

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.858 of 2010
With
Criminal Appeal (DB) No.946 of 2016

(Against the judgment of conviction and sentence dated 17th May, 2010 passed by Shree Jayanta Kumar Sen, Sessions Judge, Gaya in Sessions Trial No.297 of 2010 arising out of Bodh Gaya P.S. Case No.87 of 2010)

Criminal Appeal (DB) No.858 of 2010

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1. Pappu Kumar s/o Nand Kishore Pd. Singh R/O Vill. Amawan, P.S. Bodh Gaya, Distt. Gaya
 2. Uday Singh s/o Bachchu Singh R/O Vill. Barsauna, P.S. Wazurganj, Distt. Gaya

.... **Appellants**

Versus

The State Of Bihar

.... **Respondent**

With

Criminal Appeal (DB) No. 946 of 2016

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Littu @ Anuj Yadav @ Littu Yadav @ Anuj Kumar, Son of Govind Yadav, resident of Village- Amba, P.S. Bodh Gaya, District Gaya

.... **Appellant**

Versus

The State of Bihar

.... **Respondent**

Appearance :

(In CR. APP (DB) No.858 of 2010)

For the Appellants : Mr. Ansul, Advocate,
 Mr.Ravindra Priyadarshi, Advocate,
 Mr. Anuj Kumar, Advocate,
 Mr.Archit Rajpal, Advocate and
 Mr.Shreyanshu Kumar, Advocate

For the State : Mr. Chittaranjan Shina, PAAG-II

(In CR. APP (DB) No.946 of 2016)

For the Appellant : Mr. Shailesh Kumar, Advocate
 For the State : Mr. Chittaranjan Shina, PAAG-II and
 Mr.A.K.Sinha, APP

CORAM:

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 27-07-2017

The tale of the prosecutrix is a story of a number of



foreign tourists who are open to insult subject to abuse destined for demonisation. They are stalked molestation and battered. It is an irony that the incident occurred near Bodh Gaya, a city of pilgrimage, where Lord Budha, founder of Buddhism, got his Enlightenment.

2. All the three appellants, namely, Pappu Kumar, Uday Singh and Littu @ Anuj Yadav @ Littu Yadav @ Anuj Kumar stand convicted under section 376(2)(g) and 379/34 of the Indian Penal Code by the learned Sessions Judge, Gaya vide judgment, dated 17.05.2010, passed in Sessions Trial No. 297 of 2010, arising out of Bodh Gaya Police station Case No. 87 of 2010. For the offence under section 376(2)(g) of the I.P.C., they have been sentenced to Rigorous Imprisonment for life and a fine of Rs.10,000/- and in default of payment of fine to under go further imprisonment of two years. For the offence under section 379/34 of IPC, all the accused have been sentenced to three years imprisonment. For the offence under section 411 of IPC, they have been sentenced to three years imprisonment. However, all the sentences were directed to run concurrently.

3. The prosecution case as unfolded in the fardbeyan of prosecutrix (Sachie Nomura), a 25 years old Japanese Tourist recorded by the Sub-Inspector Shri Ram Singh, S.H.O., Bodh Gaya



P.S. on 16.4.2010 at 11.30 PM near Deep Guest House, by the help of Amardeep Kumar, an interpreter of Japanese language, in short is as follows:-

(i) On 16.4.2010 at about 8.15 PM, the informant started from Deep Guest House bag and baggage, for nearby Bodh Gaya Tempo stand for catching a tempo for Gaya Railway Station. At 8.30 PM, she reached the tempo stand. She settled a fare of Rs.200/- with one tempo driver for dropping her at Gaya Railway Station. In the meantime, another tempo arrived and the first tempo driver asked her to travel in the second tempo. Around that time, three persons were standing near the second tempo, who were keenly watching her. As suggested by the first auto driver, she sat in the second tempo and proceeded for Gaya Railway Station at about 8.30 PM. The three young men who were watching her, followed in the other tempo.

(ii) The tempo moved sluggishly for ten minutes and then it diverted leftwards from the main metalled road on to an un-metalled village road. The tempo stopped after traveling for 100 meters on the village road. Sensing something foul, the informant jumped from the tempo, and began to run towards the main road. As she reached near the main road, all the four persons got down from other tempo, which was following her and dragged her back



towards the first tempo. They pushed her down on the ground, where two small trees existed. They removed her undergarments and raped her one by one which continued for ½ hrs.

