the act of rape upon her altogether 3 (three) times.

19. It appears that it is on the basis of the sole testimony of PW-1/victim, the prosecution established the offence against the accused/appellant.

20. It is a settled law that in a case relating to an offence under the POCSO Act, a conviction can be based solely on the basis of the victim girl. However,

before returning the verdict of guilt, the Court has to come to a finding as regard whether the testimony of the victim is wholly trustworthy, credible, unblemished and is that of a sterling quality.

21. Apt to refer at the outset to the deposition of the victim, i.e., PW-1.

22. PW-1/victim deposed that since her biological father died during her childhood, her mother again married the accused/appellant and she used to stay with her maternal grandmother in Siata where her mother and the accused/appellant were residing in a separate house apart from them. She further deposed that she was born on 17.09.2004. She further deposed that since her mother is having chronic disease, she used to go out from Siata village for her treatment.

23. She further deposed that for the first time during March, 2015, she was called upon by the accused/appellant while her mother had gone to Aizawl or Burma for her medical treatment during a period about a month and accordingly on that evening, when she went to the house of the accused/appellant, the accused/appellant was alone in the house. She further deposed that as soon as she arrived, the accused/appellant directed her to sit in the long chair and when she sat in the long chair, the accused/appellant hold both of her hands and asked her to use sexual intercourse but she refused the same.

24. She further deposed that after that, the accused/appellant forcefully brought her into the bedroom and he laid her in the bed undressing all her clothes including her underwear and made her naked. She further deposed that at that time, she cried out seeking for help for two or more times, but the accused/appellant had covered her mouth with his hands. She further deposed

that the accused/appellant thereby inserted his penis into her vagina and it was very painful and that he also ejaculated inside her vagina and it was not so long for commission of the said offence.

25. She further deposed that at the time of the commission of the offence, the accused/appellant had also undressed his pants and that he had also forcefully kissed her. She further deposed that after the incident took place, she wore her clothes. She further deposed that although the accused/appellant did not inflict threatening, he stated to her not to disclose the incident. She further deposed that as she was ashamed, she did not disclose about the incident to others. She further deposed that for the second time even during March, 2015, when her mother was almost returning back, she went to the house of the accused/appellant as her mother asked her to clean the house, the accused/appellant immediately came to the house and he had again forcefully brought her into his bedroom and laid her again in the bed and undressed her pants and underwear and also by covering her mouth with his hands, he again inserted his penis into her vagina and also ejaculated again in her vagina. She further deposed that this time, he took longer time in commissioning the same than the previous time and that there her vagina was also bleeding.

26. She further deposed that although the accused did not inflict threatening not to disclose the offence, as she was ashamed again, she did not disclose the incident to others. She further deposed that for the third and last time, it was in March, 2017, when her mother went to Rangoon for her medical check-up, she went to the house of the accused/appellant with Hmangaihsangi, D/o Paliana to collect washed clothes but while they reached the house of the accused/appellant, her friend Hmangaihsangi being called back by her mother

went back and she alone entered into the house of the accused/appellant and that he again forcefully brought into his bedroom and he laid her in the bed and by undressing her pants and underwear, he inserted his penis into her vagina and ejaculated again therein. She further deposed that as she was afraid of continuity of the offence, she disclosed about the incident to her brother Michael during May, 2017 and that she was subsequently admitted into hostel at Siaha as a hostel boarder. She further deposed that after she was taken out from hostel, they went to the Police Station for lodging an FIR. She further deposed that till date, she is afraid of the accused/appellant and the same is psychologically affecting her.

27. During cross examination, she clarified that the accused/appellant never accompanied her mother for medical check-up outside Siaha village. She further clarified that her relatives like Mr. Michael did not immediately approach the Police when she disclosed about the incident to him. She further clarified that as the accused/appellant covered her mouth with his hands even for the third offence, she could not cry out for help.

