

Court No. - 45

Case :- CRIMINAL APPEAL No. - 2628 of 2001

Appellant :- Badri

Respondent :- State of U.P.

Counsel for Appellant :- G.C. Saxena, Mohammad Khalid, Pawan Kumar Yadav

Counsel for Respondent :- Govt. Advocate

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Mohammad Khalid along with Sri Pawan Kumar Yadav, learned counsel for the appellant, Sri L.D. Rajbhar, learned A.G.A. for the State and perused the records.

2. The present criminal appeal has arisen from the judgment and order of conviction dated 08.08.2001 passed by Sri Jagdish Prasad, Special/Sessions Judge, Lalitpur in Special Case No.47 of 2000 (State Vs. Badri), under Sections 376 & 506 IPC and Section 3(1)(xii) Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, P.S. Mahroni, District Lalitpur, convicting the accused appellant and sentencing him to undergo life imprisonment for the offence under Section 376 IPC; rigorous imprisonment for a period of six months for the offence under Section 506 IPC and rigorous imprisonment for a period of six months for the offence punishable under Section 3(1)(xii) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. Prosecution story emerged on the Written Report dated 09.09.2000 lodged by prosecutrix 'P', wherein she disclosed that on 02.09.2000 at about 10.00 a.m., the appellant met her on an agricultural field, where she had gone for work. He forcibly pulled her towards a check dam

and took her to the maize field, where he stuck her mouth with a cloth and committed rape on her. She also narrated resistance offered by her. Later, she narrated the incident to her husband-when he returned home at night. The next morning, a '*Panchayat*' was held but no resolution could be offered. The Written Report was exhibited as Ex.Ka.1 at the trial.

4. On the above Written Report, FIR was registered in Case Crime No.87 of 2000 at Police Station Mahroni, District Lalitpur at about 4.00 p.m. It is exhibited as Ex.Ka.2 at the trial.

5. On such report being registered by 'P', she was medically examined on 09.09.2000, by Dr. Sarojini Joshi (P.W.-5 at the trial). Medical examination could not confirm commission of rape. Supplementary Medical Report did not determine presence of spermatozoa etc.-for the obvious reason of that medical examination being conducted a week later, when no confirmation could be offered in the Supplementary Medical Report (exhibited as Ex.Ka.4 at the trial). Upon completion of the investigation, the Investigating Officer Akhilesh Narain Singh (P.W.-6 at the trial) submitted charge sheet. Upon the case being committed for trial to Court of Sessions, following three charges were framed against the appellant:-

CHARGE

FIRSTLY: That, on 2.9.2000 at about 10.00 a.m. in the Makka Wala field near Check Dam, situated in village Bhadrau, P.S. Mehroni, District Lalitpur; you committed rape on Smt. Gulab Rani and thereby committed an offence, punishable u/s. 376 I.P.C., and within the cognizance of this court.

SECONDLY: That, on the said date, time and place, you committed criminal intimidation by threatening Smt. Gulab Rani with death and thereby committed an offence, punishable u/s. 506 I.P.C., and within the cognizance of this court.

THIRDLY: That, on the said date, time and place, you being in a position to dominate the will of Smt. Gulab Rani, a woman belonging to a Scheduled Caste and used that position to exploit her sexually, to which she would not have otherwise agreed, and thereby committed an offence, punishable u/s. 3(1)(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and within the cognizance of this court.

And I hereby direct that you be tried by this court on the said charge.”

6. At the trial, the victim was examined as P.W.-1. First, she stated that she had gone to the agricultural field at about 10.00 a.m., where the appellant arrived and held her hand and took her to the maize field near the check dam. There, the appellant committed rape on her after stuffing her mouth with a cloth. She also claimed that after the occurrence, she was able to give out a cry for help but none arrived for help as no one was present. While coming back to her home, she met Ram Prasad (P.W.-3 at the trial). She narrated the occurrence to him. At that time, her husband was not in the village. When he returned in the evening, she told him about the occurrence. She also claimed that she narrated the incident to her brother-in-law (*jeth*), namely, Shyam (not examined at the trial). However, no action was taken upon that disclosure made to Nandoo (P.W.-2 at the trial), as it had got late at night.

