

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.95 of 2014

Against the judgment of conviction, dated, 25.01.2014, and order of sentence, dated, 05.02.2014, passed by the Additional District and Sessions Judge, IV, Naugachia, in Sessions Trial No. 731 of 2009 arising out of Kharik P.S. Case No. 25 of 2008 (G.R. No. 340 of 2008)

1. Badri Singh, Son of Late Bachi Singh, Resident of Village - Telghi, P.S.-Kharik, Dist.-Bhagalpur Appellant

Versus

1. The State Of Bihar Respondent

Appearance :

For the Appellant : Mr. Sadanand Ray, Adv.

For the Respondent : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

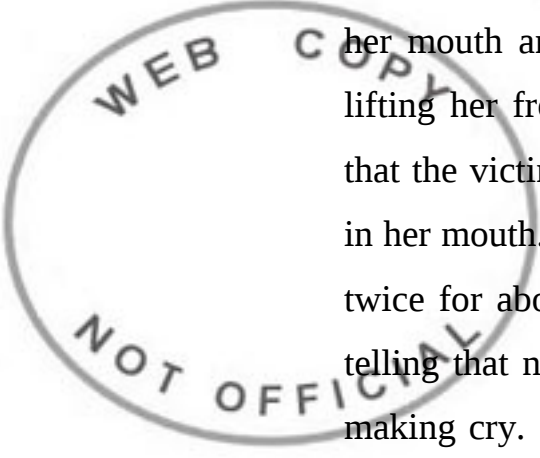
ORAL JUDGMENT

Date: 14-03-2016

Heard the learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 376 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.5,000/- and in default of payment of fine he will have to further undergo one year imprisonment. The trial Court has also, taking into consideration, the provision of Section 357A of the Criminal Procedure Code recommended to pay Rs.50,000/- as compensation to the victim.

3. The prosecution case, as alleged in the first information report by the informant, Shweta Kumari that the victim was 12 years old at the time of occurrence. On 05.04.2008 at about 03.00 P.M. she was going, along with a boy, named, Hare Ram, P.W. 2, son of Chowkidar, to purchase medicine and while returning her home reached at the Basic School, Telghi, saw the appellant, Badri Singh, coming from the side of Telghi village and when reached near the Basic School, then, Badri Singh got Hare Ram frightened by showing pistol on which Hare Ram flee away and, thereafter, Badri Singh caught hold of the



victim and took her in the nearby maize field and when the informant made a cry, she was lifted by the appellant in his lap and put clothes in her mouth and took her in the maize field and untied her panty and lifting her frock committed rape on her person. The, further, case is that the victim could not make a cry as the accused person put clothes in her mouth. She has, further, stated that the appellant committed rape twice for about half an hour. The, further, case is that appellant was telling that no one was there to protect her so there was no benefit in making cry. The, further, case is that after the rape blood was oozing out from her private part and after committing rape Badri Singh left her, then, she came to her house, disclosed the fact to her sister. At that time her father was not at home so she disclosed about the occurrence to their aunts, Chanchala Devi and Nirmala Devi, P.Ws. 3 and 4 respectively. As soon as her father came late in night they came to the Police Station which caused some delay in lodging the first information report. After lodging the first information report the investigation proceeded by Suraj Deo Singh, P.W. 8, the investigating officer of the case, recorded the further statement of the victim, the statements of the father of the victim, her aunts, Chanchala Devi and Nirmala Devi, inspected the place of occurrence, which is the main road, bearing road number 14, in front of the Basic School in a maize field, which is north-west of road number 14 to the eastern side of the road. He has given the description of the place of occurrence contiguous east of the place of occurrence, there is bamboo club of Shiv Kumar and Sukho Kumar and adjoining to the maize field in west is kachhi sadak. He found at the place of occurrence the plant of maize field broken and was found to have been trampled. The place of occurrence was 200 yards north west of Buniyadi School and in the east of road is maize field of Subho Kumar. He also found the sign of rape. The victim was taken, along with female Chowkidar to Bhagalpur where she was medically

examined and the report provided. The statement of the victim recorded under Section 164 of the Criminal Procedure Code before the Magistrate, arrested the accused, recorded the statements of the witnesses and charge sheet was submitted.