28. Apparent from the above that PW-1/victim has clearly deposed that the accused/appellant had raped her 3 (three) times when her mother was not around. Firstly, during March, 2015 when the accused/appellant called her to their house while her mother had gone to Aizawl for her medical treatment and upon her going to the house of the accused/appellant, the accused/appellant made her sit in the long chair and he then hold her hands asking her to use sexual intercourse but when she refused, he forcefully took her to their bedroom where he undressed her and though she resisted, he inserted his penis into her vagina and also ejaculated inside her vagina and that it did not take

much time for commission of the said offence. Secondly, during March, 2015 again when her mother was almost returning back, when she had gone to their house to clean, the accused/appellant forcefully took her into his bedroom where he laid her in the bed and undressed her clothing and by covering her mouth with his hands, he inserted his penis into her vagina and again ejaculated in her vagina. However, this time, the offence was longer than the last time. Thirdly, during March, 2017, when her mother went to Rangoon for her medical check-up, she had gone to the house of the accused/appellant alongwith DW-3 to collect washed clothes and as they were about to reach the house of the accused/appellant, DW-3 was called back by her mother and thereafter, the accused/appellant again forcefully took her into their bedroom and after laying her in the bed and undressing her, inserted his penis into her vagina and ejaculated again inside her.

29. The manner in which PW-1/victim has accounted the 3 (three) incidents, which is also in conformity with her version in the FIR, inspires the confidence of this Court. Further, her version is supported by PW-3/Medical Officer, who examined her and found her hymen to be torn.

30. PW-3/Dr. K. Lalchhanhimi deposed that she examined PW-1/victim and found that hymen of PW-1/victim was not intact. She further deposed that she was told that the accused/appellant had committed the sexual offence with her for three times. She exhibited the medical examination report prepared by her as Ext. P-13.

31. During cross examination, she clarified that since there was a long time gap in between the date of occurrence and the date of examination, no other finding can be arrived.

32. This takes me to the remaining two official witnesses, i.e., PW-2/Police Officer and PW-4/Investigating Officer.

33. PW-2/Smt. Remveli is the female Police Officer, who recorded the statement of the PW-1/victim under Section 161 Cr.PC.

34. PW-4/Sh. Chhuanthianghlina is the Investigating Officer, who investigated the offence and recorded the statements of the witnesses including the accused/appellant and submitted charge-sheet.

35. PW-5/Sh. Daniel and **PW-6/Sh. C.H. Sechunga** are the seizure witnesses, who testified the seizure of the Birth Certificate of PW-1/victim being Ext. P-14.

36. I shall now refer to the answers given by the accused/appellant while he was examined under Section 313 Cr.PC.

37. While the accused/appellant denied the allegations of committing sexual intercourse with PW-1/victim against question No. 6, he answered that he believes that this case evolved owing to family feud as his wife's family wanted her to be separated from him and that is why, they must have made up this case. He further adduced evidences in defence including himself.

38. DW-1/accused/appellant deposed that he has been falsely alleged by the PW-1/victim due to instigation/direction of her family members. He further deposed that as far as he know, prior to his marriage with PW-1/victim's mother, his elder brother married the elder sister of PW-1/victim's mother but both of them died after their marriage. He further deposed that his another sibling married another sister of PW-1/victim's mother but the couple also died

and since then, his wife's family members keep saying that his family and their family cannot be married again due to fear of death. He further deposed that due to spiritual work, he got married with PW-1/victim's mother, who was earlier married to his cousin brother namely Shri John Banyan 'L'. He further deposed that they were blessed with three children. He further deposed that their marriage was not accepted by the family members of his wife and keeps trying to separate them by making excuses one after another, but because of his children, he always bear all the hardship in order to save their marriage life.

39. He further deposed that after their marriage, his wife is suffering from various sicknesses and is undergoing treatment and that he works hard in order to meet the medical expenses for his wife. He further deposed that during his wife's medical treatment, he was not allowed to accompany her by the family members of his wife. He further deposed that in March 2016, the relatives of his wife had sent her to Hlamphei in order to separate us. He further deposed that he alongwith his youngest child had called her twice to return but she refused and that he again sent 'Palai' to call her back, however, she replied by saying that if she goes, she will die. He further deposed that in March 2017, he went to Halkha Myanmar for casual work and worked with DW-5 for constructing wooden house.