(iii) The accused also took her belongings i.e. Japanese currency worth 80,000 yen, Japanese Passport and Visa, one digital camera of Fuji Film, a golden chain and a Mobile Phone with SIM bearing No.09061956071. The accused then bundled themselves in one tempo and forced her to sit in the middle. When they were about 150 meters from Gaya Railway Station, the accused pushed her out and spade away. She somehow reached Rail Police Station after making enquiry from local persons. The Rail Police brought her back to Deep Guest House, Bodh Gaya, where she was staying.

(iv) She stated that after talking to local persons and interpreter Amardeep Kumar, it transpired that she was raped near village Amwa Thokar. She gave vivid description of accused persons. She stated that one tempo was not bearing any registration number, whereas “Well 2010 Come” was written on dash board of the other tempo, but she could not see its number. The informant claimed to recognize the accused on seeing them.

(v) The informant stated that the fardbeyan was read over and explained to her and finding the same to be true, she put her signature in presence of the interpreter Amardeep.



(vi) On the basis of the fardbeyan (Ext.7), a formal first information report (Ext.8) was recorded at 4 AM on 17.4.2010, giving rise to Bodh Gaya P.S. Case No.87 of 2010, dated 17.4.2010 under section 376(2)(g)/379/34 of the Indian Penal Code.

4. After recording of the fardbeyan, the victim was taken to Lady Elgin Zanana Hospital, Gaya, where she was examined by Dr. Sangeeta Kumari, P.W. 8 at 2.30 AM on 16/17.4.2010. She was brought back to Deep Guest House as she felt comfortable staying there. In the morning of 17.4.2010, the Investigating Officer took the victim, for inspection of the place of occurrence which was an open field of Homeopathic college, 100 meters west of the main road in village Amwa Thokar. The Dy.S.P. Headquarters, interpreter of Japanese language Amardeep Kumar (P.W.5) and some other police personnel also accompanied. Two small palm trees existed near the place of occurrence. There were tyre marks of tempo on the village road, leading to the place of occurrence. There were small grasses near the place of occurrence, which were trampled. Acting on tips and secret information, the police arrested a suspect on 18.4.2010 from near Bisar Talab, Gaya, who disclosed his name as Pappu Kumar son of Nand Kishore Prasad Singh of village Amwa Thokar, P.S. Bodh Gaya. In light of his statement, the police went to his house along with him in village Amwa Thokar



and searched the same in presence of two witnesses Sunil Kumar Sinha @ Santu, P.W.2, and Umesh Kumar, P.W. 4. In course of search, from a tin box, two credit cards bearing the name of the informant, one visa card also having the name of the informant, a Sony Ericson Mobile along with auto focus camera, some Indian currency and two Japanese currency worth 500 yen each were seized. The police also searched one Uday Singh, a 'Mausrea brother' of Pappu Kumar, who was also present at the time of raid, and from his pocket 600 Japanese currency worth 100 yen each, along with one Rs.500/- note in Indian currency, were recovered. The police prepared seizure of the items recovered from the possession of Uday Singh as well as from tin box found in the house of Pappu Kumar marked as Ext.9.

5. On the statement of the two accused, one Littu @ Anuj Yadav was arrested from his village Amwa and on search 700 Japanese yen along with some Indian currency were also recovered from his possession and a seizure list, of the items was prepared in presence of witnesses, which was marked Ext.9/1.

6. Finding the case to be true, the police submitted charge sheet against the three appellants under sections 376(2)(g), 379, 411/34 of the Indian Penal Code, while keeping the investigation against the two absconding accused namely Ranjan Yadav and



Lotan Yadav @ Pintu Yadav. The learned Magistrate took cognizance of offence and committed the case for trial. The Trial Court framed charges under section 376(2)(g), 379/34 and 411 of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

7. The prosecution examined the following witnesses in support of its case:-

P.W.1 Sachie Nomura	Victim and informant of the case
P.W.2 Sunil Kumar Sinha @ Santu	Seizure list witness of stolen articles
P.W.3 Surya Kanti Tiwary	Conducted T.I.Parade of accused
P.W.4 Umesh Kuamr	Seizure list witness of stolen articles`
P.W.5 Amardeep Kumar	Owner of Deep Guest House as well as interpreter of Japanese language
P.W.6 Hari Shankar Pd. Singh	Conducted T.I.Parade of two Tempos and seized materials
P.W.7 Rumpa Kumari	The then Judicial Magistrate, Gaya who recorded the statement of victim under section 164 Cr.P.C. as well as P.W.5 on 20.4.2010.
P.W.8 Dr. Sangeeta Kumari	Lady Doctor of Lady Eugin Zanana Hospital, Gaya who locally examined the victim on 17.4.2010 at 2.30 AM
P.W.9 Dr. Vijay Kishore Singh	All members of Medical Board
P.W.10 Dr. Shahala Nazneen	who examined the victim
P.W.11 Dr. Neeta Agrawal	
P.W.12 Sri Ram Singh	Investigating Officer of the case
Apart from the oral evidence, the prosecution also	

produced the following documents:

Ext.1	Signature of Sachie Nomura on statement interpreted in Hindi by Amardeep Kumar
Ext.1/1	Signature of Sachie Nomura on her statement made under section 164 Cr.P.C.
Ext.2 & 2/1	Signatures of Sunil Kumar Sinha @ Santu on two seizure lists.
Ext.3	Test Identification Parade chart
Ext.2/2 &	Signatures of Umesh Kumar on two seizure lists



2/3	
Ext.1/2	Signature of Amardeep Kumar on the fardbeyan
Ext.1/3	Certificate given to Interpreter Amardeep Kumar to interpret the statement of the victim to be recorded under section 164 Cr.P.C.
Ext.3/1	Test Identification Parade chart of articles
Ext.3/2	Test Identification Parade charge of two Auto(Tempos)
Ext.4	Statement recorded under section 164 Cr.P.C. of victim Sachie Nomura
Ext.4/1	Statement of witness Amardeep Kumar under section 164 Cr.P.C.
Ext.5	Injury report of victim
Ext.6	Report of the Medical Board
Ext.6/1	Writing and signature, on page nos.3 and 4 of the Medical Board report, of Dr. Shahala Nazneen
Ext.6/2 & 6/3	Signatures of Dr. Neeta Agarwal on page nos.4 and 5 of the Medical Board report
Ext.7	Fardbeyan
Ext.8	Formal F.I.R.
Ext.9 & 9/1	Two seizure lists
Ext.2/4 & 2/5	Seizure lists of two tempos.
Ext.10	Receipt regarding returning the seized mobile of Soni Ericson I, MEI No.3569 3502 328722-7-01
Mat.Ext I & I/A	Two Credit Cards
Mat. Ext.II to II/D	Five 500 Notes of Indian currency
Mat. Ext.III to III/F	Four 500 Yan and three 100 Yan.

8. The defence examined two witnesses, namely, Mahendra Prasad Singh, D.W.1 and Sidheshwar Singh, D.W.2 in support of its case that accused Pappu Kumar and Uday Singh have been falsely implicated at the instance of P.W.5 and P.W.2. The defence also produced the following documentary evidence:-

Ext.A	Authority letter given to Amardeep Kumar by Sachie Nomura to translate her words dated 20.4.2010
Ext.B	Paras 10 to 54 of the case diary.
Ext.C	Order dated 30.4.1971 passed by S.D.M., Gaya

9. The case of the accused in the statement under section



313 Cr.P.C. and as appearing from the mode of cross-examination is total denial of the occurrence and false implication in the case at the instance of P.W. 5 and P.W.2.

10. As noticed, in the preceding paragraphs, the prosecution examined altogether 12 witnesses in support of its case. P.W. 1 is the informant and the victim of the case and has reiterated the prosecution case. She stated that she arrived at Bodh Gaya on 15.4.2010 and stayed at Deep Guest House. She visited the Monasteries in the day time on 16.4.2010. As she had to board Dehradun Express bearing Train No.3010 in the night, she left the Deep Guest House, bag and baggage, to catch a tempo from the nearby tempo stand for Gaya Railway Station. After settling the fare, she sat on one tempo for Gaya Railway Station. Another tempo, in which four persons were sitting, closely followed her. After traveling for 30-35 minutes, she was way laid on a lonely unmettled village road, and raped by all five in a lonely field. Her belongings were looted. After committing rape, the accused persons dragged her inside the tempo and dropped her near the Gaya Railway Station, where with the help of local people, she contacted Gaya Rail Police, who brought her back to Deep Guest House at Bodh Gaya, where she made her statement with the help of P.W.5 Amardeep Kumar, an interpreter of Japanese language, to P.W.12



the Investigating Officer of the case.

11. P.W.2 and P.W.4 are witness to the recovery of Japanese Passport, Visa, Credit Cards, Fuzi Cameri Mobile Phone, Japanese currency from a tin box in the house of Papu Kumar. They are also witness to the recovery of Japanese currency as well as Indian currency from the possession of Uday Singh and Littu @ Anuj Yadav.