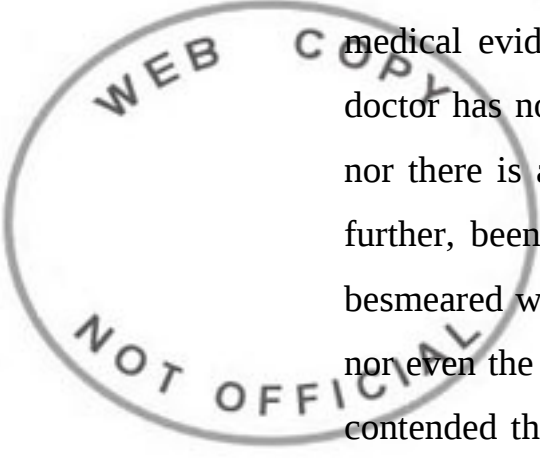
4. The police after investigation submitted charge sheet, on which the cognizance taken, case committed to the Court of sessions and after framing of the charge the trial proceeded.

5. During the trial eight witnesses were examined by the prosecution. P.W. 1 is the informant, Shweta Kumari, supported the prosecution case. P.W. 2 is Hare Ram, who is alleged to have accompanied the victim at the time of occurrence, but, he fled away on being frightened by the appellant on showing pistol. P.W. 3 is Nirmala Devi, the aunt of the victim who was intimated about the occurrence by the victim. P.W. 4 is Chanchala Devi, the aunt of the victim. P.W. 5 is Laxmi Kumari, the elder sister of the victim. P.W. 6 is Krishna Deo Rai, the father of the victim. P.W. 7 is Dr. Babita Kumari, who examined the victim. P.W. 8 is Suraj Deo Prasad, the investigating officer.

6. The documentary evidence proved are Exhibit 1, the sign of the informant on the fardbeyan, Exhibit 1/1 is the sign of Shweta Kumari on the statement recorded by the Magistrate, Exhibit 2 is the medical report, Exhibit 3 is the formal first information report, Exhibit 4 is the fardbeyan.

7. The trial Court taking into consideration the evidence of the witnesses convicted the appellant holding that the version of the victim is sufficient to convict the appellant and held that if the story of the informant is believable a conviction can be recorded and on mere absence of medical evidence it can not be said that the rape has not been committed.

8. The learned counsel for the appellant, however,



challenged the order of conviction and sentenced, recorded by the trial Court that the victim may have supported the prosecution case, but, the medical evidence is not corroborating the case of prosecution as the doctor has not found any assault or injury on the person of the victim nor there is any mention about the injury on the private part. It has, further, been contended that though the clothes alleged to have been besmeared with blood has neither been seized nor seizure list prepared nor even the cloth sent for chemical examination. It has, further, been contended that the police investigation is also doubtful as though it is stated in the first information report that the place of occurrence is Basic School or Buniyadi School as earlier the charge framed that the place of occurrence is Buniyadi School, which was subsequently amended as Basic School at the fag end of the trial and, further, the time of occurrence also amended in the charge sheet from 11.00 A.M. to 03.00 P.M. it is, further, contended that the rule of prudence requires some corroboration to the evidence of prosecutrix, but, having regard to the fact that the medical evidence has not been corroborated and the clothes besmeared with blood at the time of occurrence has also not been proved so no material to corroborate the circumstance, hence, it is not proper to record the order of conviction in view of the evidence and circumstances. The learned counsel for the appellant has placed reliance upon a decision reported in **2005(3) P.L.J.R. 638 (Bhola Pandey Vrs. The State of Bihar)**.