40. He further deposed that during his stay at Halkha, his wife came back from medical treatment and he accompanied her from Halkha for proceeding towards their village. He further deposed that the instant case against him is a fabricated one and only to separate them due to the past history between their families and that PW-1/victim is being used for this entire plan. He further

deposed that PW-1/victim was born on 11.09.2003 and not as in her Birth Certificate, which is as per the Church record and 'Hriatpuina' letter from one Evan C. Ringmang, who dedicate PW-1/victim in their Church on 5th October 2003.

41. During cross examination, he clarified that his marriage with the biological mother of PW-1/victim is still continuing till date and they also lived as couple till he was arrested. He further clarified that he also went to Halka, Myanmar after his wife had already gone there. He further clarified that he does not know how many times PW-1/victim came to their residence during March, 2016. He further clarified that he spent more than 3 weeks in Halka, Myanmar during March, 2017. He further clarified that he went to Halka, Myanmar during March, 2017 for construction of houses with DW-5 as laborers. He further clarified that PW-1/victim did not come to their house during March, 2017.

42. DW-2/Miss Dingi, who is the niece of the accused/appellant deposed that she alongwith PW-1/victim had cleaned the residence of the accused/appellant during the time when PW-1/victim's mother was hospitalized. She further deposed that when they were cleaning up the house of the accused/appellant, the house was locked and they took a key from the neighbour's house and thereby opened the door of the house of the accused/appellant. She further deposed that while they were cleaning, the accused/appellant did not come to them nor interfered in their business. She further deposed that after they cleaned up the house of the accused/appellant, they left and again locked it up and left door key to Mr. Lalramliana's house.

43. During cross examination, she clarified that it was sometime in March when they cleaned up the house of the accused/appellant.

44. DW-3/Miss Hmangaihsangi, who is a neighbour of the accused/appellant deposed that she did not go to the house of the accused/appellant during the time when PW-1/victim's mother was hospitalized outside their village.

45. DW-4/Sh. C. Ramliana, who is the younger brother of the accused/appellant deposed that during hospitalization of the accused/appellant's wife, they left their children with him and his wife. He further deposed that the accused/appellant never accompanied his wife for her hospitalization outside their village. He further deposed that during absence of the family of the accused/appellant, they left their door key to him and that during their absence, PW-1/victim never cleaned up their house but rather, it was cleaned up by DW-2.

46. During cross examination, he clarified that the house of the accused/appellant was cleaned up by DW-2 only one time.

47. DW-5/Sh. V. Sangbi, who is another neighbor of the accused/appellant deposed that although he could not recollect the exact date and month, it was during March, 2017, the accused/appellant came to Burma and worked with him for construction of a house at Burma.

48. During cross examination, he clarified that he had completed construction of two houses at Burma in between January to May, 2017. He further clarified that the accused/appellant worked with him about one to two weeks at Burma.

49. In a case of sexual assault of a minor girl, what is important to keep in mind is that the minor girl, that too, of age 13 years at the time of occurrence,

would not ordinarily lie about being sexually assaulted. Therefore, the version of PW-1/victim has to be considered with utmost care before discarding the same. In fact, if the version of the prosecutrix inspires confidence and appears to be trustworthy, credible, unblemished and of sterling quality, no further corroboration is required.

50. Apt to refer to the decision of the Apex Court in the case of **Ganesan Vs. State**, reported in **(2020) 10 SCC 573**, wherein the Apex Court has held that where the testimony of victim is found reliable and trustworthy, conviction on the basis of such testimony alone is permissible. Relevant paragraph of the aforesaid decision is reproduced hereunder for ready reference:-

"10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay, it is observed in paras 9 to 14 as under:

"9. In State of Maharashtra v. Chandraprakash Kewalchand Jain this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)

'16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence

required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In State of U.P. v. Papputhis Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12).

'12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.'