7. The next morning, Nandoo (P.W.-2) went to the father of the appellant to complain. Thereafter, a '*Panchayat*' was held, wherein 'P' (P.W.-1) swore on the life of her children that she had spoken the truth. On that, a '*Panchayat*' gave eight days' time, whereafter they reassembled and observed that the appellant was guilty. However, the appellant fled. Thereafter, the FIR came to be lodged.

8. As to the FIR, 'P' (P.W.-1) clearly stated that she had dictated the Written Report to the Clerk. He typed and read out the same to her, whereafter she affixed her thumb impression on that Written Report. She proved that Written Report.

9. During her cross-examination, she described the place of occurrence to be the agricultural field of the appellant, which had been cultivated by her and Nandoo (P.W.-2), on '*batai*'. She also described that she was pulled by the appellant for about 20 paces and that he had stuffed a cloth in her mouth. Therefore, she could not cry for help.

10. She also described (to some extent), the persons who constituted the '*Panchayat*'. She denied the suggestion that there was any animosity between P.W.-2 and the village Pradhan and other suggestions thrown at her.

11. Thereafter, Nandoo (P.W.-2) was examined. He corroborated the facts narrated by 'P' (P.W.-1) with respect to the occurrence and the '*Panchayat*' held. He also confirmed, the appellant fled after the second '*Panchayat*'.

12. During his cross-examination, he admitted, he had bought some jewellery worth Rs.1,000/- from one Hari Shanker Sonu on the security offered by the father of the appellant. He further admitted that the amount Rs.1,000/- had not been paid by him as that amount was to be repaid after the harvest.

13. Thereafter, the third witness of fact, namely, Ram Prasad was examined as P.W.-3 at the trial. He confirmed that 'P' (P.W.-1) had met her after the occurrence and narrated to him that the appellant had committed rape on her. He first stated that he could not recall the exact time gap between the occurrence and the disclosure made to him. He further confirmed that a '*Panchayat*' was held the next day, wherein 'P' (P.W.-1) swore on her children that she had spoken the truth. He further stated that '*Panchayat*' was adjourned for 7-8 days on a superstitious perception that if no ill came to visit the children of 'P' (P.W.-1)(on whose life she swore), her statement would be believed as true. In such circumstances, Ram Prasad (P.W.-3) further stated, after the second '*Panchayat*' held after seven days. Since no ill visited the children of 'P', her complaint was believed to be true. Therefore, the '*Panchayat*' advised her to take legal action against the appellant.

14. He further stated that 'P' was not his real aunt. He further confirmed that at the time when 'P' disclosed the occurrence to him, no other person was present. As to the persons, who constituted the '*Panchayat*', again common names surfaced as were disclosed by 'P' (P.W.-1) and later by Nandoo (P.W.-2). He further denied any bad relations with him and the present appellant. He further stated, at the time when 'P' (P.W.-1) first narrated to him the occurrence, her clothing was soiled on the back side, with wet earth.

15. Thereafter, Head Constable Abdul Aziz was examined as P.W.-4 at the trial. He proved the submission of the Written Report, registration of FIR etc. Next, Dr. Sarojini Joshi was examined as P.W.-5 at the trial. Her medical opinion remained inconclusive as to the commission of rape. At the same time, she did prove that she had examined the prosecutrix on 09.09.2000. Next, Investigating Officer Akhilesh Narain Singh was examined as P.W.-6. He proved the investigation.

16. After closure of prosecution witness, statement of the appellant under Section 313 Cr.P.C. was recorded. He offered general denial and alleged false implication.

17. Thereafter, defence evidence was led. In that, two defence witnesses were examined, namely, Muloo (D.W.-1 at the trial) and Koora (D.W.-2 at the trial). Both were initially listed as witness of the charge sheet. However, they were discharged by the prosecution.