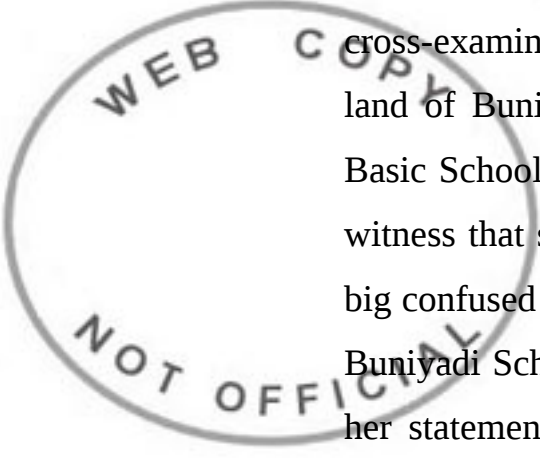
9. The learned counsel for the State, however, specifically submitted that the victim has supported the prosecution case and the age of the victim was about 12 years as mentioned in the first information report and as per the evidence of the doctor her age has been found to be about 14 years and below 17 years and if her evidence found to be trustworthy, then, a conviction can be recorded. It has, further, been contended that there is no rule of law for corroboration is

required to record a conviction.

10. In view of the respective submissions, I proceed to consider the submissions of the parties.

11. The prosecution case, as alleged in the first information report that while the victim was coming after purchase of the medicine along with P.W. 2 Hare Ram and reached at the Basic School, then, one Badri Singh coming from the side of village met and got Hare Ram frightened by showing him a pistol on which Hare Ram fled away and he picked the victim in his lap, took her to nearby maize field and committed rape twice for about half an hour.

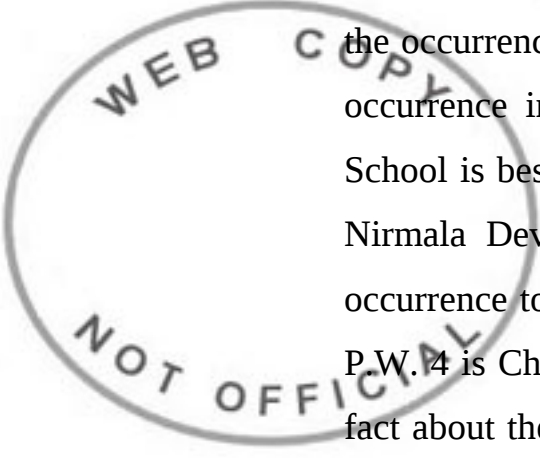
12. P.W. 1 is the victim herself and she has supported the prosecution case that at about 03.00 P.M. on 05.04.2008 she had been to purchase the medicine for her mother and at that time Hare Ram was also with her. She has, further, stated that after purchase of the medicine she reached at the Buniyadi School where they met with Badri Singh and he caught hold of her and when Badri Singh showed the pistol, Hare Ram fled away and the victim was caught hold by Badri and took her to the field through the orchard. She has, further, been stated that at the time when Badri Singh caught hold of her, she had made a cry, thereafter, towel was put in her mouth and she was raped in the maize field by untying her panty. Further case that after committing rape, Badri Singh fled away, then, she came to her house and disclosed about the occurrence to her sister, Laxmi Devi, P.W. 5, and, thereafter, their aunts were informed and when her father came then he was also intimated about the occurrence, thereafter, the victim along with Chanchala Devi and Nirmala Devi came to the Police Station where their evidences were recorded and, thereafter, she remained at the Police Station from where she was taken to Bhagwanpur where she was checked up by doctor and, thereafter, her statement recorded under Section 164 of the Criminal Procedure Code by the Magistrate, which