11. In State of Punjab v. Gurmit Singh, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394- 96&403, paras 8 &21)

'8.... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

21.... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations." (emphasis in original)

12. In *State of Orissa v. Thakara Besra*, this Court held that rape not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh* this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of

circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

10.2. In Krishan Kumar Malik v. State of Haryana, it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a "sterling witness", has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi). In para 22, it is observed and held as under: (SCC p. 29)

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross- examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should

remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

51. Reference is also made to the decision of the Apex Court in the case of **State (NCT of Delhi) v. Pankaj Chaudhary**, reported in **(2019)11 SCC 575**, wherein the Apex Court has observed and held as under:

"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming." [State of Rajasthan v. N.K.].

52. Reference is also made to the decision of the Apex Court in the case of **Sham Singh v. State of Haryana**, reported in **(2018) 18 SCC 34**, wherein the Apex Court has observed and held as under:-

"6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or

sexual assaults. [See State of Punjab v. Gurmit Singh³ (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam⁴.)"

53. Therefore, the test is to consider the testimony of the victim in the context of the facts of each case and to ascertain whether her testimony can be said to be trustworthy, reliable, credible and is of sterling quality. In doing so, whether the surrounding circumstances deposed by her are supported by other witnesses or not and the manner in which she has recounted the incident right from the beginning to the end are also, amongst others, to be taken into account.

54. From the FIR, PW1/ victim's statement recorded under section 164 Cr.P.C., and her deposition before the Trial Court, it appears that the PW-1/victim had recounted the three incidents of sexual intercourse committed by the accused/appellant in a consistent manner right from the beginning to the end. It further appears that the said version is also supported by the medical report, wherein her hymen was found to be torn. That apart, the defence has

not been able to shake her credential during cross examination. In fact, no reason whatsoever for PW-1/victim to falsely implicate the accused/appellant of an offence which will tarnish her image and destroy her life is also brought out during cross examination of the prosecution witnesses.

55. Therefore, in view of the continuity in the chain of events, supported by the medical witness and the manner in which the PW-1/victim had disclosed about the incident, it is conclusively established that PW-1/victim is totally trustworthy, credible and unblemished. Therefore, this Court has no hesitation in accepting the testimonies of the PW-1/victim as true. That being so, no further corroboration is required.

56. Apt that though the accused/appellant during his examination under Section 313 Cr.PC has explained that the allegation in the FIR evolved owing to family feud with his wife's family as they wanted to separated them. However, there is no foundation or basis whatsoever built by the accused/appellant to bolster his suspicion during the cross examination of the Prosecution Witnesses. In fact, no suggestion or question whatsoever as regards family feud between the two families was put either to PW-1/victim or other Prosecution Witnesses during cross examination.

57. Section 313 Cr.PC provides a substantial right to the accused/appellant, whereunder, after the evidence of the prosecution is adduced, all the incriminating circumstances emerging out during the trial are put to him for offering explanation. Thus, the accused/appellant is given an opportunity for offering his explanation in defence. The answers given by the accused/appellant is carefully weighed in the facts and circumstances of each case so as to find out the truth and to examine the veracity of the case of the prosecution.

However, if such explanation appears to be unreasonable or false, the Court is entitled to draw adverse inferences against the accused/appellant and the same shall complete the chain of events in cases which are based on circumstantial evidence.

58. Reference is made to the decision of the Apex Court in the case of ***Sanatan Naskar & Anr. Vs. State of West Bengal***, reported in **(2010) 8 SCC 249**. Paragraph 10 and 11 of the aforesaid judgment is reproduced hereunder for ready reference:-

“10. The answers by an accused under Section 313 of the Cr.PC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. The scope of Section 313 of the Cr.PC is wide and is not a mere formality. Let us examine the essential features of this section and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Cr.PC. As already noticed, the object of recording the statement of the accused under Section 313 of the Cr.PC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and, besides ensuring the compliance thereof, the Court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simplicitor denial or, in the alternative, to explain his version and reasons, for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him.