18. Muloo (D.W.-1) first stated that his statement had not been recorded by the Police. Thereafter, he confirmed that a '*Panchayat*' was held in which 20-25 villagers participated. According to that witness, a decision was taken at the '*Panchayat*' that the husband of prosecutrix, namely, Nandoo (P.W.-2) had assaulted his wife to force her to lodge a false complaint against the accused-alleging rape. He also stated that the appellant had lent money to enable Nandoo (P.W.-2) to buy some jewellery. According to him, on such occurrence, Nandoo (P.W.-2) fled from the

village. He completely denied having made such statement to the Police during investigation.

19. During his cross-examination, he tried to prove that the '*Panchayat*' had been called to restrain Nandoo (P.W.-2) from lodging any false case against the appellant arising from the money dispute that existed between those parties for Rs.1,000/- borrowed by Nandoo (P.W.-2) from the appellant. At the same time, during that cross-examination, he admitted that at that '*Panchayat*', Nandoo (P.W.-2) asserted that the appellant had committed rape on his wife ('P'). Further, he denied knowledge if 'P' had gone to the agricultural field as disclosed by her. He also denied knowledge if the appellant had committed rape on her. Last, he stated that the appellant had not appeared at the second '*Panchayat*'.

20. Thereafter, Koora was examined as D.W.-2. He claimed that the first '*Panchayat*' had been called involving about 30-40 villagers for reason of Nandoo (P.W.-2) having assaulted his wife i.e. 'P' (P.W.-1) and forced her to lodge false case against the appellant. In that, he stated that Nandoo (P.W.-2) had assaulted 'P' (P.W.-1) till late in the night. Second, he also denied any statement being made during investigation. According to him, for reason of money not returned by Nandoo (P.W.-2), the appellant had threatened to not continue the '*batai*' arrangement any further. At the same time, he confirmed that upon the first '*Panchayat*', seven days' time was granted to the parties to

resolve their disputes. However, he denied that a second '*Panchayat*' was held.

21. In such circumstances, after hearing the parties, learned Court below has convicted the appellant, as above.

22. Learned counsel for the appellant submits, the occurrence is wholly fake. The real occurrence was completely otherwise being money dispute between the appellant and the husband of 'P' (P.W.-1), namely, Nandoo (P.W.-2). He had no desire to repay the appellant. He assaulted and forced 'P' (P.W.-1) to lodge a completely false case against the appellant.

23. The above theory is stated to have been proved. In the first place, the prosecution story emerged a week after the alleged occurrence. Second, there is discrepancy in the FIR narration of many people having reached the place of occurrence and the first statement made by P.W.-1 at the trial, when according to her, no one reached the place of occurrence. Third, no medical evidence exists of the occurrence. Fourth, there are no external injury marks noted on the body of 'P' (P.W.-1), even though she claimed to have been dragged over some distance and thrown to the ground, where rape was allegedly committed upon her. Fifth, no recovery whatsoever exists of any cloth or other material that may have been involved in such occurrence. Sixth, it has been submitted, 'P' (P.W.-1) had not disclosed the time of the occurrence, to the independent witness (P.W.-3). Seventh, though the '*Panchayat*' was admitted to the appellant, it has been submitted, it was clearly proven

through defence witnesses that '*Panchayat*' was held to resolve the dispute that existed between Nandoo (P.W.-2) and the appellant. Eighth, though 'P' described that her husband Nandoo (P.W.-2) returned in the evening, the said Nandoo (P.W.-2) stated that he was present the same morning. Last, it has been stated, the prosecution held back crucial eye witnesses (D.W.-1) and (D.W.-2). Since, they were listed as prosecution witnesses in the charge sheet, defence called them to the witness box. They have proven the correct facts. Therefore, their testimony may not have been discarded treating them to be pure defence witnesses.

24. As to the sentence, it has been submitted, severe sentence has been awarded being life imprisonment. Referring to the provisions of Section 376 I.P.C. and Section 3(1)(xii) S.C./S.T. (P.A.) Act, 1989, as they existed on the date of occurrence, it has been argued, no case was made out to award maximum sentence, for the merit reasons, noted above.