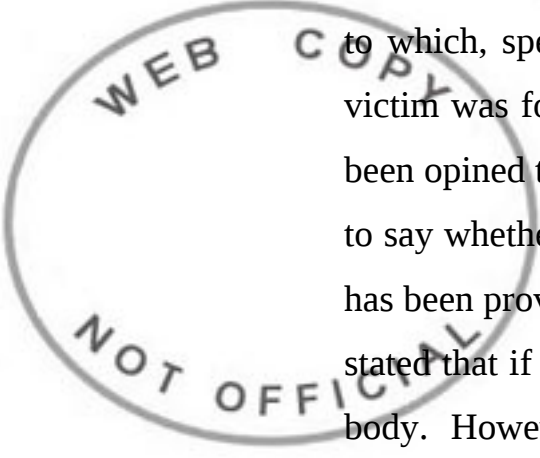
has been proved. However a detailed cross-examination has been made. The learned counsel for the appellant has pointed out that in cross-examination she has stated that the occurrence took place in the land of Buniyadi School and the occurrence has not taken place at Basic School, hence, it has been contended that the criticism about the witness that she has not disclosed the place of occurrence and she is a big confused as there are two schools, one Basic School and the other is Buniyadi School, at a different place. The attention has been drawn to her statement in paragraph 10 where she has deposed that Buniyadi School is a big school and several children study there and has stated that the occurrence took place at the land of Buniyadi School. However, again, in paragraph 11 she stated that while she was returning from Bazar at that time it was day and she returned through kachhi road come straight to village Talghi, however, she has stated that there is no school beside kachhi sadak and the school is beside the pakki sadak. However, she stated that both the roads are joined. She has, further stated that Buniyadi School is also called as Basic School. She has, further, stated that adjoining to Buniyadi School, towards east, there is pakki sadak, facing east to west and adjoining the road to north of the said Buniyadi School there is Ramgarh Tola and to the west of Buniyadi School there is orchard and, thereafter, there is Sadar Hospital, which is old and big one. Again, in paragraph 12 in cross-examination she stated that she was caught hold near Buniyadi School. She has, further, stated that she was caught at pakki road in front of the gate of Buniyadi School and from there she was taken towards south and, thereafter, she was taken in maize field where she was raped where maize plants and grasses were found trampled. She has stated that she was left fallen on the maize plants, hence, she has given the vivid description of the place of occurrence and even explanation that Buniyadi School and Basic School are same.

13. The investigating officer, P.W. 8, has also given the description of the place of occurrence that the place of occurrence is 14 number pitch road, which is a pakki road in front of Telghi School and has stated that he visited the place of occurrence, as per disclosure of Shweta Kumari. He has given the boundary and has also stated that from the place of occurrence, at the distance of 200 yards there is Banskitta of Ramgarh village and at the place of occurrence he found maize plants broken and trampled, the grasses were also trampled. He has also found the sign of legs. However, from the description of the land though the victim is unable to disclose the boundary of the place of occurrence as she may not be aware of the fact as to who is the owner of land in the boundary of place of occurrence. However, seeing her evidence in cross-examination she has stated that the occurrence took place in Ramgarh village. However, this witness, the victim, in cross-examination, in paragraph 18, has stated that in Telghi village there are three schools and all the three are separate, one is Buniyadi School, second is Kanya Madhya Vidyalaya and the third is Middle School. She has, further, stated that Middle School has no other name though in cross-examination it has come that there is one Basic School and one Buniyadi School and this has created a confusion that the place of occurrence is whether Buniyadi School or Basic School, however, in evidence, this witness has specifically stated that Basic School is Buniyadi School and both schools are same.

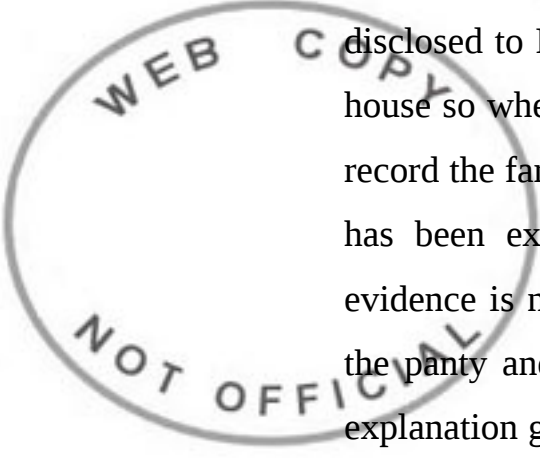
14. However, the victim has supported the prosecution case that when she reached near Buniyadi School, Badri Singh showed pistol and Hare Ram flee away and, thereafter, she was taken through the orchard to maize field and there she was raped. P.W. 2 is Hare Ram. He has also supported the prosecution case that on the date of occurrence he was coming along with victim after purchase of medicine and reached at the Basic School, then, Badri Singh caught hold of