12. P.W.5 Amardeep Kumar is owner of Deep Guest House. He is married to a Japanese woman and has been to Japan a number of times and knows Japanese language. He played the role of interpreter and translated the fardbeyan of the informant, her deposition during trial and her statement under section 164 Cr.P.C. The informant had stayed at her Guest House during her visit to Bodh Gaya. He accompanied the informant and the police during visit to the place of occurrence, in the morning of 17.4.2010 because of his knowledge of Japanese language. He denied the suggestion of the accused that since his father was allegedly defeated in the election of Mukhiya by maternal uncle (D.W.2) of accused Pappu Kumar 40 years ago, he has falsely implicated him and his cousin accused Uday Singh in the instant case.

13. P.W. 3 Surya Kant Tiwary conducted the Test Identification Parade of the accused persons in which the appellants



were identified by the Informant P.W.1.

14. P.W.6 Harishankar Prasad Singh, B.D.O., Bodh Gay conducted the Test Identification Parade of the seized articles and two tempos involved in the incident were also duly identified by the informant.

15. P.W.7 Rumpa Kumari, the then Judicial Magistrate Ist Class, Gaya recorded the statement of the informant (P.W.1) under section 164 Cr.P.C. with the help of the interpreter Amardeep Kumar (P.W.5), duly authorized by her (Ext.A). She also recorded statement of P.W. 5 (interpreter) under section 164 Cr.P.C. She stated that the victim could speak little bit of English.

16. P.W. 8 Dr. Sangeeta Kumari, who was first to examine the victim on 17.4.2010 at 2.30 AM, opined that there are signs of recent sexual inter course on the person of the victim. P.Ws. 9, 10 and 11 are all Medical Doctors and members of the Medical Board, which examined the victim P.W. 1. on 17.4.2010 at 5.30 PM. P.W. 9 Dr. Vijay Kishore Singh examined the external injuries on the person of the victim and P.W. 10 Dr. Sahala Nazneen and P.W. 11 Dr. Neeta Agarwal, examined the internal injuries of the victim. They have corroborated the factum of rape on the victim.

17. P.W.12 Sri Ram Singh is the Investigating Officer of



the case. He also had recorded the fardbeyan of the informant (P.W.1). In course of investigation, he inspected the place of occurrence and got the victim medically examined. On secret information, he arrested Pappu Kumar and recovered articles belonging to the victim from his house. He also arrested accused Uday Singh and Littu @ Anuj Yadav from whose possession Japanese currency were recovered. He got arranged T.I. Parade of the seized articles as well as of two tempos, suspected of being used in the commission of rape. He found marks of tyres on village road leading to the place of occurrence from the main road and trampled grasses around the spot.

18. The Trial Court relying upon the evidence of the informant as well as identification of the accused persons and seized articles in the T.I. Parade, coupled with Medical report, held the appellants guilty under section 376(2)(g) and 37934 of the Indian Penal Code.

19. Being aggrieved, the appellants have challenged the judgment of conviction and sentence, in these appeals. Assailing the impugned judgment, the appellants submit that the prosecution has utterly failed to establish factum of rape on the victim, much less their involvement in the case. The medical report of the victim prepared first by P.W. 8 Dr. Sangeeta Kumari, differs with the



medical report of the two Lady Doctors of Medical Board, namely P.W. 10 and P.W.11. The T.I. Parade of the accused as well as the articles recovered are farce and wholly unreliable. The F.I.R. was instituted on 17.4.2010 at 4 P.M., the same was seen by the Chief Judicial Magistrate, Gaya belatedly after two days on 19.4.2010, which is against tenets of section 157 Cr.P.C., as it allowed ample scope of manipulation. Thus, much before the F.I.R. was seen by the Court, a major portion of the investigations i.e. holding of medical examinations, the arrests, search and seizure of the accused and house of Pappu Kumar, inspection of place of occurrence, all were all done. The police failed to record the statement of relevant witnesses i.e. Railway Police, Gaya, whom the victim first approached after the alleged rape. The police also did not record the statement of Rickshaw Puller who helped the victim in carrying her to Gaya Railway Station in the night of 16.4.2010. Both the statement and deposition of the victim were recorded in teeth of section 277 Cr.P.C. The original statement of the victim was not recorded nor videographed. No official or certified interpreter of Japanese language, though available, were called for interpretation. Further more, the appellants Pappu Kumar and Uday Singh have been falsely implicated in the case at the instance of P.W.5 and P.W.2.



