

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.191 of 2002

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1. Suresh Murmu.
2. Mangal Murmu.
Both sons of Babu Lal Murmu.
3. Dinesh Kurmu, son of Hopna Murmu.
All of village- Jharhbari, Police Station-Pothia, District-Kishanganj.
.... **Appellant/s**

Versus

The State of Bihar
.... **Respondent/s**

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Appearance:

For the Appellant/s : Mr. Patanjali Rishi, Adv., Amicus Curiae
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 04-02-2015

Due to absence of learned counsel for the appellants, Mr. Patanjali Rishi, learned Advocate has been requested to assist the court, which he consented. Accordingly, heard learned Amicus Curiae as well as learned Additional Public Prosecutor.

2. Appellants Suresh Murmu @ Tudu, Mangal Murmu and Dinesh Murmu have been found guilty for an offence punishable under Section 376 IPC and each one has been directed to undergo R.I. for 10 years, under Section 366A of the IPC and each one has been directed to undergo R.I. for 10 years with a further direction to run the sentences concurrently vide judgment of conviction dated 04.03.2002 and sentence dated 07.03.2002 passed by Additional Sessions Judge, Kishanganj in Sessions Trial No.215 of 1998 have preferred instant appeal.



3. Nabi Ansari filed Complaint Petition No.529(C) of 1996 on 18.07.1996 against Dinesh Murmu, Hapna Murmu, Pajhar Murmu, Biren Murmu for commission of an offence on 15.07.1996 at about 07:00 P.M. showing the place of occurrence to be jute field lying west to the house of complainant, putting an allegation that his minor daughter Hamidan Nisha @ Ruksana, aged about 14 years had gone to meet nature's call in the jute field lying west to his house. On account of some delay in her return, his wife Bibi Latifa had gone in her search but could not trace her out and then, thereafter, she informed the event whereupon he along with his son gone in search of Hamidan Nisha @ Ruksana but could not trace her out. On the following morning, when they reached at *Dangi* Bus Stand, Ramjan Ali as well as Ishaque, both residents of *Dangi* informed that all accused persons brought his daughter Ruksana and forcibly got her boarded in a bus going towards Kishanganj. They have further disclosed that Dinesh Murmu was accompanying the convict who was also threatening. On account thereof, they came to the conclusion that his minor daughter has been kidnapped by the accused persons on account of ill motive.

4. Aforesaid complaint petition was sent to local P.S. for registration and investigation over which Kishanganj P.S. Case No.107 of 1996 was registered under Section 363, 366A of the IPC and as is evident from lower court record, charge sheet was submitted against the accused at different stages and that



happens to be reason behind, that an earlier occasion charge was framed on 31.08.1998 against accused Suresh Murmu under Section 376 IPC while Pajhar Murmu, Suresh Murmu and Babu Lal under Section 366A of the IPC, on 13.01.2000, against Dinesh and Mangal under Section 376 IPC, Raj Kumar, Hapna, Mangal, Dinesh and Kamlesh under Section 366A of the IPC, on 04.02.2000 against Biran under Section 366A of the IPC after amalgamation of Sessions Trial No.227 of 1999, Sessions Trial No.561 of 1999. It is also evident from the lower court record that before 13.01.2000, the prosecution had already examined PW-1 Md. Ramjani, PW-2 is Abdul Rahman, PW-3 Ishaque Alam, PW-4 Jakiran Nisha, PW-5 Latifa Khatoon, PW-6 Hakimuddin, PW-7 Mahendra Jha, PW-8 Haimda Khatoon. Subsequently after framing of charge on 13.01.2000 as well as 04.02.2000, PW.9 Dr. (Mrs.) Urmila Kumari was examined on 11.05.2000 while PW.10 Md. Shamse Alam was examined on 29.06.2000. Subsequently thereof, while the trial was pending for argument, on 05.02.2001 the learned lower court found procedural defect persisting on the record after framing of the charge subsequently against the accused after amalgamation of Sessions Trial No. Sessions Trial No.227 of 1999, Sessions Trial No.561 of 1999 and on account thereof, invoking extraordinary power under Section 311 Cr.P.C., recalled witness Ramjani, Ishque Alam, Jakiran Nisha, Latifa Khatoon, Hakimuddin and Haimda Khatoon for fresh examination and on account thereof, they have been examined as Ishaque



Alam, PW.1 on 30.03.2001, PW.2 Latifa Khatoon on 30.03.2001, PW.3 Md. Ramjan on 30.03.2001, PW.4 Jakiran Nisha on 10.05.2001, PW.5 Hamida Khatoon on 12.06.2001, PW.7 Hakimuddin on 27.11.2001 and then statement of the appellant / accused were taken, argument were heard and by the judgment impugned others have been acquitted while appellants have been convicted in a manner, the subject matter of instant appeal.