25. On the other hand learned A.G.A. submitted that all the submissions being advanced by learned counsel for the appellant are misconceived as the delay in lodging of the FIR is wholly explained for reason of '*Panchayat*' held. That '*Panchayat*' being admitted and since seven days' time was granted by the '*Panchayat*', the FIR lodged immediately after lapse of seven days', was not belated. Thus, FIR is wholly prompt. The occurrence being of village, no undue prejudice may be caused to the

prosecution for reason of that time taken. As to the alleged discrepancy in the FIR narration and the statement of 'P' (P.W.-1), the same is wholly inconsequential and trivial. The FIR is not an encyclopedia that must be proven in full at the trial. To the extent, 'P' (P.W.-1) clearly proved that she first narrated the occurrence to Ram Prasad (P.W.-3) soon after the occurrence and to the extent the said Ram Prasad (P.W.-3) has wholly corroborated that occurrence and no doubt has emerged as to the prosecution story on that count, the discrepancies cited by learned counsel for the appellant must be ignored. As to the medical evidence, it has been submitted, it is of no consequence in face of strong ocular evidence of the prosecutrix existing. It being case of rape, her deposition has to be treated at par with that of injured witness. As to the lack of injuries, it has been submitted, it was never the prosecution story that the appellant had physically assaulted the prosecutrix in any manner in which she may have received visible physical injuries as may have been examined seven days after the occurrence. She being a married lady and mother of four children, no undue reliance may be placed on the lack of internal injuries. On the other hand, the defence theory of false prosecution lodged for reason of heavy assault committed on 'P' (P.W.-1) by Nandoo (P.W.-2), to force her to lodge false complaint against the appellant is proven false for reason of no external injury noted during the physical examination by Dr. Sarojini Joshi (P.W.-5), conducted on 09.09.2000. As to the defence evidence, the same is of no value to the extent, the defence witness denied any

statement made to the Police. Since no doubt emerged with respect to such statement, their status cannot be elevated to better than that of a simple defence witness. Then, as to the actual occurrence, D.W.-2 clearly stated, he could not make any statement to the Court if 'P' (P.W.-1) had gone to the agricultural field on the date of occurrence or if rape had been committed upon her.

26. Having heard learned counsel for the parties and having perused the record, in the first place, there is no denial to the fact that the Written Report was submitted by 'P' (P.W.-1) on 09.09.2000. On the issue of delay, we find that it is an admitted case between the parties that after the date of occurrence, the very next day a '*Panchayat*' was convened and held with respect to the dispute between the parties. While the prosecution case is consistent that such '*Panchayat*' was convened arising from rape committed on 'P' (P.W.-1), the defence theory is that the '*Panchayat*' was convened to deal with the false accusation of rape committed on 'P' (P.W.-1). Therefore, it has to be accepted as a fact that the allegation of rape had emerged on 03.09.2000 itself when the first '*Panchayat*' was convened.

27. It is also a fact that after the first '*Panchayat*' was held, a break occurred and the proceeding of the '*Panchayat*' was adjourned for seven days. The prosecution maintains that it was adjourned for reason of the prosecutrix (P.W.-1) having sworn on her God that ill may fall on her children if she had spoken falsehood

against the appellant. Therefore, the '*Panchayat*' thought it proper to wait for seven-eight days. While the Court would not give any recognition to such practices, at the same time, the Court has to remain mindful of the realities of life and practices and customs and belief that exist and prevail in the villages of the country. Simple villagers may trust God and his ways more blindly and absolutely. Therefore, they may trust the fallout of false personal oath more than the others. On the other hand, the defence stated that 7-8 days time granted to Nandoo (P.W.-2) to settle his money dispute with the appellant. Yet, no such settlement was reached on that count and no proceeding was instituted by the appellant against Nandoo (P.W.-2), in that regard. Therefore, the fact that the FIR came to be lodged after seven days cannot be described to be wholly belated for reason of gap of time since both sides admit that time was consumed for reason of '*Panchayat*' convened. Without reaching any further conclusion that such '*Panchayat*' convened, we reject the submission that FIR was lodged with delay.