Shweta Kumari and showed pistol. He fled away and saw the victim is being taken and, thereafter, he went to the house and disclosed about the occurrence. He has also given the vivid description of the place of occurrence in the cross-examination. He has also stated that Basic School is beside both the road, kachhi road and pakki road. P.W. 3 is Nirmala Devi and has disclosed that Shweta Kumari disclosed the occurrence to her sister, Laxmi Devi and Laxmi Devi disclosed to her. P.W. 4 is Chanchala Devi, she also stated that the victim disclosed the fact about the occurrence to Laxmi Devi and she also disclosed to this witness, however, she is not eye witness to the occurrence, but, the victim disclosed about the occurrence. P.W. 5 is Laxmi Devi, the elder sister of the victim and has deposed that the victim disclosed about the fact of rape by Badri Singh by catching hold of her by hand and taking the victim in maize field, hence, she supported the prosecution case about the disclosure of the fact by the victim. P.W. 5 is father of the victim and has disclosed that the victim disclosed about the fact in the night about the rape by Badri Singh. However, his evidence is also might not be very relevant as hear-say regarding the disclosure of the fact by the victim. However, this witness stated that he was out and when he reached house on the information about the rape, they came with the daughter at the Police Station though his evidence is substantive, but, hit by hear-say. However, it may have corroborative value as the victim disclosed about the occurrence. P.W. 7 is the doctor. The great criticism has been made in the evidence of the doctor that her evidence is not conclusive or has not found the apparent sign of rape. However, the evidence of this witnesses, P.W. 7, the doctor, has deposed that she examined the victim at 01.15 P.M. on 06.04.2008 at Sadar Hospital, Bhagalpur. However, she has reported that there was no sign of injury on the head, ribs, fore-abdomen on and around private part, back. She has, further, deposed that two sealed vials with vaginal



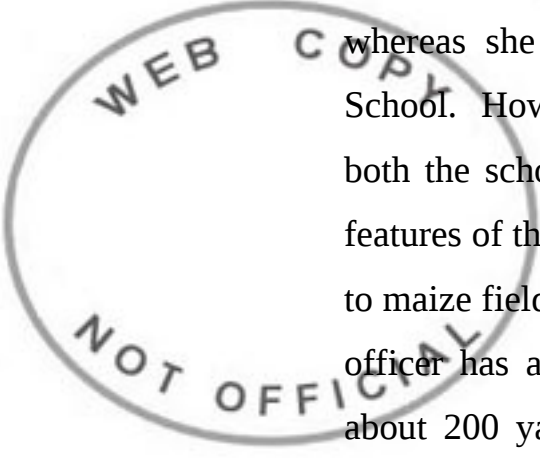
swab sent to Pathological Department, Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, and a report was received, according to which, spermatozoa not found and as per the report the age of the victim was found about 14 years and below 17 years. However, it has been opined that there is no sign of recent sexual assault so it is difficult to say whether the rape has been committed or not. The medical report has been proved and marked as Exhibit 2. In cross-examination she has stated that if the minor is raped there must be some sign of rape on her body. However, on the basis of the evidence, it is submitted that since no sign of rape and spermatozoa not found, hence, the opinion of the doctor is not then the medical examination ruled out the possibility of rape, but, the fact remains that the opinion has been given that it is difficult to say whether the rape has been done or not. However, the examination of the victim by the doctor apparently appears to be very cryptic. The doctor has proved Exhibit 2 her report regarding the medical examination of the victim. However, she has not given any description of the private part. There is no mention about whether she found on person of victim any pelvic or pubic hair or not. She has not mentioned about the nature of the private part and there is no mention that hymen was torn or intact and her evidence is in one line that there is no sign of rape. This report is without the detailed description whether the hymen was torn or intact neither there is any mention of any finger test nor there is any mention that she found any swelling. The age of the victim has been found above 14 years, but, less than 17 years. However, the victim is a girl of tender age of 14 to 17 years. She has given specific evidence regarding the rape by the appellant. Her evidence is corroborated by the evidence of P.W. 2, Hare Ram, to material particular, who has followed her and even a witness to the extent that the victim was lifted by the appellant. P.Ws. 3, 4 and 5 though are not eye witnesses to the occurrence, but, there evidences are