5. The defence, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence as well as false implication. In an alternative it has also been pleaded that the so alleged victim, who happens to be major, had eloped with Dinesh out of her own sweet will, however subsequently, having been influenced by her parents, gone against the accused castigating them.

6. It has been submitted on behalf of learned amicus curie that none is an witness to occurrence so far, kidnapping or abduction as well as rape is concerned save and except the victim. It has further been submitted that from the evidence of the victim inconsonance with her conduct, it is crystal clear that she was consenting party. In likewise manner, it has also been submitted that prosecution had filed complaint petition purposely so that, they be able to show the alleged date of occurrence according to their own choice concealing the actual



affair, as well as recovery of the victim is to be shown in likewise manner otherwise, there was no question for filing complaint petition subsequently instead of rushing to police on the same day which, if timely approached, would have recovered the victim. Therefore, prosecution case suffers from inherent defect and on account thereof, is fit to be rejected.

7. Further, stressing over the same, it has been submitted that neither in the complaint petition nor during course of evidence, Nabi Ahmad, the complainant, disclosed the reason for not approaching the police on the fateful day itself. Had there been, certainly the accused along with victim could have been apprehended as, the prosecution itself disclosed presence of victim in the village. Therefore, the aforesaid event is suggestive of the fact that prosecution has not come up with true version.

8. Then, it has been submitted that in the complaint petition, there happens to be complete absence of the fact that alleged victim had gone along with her mother which, during course of trial, has surfaced. According to evidence of Latifa Khatoon (mother), it is evident that she had accompanied the victim up to field and as it was drizzling, she, after instructing her daughter, returned back. The aforesaid event is neither supported by the complaint petition nor from the evidence of victim Haimda Khatoon. Furthermore, it has also been submitted that as per averment of the complaint petition, it is apparent,



that Latifa Khatoon had gone to the field in search of victim but could not find her while from the evidence of victim, it is evident that she remained inside the field for 2-3 hours having been under captive at the hands of accused while, the others have stated that they have not gone inside the field to search out the same. It has also been submitted that from the evidence of victim, it is apparent that she had shown presence of her mother while she was easing and, even after having been grasped by the accused, she raised alarm, did not attract attention of her mother. This part is indicative of having the victim in collusion with accused, otherwise, the cry, that too in night, raised by a girl having under danger of her life would not have gone unheeded.

9. In likewise manner, it has also been pleaded that till filing of complaint petition, as is evident from narration of the complaint petition, only Dinesh was seen accompanying the so alleged victim, then in that event, arraying three others as an accused without any basis and foundation again cast doubt over authenticity of prosecution.

10. It has further been submitted that from the evidence of Ishaque, it is apparent that Dinesh had boarded the bus firstly and then, the alleged victim had boarded the bus. During aforesaid event, victim had not raised alarm nor in the bus way up to Punjab, as has been disclosed by the prosecution. Had there been it a case of abduction, then in that event, such thing

would really been allowed to subsist, at least at Dangi Bus Stand, where victim would not have allowed herself to follow Dinesh.

11. It has further been submitted that apart from having failure on the part of victim to disclose the location at Punjab where she was kept, ravished, name of landlord where she along with accused resided also not been disclosed. In case, as disclosed, was the place Jakiran Nisha was residing since before, makes the prosecution case more vulnerable as, had there been a case of abduction, why the accused would have given an opportunity to have their location traced out.

12. In likewise manner, the learned counsel for the appellant also highlighted the event as brought up by the informant by examining Jakiran Nisha and submitted that the same appears to be unbelievable.

13. Furthermore, it has been submitted that victim was examined by the doctor who had found her age about 18 years and having variance of two years, she on the alleged date, appears to be major one having no sign over her body, including private part and taking into account her conduct as well as conduct of prosecution, she appears to be consenting party and on account thereof, the conviction and sentence recorded by the learned lower court did not justify its prevalence.

14. On the other hand, the learned Additional Public Prosecutor supported the finding recorded by the learned trial court and submitted that in rape cases, the evidence of victim



got primacy, and ordinarily, should be accepted unless there happens to be prospect of false implication. From the evidence, it is evident that there happens to be complete absence of guilefulness on the part of prosecution to falsely implicate the appellants. Moreover, there happens to be consistent version of the victim at every occasion that she was taken away to Punjab by the accused and was made captive, ravished by all the appellants. It has also been submitted that so far incidence of abduction is concerned, that also been proved by consistent evidence.