28. Reliance may be placed on the decision of the Supreme Court in **Lalai @ Dindoo and Another Vs. State of U.P. (1975) 3 SCC 273**, wherein a three judge bench of the Supreme Court considered the issue and observed as below:

6. The only other ground on which Radhey Shyam's evidence was challenged is that though the incident took place at about 10.30 p.m. on the 24th it was not until 11 a.m. on the 25th that Radhey Shyam lodged the first information report. This undoubtedly is an important circumstance but the Sessions Court and the High Court have given a reasonable explanation of the delay. The night was dark, the road was rough and the assault so fierce that Radhey Shyam could not have collected his wits to proceed straightway to the police station. There is no indication in the evidence that the names

of the appellants were incorporated in the first information report as a result of any confabulation.

(emphasis supplied)

29. In **Tara Singh and Others Vs. State of Punjab 1991 Supp (1) SCC 536**, the Supreme Court considered the issue of delay in lodging of F.I.R. It was observed as below:

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case. In the instant case there are three eye-witnesses. They have consistently deposed that the two appellants inflicted injuries on the neck with kirpans. The medical evidence amply supports the same. In these circumstances we are unable to agree with the learned counsel that the entire case should be thrown out on the mere ground there was some delay in the FIR reaching the local Magistrate. In the report given by PW 2 to the police all the necessary details are mentioned. It is particularly mentioned that these two appellants inflicted injuries with kirpans on the neck of the deceased. This report according to the prosecution, was given at about 8.45 p.m. and on the basis of the report the Investigating Officer prepared copies of the FIR and despatched the same to all the concerned officers including the local Magistrate who received the same at about 2.45 a.m. Therefore we are unable to say that there was inordinate and unexplained delay. There is no ground to doubt the presence of the eye-witnesses at the scene of occurrence. We have perused their evidence and they have withstood the cross-examination. There are no material contradictions or omissions which in any manner throw a doubt on their veracity. The High Court by way of an abundant caution gave the benefit of doubt to the other three accused since the allegation against them is an omnibus one. Though we are unable to fully agree with this finding but since there is no appeal against their acquittal we need not further proceed to consider the legality or propriety of the findings of the High Court in acquitting them. So far as the appellants are concerned, the evidence against them is cogent and convincing and specific overt acts are attributed to them as mentioned above. Therefore we see absolutely no grounds to interfere. The appeal is, therefore, dismissed.”

(emphasis supplied)

30. Then in **Ravinder Kumar and Another Vs. State of Punjab (2001) 7 SCC 690**, there was delay of two days in lodging the F.I.R. In that, the Supreme Court made following pertinent observations:

“13. The attack on prosecution cases on the ground of delay in lodging FIR has almost bogged down as a stereotyped redundancy in criminal cases. It is a recurring feature in

most of the criminal cases that there would be some delay in furnishing the first information to the police. It has to be remembered that law has not fixed any time for lodging the FIR. Hence a delayed FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein.

14. When there is criticism on the ground that FIR in a case was delayed the court has to look at the reason why there was such a delay. There can be a variety of genuine causes for FIR lodgment to get delayed. Rural people might be ignorant of the need for informing the police of a crime without any lapse of time. This kind of unconversantness is not too uncommon among urban people also. They might not immediately think of going to the police station. Another possibility is due to lack of adequate transport facilities for the informers to reach the police station. The third, which is a quite common bearing, is that the kith and kin of the deceased might take some appreciable time to regain a certain level of tranquillity of mind or sedativeness of temper for moving to the police station for the purpose of furnishing the requisite information. Yet another cause is, the persons who are supposed to give such information themselves could be so physically impaired that the police had to reach them on getting some nebulous information about the incident.

15. We are not providing an exhaustive catalogue of instances which could cause delay in lodging the FIR. Our effort is to try to point out that the stale demand made in the criminal courts to treat the FIR vitiated merely on the ground of delay in its lodgment cannot be approved as a legal corollary. In any case, where there is delay in making the FIR the court is to look at the causes for it and if such causes are not attributable to any effort to concoct a version no consequence shall be attached to the mere delay in lodging the FIR.

...