relevant and corroborate that the victim as just after the occurrence, she came and disclosed about the occurrence to P.W. 5 and who in turn disclosed to P.Ws. 3 and 4 and since P.W. 6, the father, was not in the house so when the father came, they proceeded to the Police Station to record the fardbeyan though there is delay of some hours, but, the delay has been explained. However, there is criticism that the medical evidence is not conclusively supporting the occurrence. It is said that the panty and frock has not been brought to the Police Station. The explanation given that during the rape the panty of the victim was taken out and the victim has to come home after the occurrence without the panty as it has come in the evidence though the spermatozoa has not been found that there is a reason that when the victim reached the house her private part was washed up and she got up another set of panty thereafter. When the father came, the victim was taken the Police Station, however, she went to the Police Station without the frock she had worn and the from was also washed up. Hence, there is valid explanation for not giving the frock and panty. However, the matter concerns with the rape of victim, who is a minor girl of tender age and corroboration of the evidence of P.W. 2, who is said to have been coming along with the victim at the time of occurrence and he was threatened to flee away after showing pistol and he fled away and informed about the occurrence, at that time the father was not in the house. However, a criticism has been raised that though the witness, P.W. 2, has sated that he went and intimated about the occurrence to the inmates of the house, but, none of the inmates turned up to the place of occurrence. However, having regard to the fact that P.W. 2 informed the inmates of the house, but, the father was not there, hence, possibility that the inmates of the house till then has not taken a serious view of the occurrence. However, when the victim reached in a condition that may have alarmed and when the father reached, they proceeded to the Police

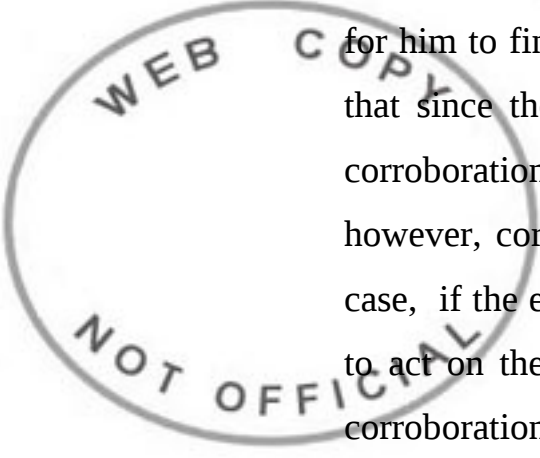
Station to record the fardbeyan.

15. However, criticism based that there is no specific corroboration as the medical evidence has not supported the prosecution case and there is no exclusive sign of rape found on the person of the victim. However, the doctor has also not given specific finding or opinion that the rape is ruled out. There is opinion only to the extent that it is difficult to say whether the rape has been done or not. The opinion is not as such to exclude, however, it has been stated that there is no sign of recent sexual assault though the occurrence took place on 05.04.2008 at about 03.00 P.M. whereas the victim was examined on 06.04.2008 at 01.15 P.M. There is evidence that the private part of the victim was washed away and her frock was also changed and the frock was not taken to the Police Station while the victim along with her father and other members proceeded to the Police Station in the night of 05.04.2008, hence, spermatozoa might not have been found when the private part of the victim has been washed up. However, going to the evidence of the doctor the evidence of doctor is well cryptic as she has not mentioned about the vivid description of the private part that the victim, who was examined, there is no mention that whether the hymen was torn recently or not. There is no mention about the other features, hence, in the absence of these features and the report, which does not exclude the rape, it can not be said that there is no rape. However, going to the evidence of the prosecutrix there is nothing in her evidence to doubt her testimony and in such a facts and circumstances of the case, there is nothing in the evidence of the victim to disbelieve her as she has stood the test of vivid cross-examination and has stood the test of cross-examination. The corroboration, however, is not a rule of law, but, only a rule of prudence and is lost its significance when the evidence of the victim transpires confidence. However, the only criticism, which has been pointed out that she has