15. With regard to medical evidence, it has been submitted that when parents of the victim had specifically disclosed that she was aged about 14 years at the time of occurrence, then in that event, the evidence of parents should have been given preference over the medical evidence, which, only indicates approximate age having prospect of fluctuation and being so, the learned lower court had rightly found the victim to be minor. Hence the judgment of conviction and sentence is unassailable.

16. From the nature of evidence adduced on behalf of prosecution, it is found that occurrence as alleged is found under two different events. First one, of abduction and second one of rape.

17. With regard to abduction of victim Hamida Khatoon, only two persons are the witness. The first one victim herself and



the second Ramjan Ali. Ramjan Ali is the person who had informed the prosecution party having the victim accompanied by Dinesh. From evidence of Ramjan Ali, it is apparent that he had seen daughter of Nabi in company of Dinesh who was taken over by bus towards Kishanganj. From his cross-examination it is apparent that first of all Dinesh boarded bus followed by the victim. At that moment nothing abnormal was perceived by the Ramjan Ali even at the end of victim.

18. Now, coming to the evidence of alleged victim Hamida Khatoon, who has been examined as PW-8 while the trial was proceeded against Suresh, Pajhar, Suresh, Babu Lal, she had gone to ease herself towards east to her house at 07:00 P.M. During course of return Raj Kumar, Kalar Paswan, Biren Murmu, Babulal Murmu, Suresh Murmu, Hapna Murmu, Dinesh Murmu and Pajhar apprehended him and gagged her mouth by inserting cloth. When she tried to escape, Raj Kumar assaulted her as well as also threatened her. She was kept in the same field for 1½-2 hours. While deposing as PW-5, on recall in terms of Section 311 Cr.P.C., she had stated that while she was returning after meeting nature's call, Raj Kumar apprehended her, gagged her mouth, assaulted her, threaten to kill and kept her sitting in the field for two hours. In para-8 of her cross-examination she had stated that at that very time darkness had fallen. Her mother had accompanied her who was standing at some distance. When accused apprehended her, she shouted. One small bamboo

cluster lies in between her house as well as the field, where she had gone to ease herself. Main I.O. has not been examined and on account thereof, neither there happens to be specific identification of the field nor the distance has come up from her house.

19. At the present moment, the evidence of mother of victim is also to be taken into account. She was examined as PW-5 at an earlier trial. Wherein she had stated that on the alleged date and time of occurrence, Hamida Khatoon had gone to jute field to ease herself. When she did not return, then she was searched. During cross-examination she had deposed on the basis of hearsay. Subsequently she has been examined as PW-2 wherein she had stated that when her daughter disclosed that she will go to meet nature's call, she took her to a field. As rain commenced, therefore, she directed her daughter to go while she returned back to her work. When her daughter did not return, they went in search of her. In para-4 of her cross-examination she had stated that they have searched the victim around the village.

20. In the background of aforesaid inconsistency as well as disclosure made by the victim that she was forced to sit in a field for two hours she shouted and during midst thereof, having active involvement of the prosecution party in tracing out the victim, and non-availability of the victim though she herself volunteered to have confined in the field for two hours, is a



matter of grave concern and put a question mark over the authenticity of the prosecution version on this very score. Furthermore, from the evidence of Hakimuddin, who has examined as PW-6 at an earlier occasion, had stated that her mother had disclosed that his sister who has gone to ease himself did not return. They became anxious, searched out but did not found. He has been examined as PW-6 subsequently wherein he had stated that at the time of occurrence he was at his house. At about 07:00 PM his sister had gone to meet nature's call in the jute field. As she did not return, his mother began to search and then, she informed him. During cross-examination at para-14 he had stated that he had searched out his sister in his village Jharbari as well as adjoining village. In para-21 he had stated that he had not searched his sister in the said jute field where she has gone to ease herself, is another circumstance, which speaks a lot.

21. Informant Nabi Ansari has not been examined in this case.

22. As such, non searching of the victim in the same jute field where she had gone to ease herself by the prosecution party speaks otherwise more particularly regarding incidence of kidnapping having effected during course thereof, where she had gone to ease.