16. In the present case, no doubt, there is apparently a long delay of two days to give information to the police but the bereaved widow was not absolutely certain that she lost her husband once and for all until her brother-in-law confirmed to her, after identifying the dead body, that the same was that of her husband. The initial tension and suspense undergone by her would have billowed up into a massive wave of grief. It is only understandable how much time a woman, placed in such a situation, would take to reach some level of placidity for communicating to the strangers of what she knew about the last journey of her husband. We therefore find no merit in the contention based on the delay in lodging the FIR."

(emphasis supplied)

31. As to the real occurrence, besides one discrepancy in the FIR and the fact proven by 'P' (P.W.-1) at the trial with respect to presence of other persons at the place and time of occurrence, the prosecution story has been proved on the strength of strong ocular evidence. That principle was applied in **State of H.P. Vs. Raghubir Singh (1993) 2 SCC 622**. There it was further observed as below:

"5. ... The High Court appears to have embarked upon a course to find some minor contradictions in the oral evidence with a view to disbelieve the prosecution version. In the opinion of the High Court, conviction on the basis of uncorroborated testimony of the prosecutrix was not safe. We cannot agree. There is no legal compulsion to look for corroboration of 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. In the present case the evidence of the prosecutrix is found to be reliable and trustworthy. No corroboration was required to be

looked for, though enough was available on the record. The medical evidence provided sufficient corroboration....”

(emphasis supplied)

32. Applying the above principle, in **State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384**, the Supreme Court further observed, to seek corroboration of the statement of such a witness i.e. a victim of sexual assault would be to add insult to the injury. At best, the Courts may look for some “assurance” of statement of such a witness- “to satisfy its judicial conscience”. In that regard, it was observed as below:

“8. ...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. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her; but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable....”

(emphasis supplied)

33. Coming to the alleged discrepancy, during her cross-examination, nothing material was put to P.W.-1 to establish that she had made any false statement or allegation in the FIR or during investigation with respect to the presence of others. In **State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384**, the Supreme Court

underscored the importance (for Courts) to be not swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix/rape victim. Where the evidence of the prosecutrix/victim inspires confidence with the Court, it must be relied (by Courts) without seeking corroboration of her statement in her material parts. In that regard, it was observed as below:

“21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault — it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, 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 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.”

34. In the case of **Bhagwan Jagannath Markad Vs. State of Maharashtra, (2016) 10 SCC 537**, the Supreme Court summarized the principles for the appreciation of the credibility of witnesses where there are discrepancies or infirmities in the statement. It observed:

“19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff

from the grain and find out the truth. A statement may be partly rejected or partly accepted. ...”

35. As to the real occurrence, the prosecution story as narrated in the FIR and maintained at the trial is singular. In that, it was consistently alleged and proven through ocular evidence of 'P' (P.W.-1). In that she narrated that she was working on the agricultural field that was being cultivated by her on 'batai' with the appellant, when the appellant dragged her to another maize field that had standing maize crop. She described the location of that field to be near a check dam. She also claimed, the appellant stuffed a cloth in her mouth and committed rape on her. No doubt emerged in that narration by P.W.-1, despite her extensive cross-examination.

36. She further narrated that after the appellant had fled from the place of occurrence, she ran back to her house. On her way back, she met with P.W.-3 and narrated the occurrence to him. Not only P.W.-1 remained consistent during her cross-examination, Ram Prasad (P.W.-3), in his testimony, narrated that very version of the occurrence as offered by P.W.-1. He did not make any statement either in his examination-in-chief or in his cross-examination as may give rise to any reasonable doubt as to the occurrence as was narrated by the prosecutrix i.e. 'P' (P.W.-1), either to the police or to the Court or to Ram Prasad (P.W.-3).

37. Here, we may remain mindful that deposition made by a rape survivor is to be treated at par with that of the injured witness. Specifically in the context of testimony of

a prosecutrix/victim of rape, in **Bharwada Bhognibhai Hirjibhai Vs. State of Gujarat, (1983) 3 SCC 217**, a victim of sexual assault was treated to be at par with an injured witness for the purpose of weight to be given to the testimony of such a witness. In that regard, it was observed as below:

“11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eyewitness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that 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 the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification : Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the “probabilities factor” is found to be out of tune.”