not properly explained the place of occurrence, the criticism has been raised that she has stated in her evidence about Buniyadi School whereas she has taken that the occurrence took place at the Basic School. However, the explanation has been made in her evidence that both the schools are same. She has also given the description of the features of the place of occurrence and she has stated that she was taken to maize field, which is about the village Ramgarh and the investigating officer has also given his description that the place of occurrence is about 200 yards of the village Bansbitta and village Ramgarh. The investigating officer has also found the grasses trampled and sign of broken maize plants at the place of occurrence. However, having regard to the fact and circumstance of the case merely because the evidence of the doctor not fully corroborates the sign of rape and the fact that the clothes of the victim have not been brought on record, however, taking into consideration the evidence of the victim as well as the corroboration of P.Ws. 2, 3, 4 and 5 and the fact that in our tradition bound society, a girl or woman would be extremely reluctant to lodge an incident, which is likely to reflect her chastity has ever done. The victim and her family is conscious of her them being ostracize of the society or being looked down by the society or by even own family members, relatives, friends and others. She would face a consequence of the lost of respect of her own near relatives and particularly when she is unmarried it would be difficult to secure alliance with a suitable match from suitable or respectable family.

16. Having regard to the fact that the victim is a girl of tender age and lodging of a case of rape committed upon her falls her in serious consequence not only on the victim, but, also on the family stakes to loose respect and then the likelihood of marriage of other girls in the family become difficult. It is hardly expected that a father will ask a daughter of tender age to lodge a false case against a person by



which he himself will be highly prejudiced and not only his reputation in the family or the neighbour or in society falls down, but, it is difficult for him to find out a match for her unmarried daughter. The argument that since there is no corroboration by the medical evidence and no corroboration that the clothes of the victim has been produced, however, corroboration is not sine qua non for a conviction in a rape case, if the evidence of victim inspire confidence and, then, the refusal to act on the testimony of the victim of sexual assault in absence of corroboration as a rule amounts to add insult to injury is well settled in a judgment of the Apex Court reported in **A.I.R. 1983 S.C., 753 (Bharwada Bhoginbhai Hirjibhai Vrs. State of Gujrat)**. However, having regard to the fact that the victim has specifically mentioned about the rape and in her evidence she has stood the test of cross-examination except few confusion and criticism that the place of occurrence has not been well established and she is a bit confused about the place of occurrence, Buniyadi School or Basic School, though she has stood the test of cross-examination that the Basic School and Buniyadi School are same and has given the vivid description as well as about the place of occurrence and given a description as the place where she was taken and raped is near Surajgarha village and the field which has also been found in the evidence of the investigating officer.

17. However, the learned counsel for the appellant has relied upon decision reported in **2005(3) P.L.J.R. 638 (supra)**. The fact of the case reported is quite contrary or different than the fact of this case. However, here the allegation made whether the evidence of the witnesses that the appellant misbehaved with the victim. However, in this case, neither the doctor was examined nor the investigating officer and the fact taken into consideration that though the witnesses claimed to be the eye witnesses, but, they have not stated about the nature of misbehaviour committed by the accused and only evidence that the

appellant misbehaved (be-izzat) and the only evidence found that the torning of the blouse of the victim and, thereafter, the accused flee away, hence, it is well decided and not applicable to the facts and circumstances of this case. Here under the facts and circumstances though it is suggested about enmity, but, it has not been established nor even probable that the victim in cross-examination has stated that there is no enmity.

18. Hence, having regard to the facts and circumstances of the case, I do not find any merit to interfere in the appeal. The order of conviction and sentence, recorded by the trial Court, is hereby **confirmed**.

19. This appeal is **dismissed**.

(Gopal Prasad, J)

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