However, if the statements made are false, the Court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the Court and the accused and to put every important incriminating piece of evidence to the accused and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the Courts

have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence. The statement of the accused can be used to test the veracity of the exculpatory of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of [Section 313 \(4\)](#) of Cr.PC explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for, any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The Courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this Section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. Another important caution that Courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under [Section 313](#) of the Cr.PC as it cannot be regarded as a substantive piece of evidence. In the case of [Vijendrajit v. State of Bombay](#), [AIR 1953 SC 247], the Court held as under:

"(3). As the appellant admitted that he was in charge of the godown, further evidence was not led on the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under S.342 as supporting the prosecution case concerning the possession of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under S.342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown."

11. In the light of the above stated principles it was expected of the accused to provide some reasonable explanation in regard to various circumstances leading to the commission of the crime. He was known to the family along with other accused and by giving just a bare denial or lack of knowledge he cannot tilt the case in his favour. Rather their answers either support the case of the prosecution or reflect the element of falsehood in the statement recorded under [Section 313](#) of Cr.PC. In both these circumstances the Court would be entitled to draw adverse inference against the accused."

59. In the present case, there being no foundation as regards the defence of such family feud, such answers of the accused/appellant appears to be unreasonable and false. Hence, the same stands against the accused/appellant.

60. The argument of the learned Amicus Curiae for the accused/appellant to the effect that in view of the statement of DW-3, the testimony of PW-1/victim is blemished is totally fallacious, inasmuch as, DW-3 has clearly stated that before she entered into the residential house of the accused/appellant, she was called back by her mother and therefore, her deposition that she did not accompany PW-1/victim to collect washed clothes in the residence of the accused/appellant cannot be said to be contradictory to the deposition of PW-1/victim to the effect that DW-3 and she went to the house of the accused/appellant to collect washed clothes and as soon as reaching the house, DW-3 was called back by her mother. There is nothing inconsistency between the two testimonies and both can stand together.

61. The argument of the learned Amicus Curiae for the accused/appellant that the accused/appellant has proved that during March, 2017, he had gone to Halka Myanmar with DW-5 in connection to a work for construction of a house is also of no help to the defence, inasmuch as, neither DW-5 nor the accused/appellant had deposed the exact date or period of stay at Halka Myanmar in the month of March, 2017. In fact, DW-5 deposed that he could not recollect the exact date and month but he deposed that it was March, 2017 when the accused/appellant came to Burma and worked with him. The testimony of PW-1/victim that during 2017, when her mother went to Rangoon for her medical check-up, she had gone to the house of the accused/appellant

to collect washed clothes when the accused/appellant sexually abused her for the third time is further corroborated by the accused/appellant in his cross examination, wherein he clarified that when during March, 2017, he had gone to Halka Myanmar, his wife had already gone there and in his deposition during in-chief evidence, wherein he deposed that while he was staying at Halka, upon his wife's medical treatment being over, she accompanied him back to their village.

62. Thus, it is clearly emerging out that during March, 2017, after PW-1/victim's mother left for her treatment to Burma, in absence of her mother, the accused/appellant sexually abused her for the third time and thereafter, he left for Halka, Myanmar in connection with construction work with DW-5 and after completing the said work, he alongwith his wife came back to their village. Thus, there is no inconsistency as regards the third incident as was sought to be projected by the accused/appellant.

63. In view of the above, the offence of aggravated penetrated sexual assault is clearly established and proved by the prosecution beyond reasonable doubt against the accused/appellant.

64. That being so, this Court does not find any illegality or infirmity in the conviction of the accused/appellant by the Trial Court. Hence, I am of the considered view that there is no sufficient ground for interfering with the Judgment & Order dated 11.10.2017 passed by the Trial Court. Resultantly, the conviction of the Trial Court stands upheld. Therefore, the appeal fails.

65. This Court appreciates the services rendered by the learned Amicus Curiae and the learned Legal Aid Counsel and accordingly, their requisite fees are to be paid by the State Legal Services Authority as per existing rates.

66. Send back the Trial Court records.

JUDGE

Comparing Assistant