38. In **State of Maharashtra Vs. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550**, the Supreme Court emphasised, unless compelling reasons necessitate corroboration, statement of the victim/rape victim should be acted upon by Courts and unnecessary corroboration may not be sought. To that extent, such a witness was described to be at par with an injured witness. In that regard, it was observed as below:

“16. A prosecutrix of a sex offence cannot be put on 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 is 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. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

“It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.”

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.”

39. In view of such facts, we find no reasonable doubt exists in the prosecution story with respect to commission of rape on 'P' (P.W.-1). The fact that no medical evidence exists of rape committed, is really of no value. Admittedly, the victim was 30 years old and mother of four children. She did not allege any injury was suffered by her in the occurrence. She also did not allege that she was dragged in a manner as may have led to any external injuries to her. Undeniably the occurrence started and ended in an agricultural field. Since no hard object was present at such place of occurrence, the fact that no external injury was suffered by the victim is, therefore, of no avail.

40. The defence theory for whatever worth it may be, that false accusation arose upon physical assault committed by Nandoo (P.W.-2) on the victim, has been proven false by the medical report proven by Dr. Sarojini Joshi (P.W.-5). Though we are not required to test that theory any further in face of wholesome evidence by the

prosecutrix, however, such observation has been made to deal with the submission advanced.

41. To the defence witness, no credence is to be given once they completely denied having made any statement to the Police during the investigation. Though, they were claimed to be charge sheet witness but they denied having made any previous statement to the police. In absence of any cross-examination to doubt that stand taken by the witness, at the trial, it cannot be said that such witness had made any previous statement or that they were present at that time or place of occurrence, as originally disclosed by the prosecution. Once the prosecution did not prove and the defence itself rejected the previous statement attributed to such a witness, it cannot be said that the prosecution had accepted their presence.

42. Therefore, in view of such facts, the conviction for offence under Section 376 I.P.C. and 506 I.P.C. is confirmed. There is no error in the order of the learned court below convicting the appellant, as above. However, crucial element of offence alleged under Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 remained to be proved inasmuch as no effort was made to establish that the offence of rape under Section 376 I.P.C. was committed on 'P' from a position of dominance attained by the appellant on 'P', a woman belonging to Scheduled Caste by using the dominant position to exploit her sexually. No element of such social dominance existing was proven and no element

was proven to establish sexual exploitation practiced from that dominant position. On the contrary, it was disclosed that P.W.-2 was '*Bataidaar*' of the appellant i.e. a partner in loose sense. To that extent, the order of conviction cannot be sustained. Accordingly, the conviction made under Section 3(1)(xii) the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is set aside. As to sentence, we find that minimum sentence that may have been awarded at the relevant time was seven years and maximum was life imprisonment. No reason whatsoever has been recorded by the learned court below to award the maximum sentence. Neither there is any prior conviction nor there is any other circumstance shown to have existed as may warrant that heavy/maximum sentence.

43. Practically, since at the time of institution of this appeal, the appellant was 30 years of age, he would be about 55 years of age, now.

44. Accordingly, in the entirety of the facts, we award sentence of seven years to the appellant. At present, we note that the appellant has been enlarged on bail. His bail bonds are cancelled and sureties discharged. Since, the appellant has not served out the minimum sentence, the appellant is required to surrender by 31.05.2025, failing which the C.J.M., Lalitpur may ensure the arrest of the appellant to lodge him in jail to serve out the remaining sentence.

45. The appellant shall pay fine of Rs.45,000/- for the offence under Section 376 I.P.C. and Rs.5,000/- for the offence under Section 506 I.P.C. within six weeks. The same be paid out to 'P'. In case fine is not deposited within the aforesaid period, appellant shall further undergo imprisonment of one year.

46. Accordingly, the appeal is **partly allowed**.

47. Let the trial court record along with a copy of this order be transmitted to the court concerned through Registrar (Compliance) forthwith and a copy of this order may also be sent to the C.J.M., concerned.

48. C.J.M., concerned shall submit his compliance report in this regard to this Court, by 31.05.2025.

Order Date:- 16.04.2025

Anurag/-

(Dr. Gautam Chowdhary, J.) (S.D. Singh, J.)