23. The next question relates with recovery of the victim. Though others have also stated but the main witness on this



score happens to be Jakiran Nisha as well as victim herself. Jakiran Nisha has been examined at previous occasion as PW-4 as well as at subsequent stage also she has been examined as PW-4. At an earlier occasion she had stated that while she was staying at Punjab, his brother had written a letter to her disclosing the fact that Hamidan fled away along with Dinesh, Mangloo and Suresh. In case of her presence at Punjab, let he be informed. She came to know about staying of Dinesh where she had gone along with 2-4 persons, met with Hamidan. Dinesh, was also there escaped seeing them. She accompanied Hamidan she had stated that Dinesh enticed her away and also committed bad work with him. During cross-examination at para-3 she had admitted that she is unable to produce the letter. She further admitted that she had not informed the local police. In her subsequent evidence, she had stated that her brother had sent a letter disclosing therein that Hamidan fled away with Dinesh. Mangloo was along with them. Then she located and took her back from the place of Dinesh. On query Hamidan had disclosed that Dinesh kidnapped her and committed wrong act. During cross-examination she had reiterated the same.

24. From her evidence, it is evident that she had not disclosed the exact place where she was residing in the Punjab State and in likewise manner stay of Hamidan with Dinesh. Furthermore, there happens to be no corroborative material at least like ticket etc. through which return of Jakiran along with

Hamidan Khatoon is found duly proved. Not only this, stay of victim with Dinesh in the same locality where she was staying poses a serious doubt over assertion of this PW because of the fact that had there been a case of kidnapping, why the accused would have stayed in the same locality to have his appearance duly notified.

25. Hamidan Khatoon, victim at an earlier occasion was examined as PW-8. She had stated that from field, she was taken to house of Babu Lal after keeping whole night where she was offered wine. She slept thereafter. She was taken to Dangi Bus Stand at about 04:00 AM and then, to Kishanganj where was taken to the house of Mangloo wherefrom, she along with Suresh, Dinesh, Hapna and Mangla on next day boarded train. Hapna got down at Patna while rest taken her away to Punjab. She was kept confined there where she was raped one-by-one by the accused persons. Then thereafter, Dinesh remained along with her while two returned back. Dinesh had committed rape. Subsequently Hapna came and informed that the father of girl instituted a case therefore, she be sold. Her *Fua* Jakiran Nisha was residing in Punjab in the same vicinity. After coming to know about her, she came along with 2-4 persons and got her released. After return from Punjab her statement was recorded. During cross-examination at para-8 she had stated that though 40-50 passengers were present in the bus, she had not disclosed to anybody as, the accused persons had threatened her. She had



further disclosed she had stated that she had not talked with anybody during transit to Punjab. At para-9 she had stated that she is unable to disclose the place of his stay at Punjab. In para-10 she had stated that her statement was not recorded by the Punjab police. Later on, while deposing as PW-5, she stated that she was taken to Punjab by Raj Kumar, Dinesh, Mangla and Suresh. She had further disclosed that Mangla and Dinesh had committed rape at Panjab. Thereafter leaving her in company of Dinesh, he returned back. Subsequently, she was rescued by her *Fua* Jakiran. During cross-examination at para-6 she had stated that she had not raised alarm at the house of Babu Lal. While the accused persons were carrying her, she had not seen any of her co-villagers. She was not in full consciousness at Dangi Basti Bus Stand and so, she was unable to perceive anybody. She was kept at the house of Mangla at village Gatchpara. After Gatchpara she was in full consciousness. In para-9 she stated that she stays 10 to 15 days at Punjab. Then her *Fua* brought her to her place.

26. From her evidence, it is evident that she had not disclosed the exact place where her *Fua* was residing and in likewise manner, her stay. No other witnesses have come forward to support her stay at Punjab. From her subsequent evidence, it is also evident that she had not stated with regard to any kind of threatening having been inflicted upon her by the accused persons during the intervening period. Furthermore, she had not alleged any sort of allegation against one of the convict,



Suresh. Apart from this she had not stated that any of the accused was duly armed. Not only this, she had claimed that at Dangi Bus Stand she was not under full consciousness. Then, her abnormal activity might have been perceived by Ramjani, and if the evidence of Ramjani is taken, she had boarded the bus, after Dinesh. Furthermore, Ramjani had seen only Dinesh, while as per her evidence, other accused have also accompanied her. This inconsistency speaks unnatural event over her own conduct.

27. Now coming to allegation over rape, the best evidence collected by the prosecution is the evidence of victim herself. To appreciate the same in its right perspective, her conduct has also to be seen. From the evidence of Jakiran, it is apparent that she was not informed by her brother that victim was kidnapped / abducted by the accused persons rather she was informed with regard to event that Hamida had eloped with Dinesh. Furthermore, the aforesaid theme is found supported with the evidence of witness Ramjani who had seen victim in company of Dinesh only and had further disclosed that first of all Dinesh had boarded the bus and then, by the victim. Had she been not a consenting party, then in that event, she might have refused to board the bus, and in case resisted, would have created a scene attracting the people, present in surrounding. Furthermore, as is evident, Hamida had purposely introduced the story of carrying her at Dangi Basti Bus Stand at 4 KM because of the fact that witness Ramjani had seen her in company of Dinesh



while he was sipping tea at a shop and on account thereof, it could not be 4 AM as disclosed by Hamida herself. Further, sipping tea at a tea stall is indicative of the fact that the tea stall had already found running having presence of customers. Not only this, even considering her evidence she had gone to the place of Mangla, stayed there, but had not complaint to anybody, even during course of traveling to Kishanganj over bus she had not raised alarm. Not only this, even during her journey to Punjab, covering such long distance over train, she had not shown her anxiety over the manner of occurrence. Had she not been a consenting party, the aforesaid situation would not have visualized.

28. Her conduct, even accepting her testimony regarding stay at Punjab and being raped also appears to be dubious. She had not disclosed that all around Dinesh stayed with her. She had not spoken, any sort of threatening perceived by her at that place. She had not spoken that she raised alarm anytime if raised would have attracted large numbers of persons staying around at least the landlord. Then, in that event, searching out by Jakian is another circumstance which creates doubt over the prosecution version in a manner, as has been brought up.

29. The evidence of victim has got priority over other kind of evidence and her evidence is bound to acceptance unless and until is found intermingle with falsehood. In ***Munna Vs. State of M.P.*** reported in ***(2014) 10 SCC 254*** the Hon'ble Apex Court

had held:

In *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217], this Court held as under : (SCC pp. 224-26, paras 9-10)

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. ...

10. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family





members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain*, [(1990) 1 SCC 550], this Court held as under : (SCC pp. 558-60, paras 15-17)

“15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony ? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix ? Let us see if the Evidence Act provides the clue. Under the said statute ‘Evidence’ means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give



oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

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.

17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing,

from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

10. Similar observations were made in *State of Punjab v. Gurmit Singh* [(1996) 2 SCC 384] as under : (SCC pp. 395-96, para 8)

“8. 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. 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."

30. In *Mukesh Vs. State of Chhattisgarh* reported in (2014) 10 SCC 327 the same issue has been reiterated in following manner:

"15. Further, as has been repeatedly held by this Court in a catena of cases, the sole testimony of the witness (sic prosecutrix) is sufficient to establish the commission of rape even in the absence of corroborative evidence. Reliance has been placed on the decision of this Court in Mohd. Iqbal v. State of Jharkhand [(2013) 14 SCC 481], which states as under: (SCC p.485, paras 17-19)

"17. There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

18. In *Narender Kumar v. State* (NCT of Delhi [(2012) 7 SCC 171] this Court has observed that even if a woman is of easy virtues or used to sexual intercourse, it cannot be a licence for any person to commit rape and it further held: (SCC p.180, paras 30-31)

30. conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtues/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.'

19. In the statements of the appellant-accused under Section 313 CrPC, only a bald statement had been made by both the appellant-accused that they were innocent. No explanation had been furnished by either of them as to why the prosecutrix had deposed against them and involved them in such a heinous crime."

31. From the evidence of victim as well as Jakiran Nisha, it is evident that after coming out from the grip of Dinesh, she remained with Jakiran for so many days as well as coming to her own place, she also stayed with her parents, and on account thereof, probability of influence cannot be ruled out over over statement / evidence of victim. Furthermore, as the main Investigating Officer has not been examined, as such the steps

taken up by the Investigating Officer while investigating with the case at least relating to victim, and further, victim was actually absent from her native place, could not come, appears to be pre-dominating issue in the background of extensor in the prosecution case.

32. Side by side, evidence of PW-9 doctor has also to be taken note of, which on the factum of rape, even discarded, suggest the victim to be full grown up lady aged about 18 years and on account of variation of two years, needs no more scrutiny.

33. Thus, after having minute and careful scrutiny of the evidences adduced on behalf of prosecution, it is found and held not above board. Hence, the judgment of conviction and sentence passed by the learned lower court is set aside. Appeal is allowed. Appellants are on bail, hence are discharged from its liability. First and last page of judgment be handed over to learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 4th day of Feb., 2015
Prakash Narayan

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