20. On the other hand, Mr. Chittaranjan Sinha, learned PAAG 2 appearing on behalf of the State has defended the impugned judgment of conviction and sentence. He submits that the fardebyan was recorded within three hours of the commission of rape. The First Information Report was instituted promptly and the investigation was done with utmost promptness, which in fact rules out manipulation. Both medical reports support the factum of rape. The place and time of occurrence too has been established. The identification of the accused and the seized articles in the T.I. Parade, recovered from their house and possession, prove their involvement in the crime. The prosecutrix is not an accomplice but a victim herself of a foreign nationality and has fully supported the prosecution which is also corroborated by medical evidence.

21. We have heard learned counsel for the parties and perused the materials on record. The issue for consideration is whether the accused persons are guilty of committing rape on the victim and relieving her as well of her belongings?

22. Before, we examine the issue and submissions of the rival parties, it would be relevant to notice the principles of law governing the subject matter in hand. The Hon'ble Apex Court in the case of *Aslam vs State of Uttar Pradesh, reported in (2014) 13 SCC 350* observed that if upon consideration of the prosecution



case in its entirety, the testimony of the prosecutrix inspires confidence in the mind of the Court, the necessity of corroboration of her evidence can be excluded.

23. The Hon'ble Apex Court in the case of ***The State of Punjab vs. Gurmit Singh & Ors, reported in (1996) 2 SCC 384***, observed that while evaluating evidence, the Courts must 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 of her. The relevant extract of para-8 of judgment is quoted herein below:

“.....inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. 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.....”.

24. The Apex Court further went on to observe in the para-8 of judgment as under:



“.....the evidence of a victim of sexual assault stands almost at 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 over-looked 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.....”.

25. The Hon'ble Apex Court in the case of ***State of Maharashtra vs Chandraprakash Kewal Chand Jain, reported in 1990 AIR 658*** observed that 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 of the Evidence Act 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 be attached 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 leveled 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 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 lead 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.

26. In light of the principles noticed above, we would now examine the grounds raised by the appellants in support of their case.

The appellants have challenged the very factum of rape, though they had not seriously contested the issue before the trial court. They submit that at the best it would be a case of loot or robbery but not of rape. In support of their submissions, learned counsel for the appellants argued that the two medical reports brought on record by the prosecution regarding sexual abuse, substantially differs from each other. The first report submitted by P.W. 8 Dr. Sangeeta Kumari mentions only two external injuries, whereas the second report talks of as many as 13 injuries. Elaborating their submissions, learned counsel for the appellants submits that the contents of the reports do not corroborate sexual assault on the victim. P.W.8 Dr. Sangeeta Kumari who first examine the victim on 17.4.2010 at 2.30AM at Lady Elgin Zanana Hospital stated that vagina was accepting one finger, whereas the second report submitted by the Medical Board on 17.4.2010 at 5.30 PM mentions admitting of two fingers. Both the reports stated that though pubic hair was present, no foreign hair was found; though



Modi Medical Jurisprudence clearly states that the exchange of pubic hair in a sexual act, is imminent. It was further contended that apart from ejaculation, large number of pre-ejaculation secretions and seminal fluids come out which has also not been detected in the vagina or cloths of the victim. Further more, there is no vaginal swab report, nor garments or undergarments of the victim were sent for Forensic Science Laboratory. No spermatozoa dead or alive was found though the Hon'ble Apex Court in paragraph 43 of its judgment in the case of ***Krishan Kumar Malik vs State of Haryana, passed in Crl.Appeal @ S.L.P.(Crl.)No.8021 of 2009*** observed that it can be shown with the help of medical report that even dead spermatozoa has a long life.

27. The appellants have much harped that there is conflict in the two medical reports as first report of P.W.8 mentions of only two external injuries which is at variance with 13 injuries found by the Medical Board. It is relevant to notice that the victim was first locally examined by P.W. 8 at 2.30 AM in the night of 17.4.2010, and again by a fullfledged Medical Board on the same date later during the day hours at 5.30 PM. The variance in external injuries noticed in the two reports and none noticing of foreign hair on the private part of the victim would not be of much consequence in view of the specific findings of rape in both the reports. For similar



reason, the findings of vagina admitting one finger as per report of P.W.8 and two fingers as per report of the Medical Board would not in any way undermine the specific findings of commission of rape in the two medical reports.

28. Further more, P.W. 8 had found blood stained pad inside the panty of the victim and slight pariental tear which was also bleeding. The two female Doctors of Medical Board, also found 6"x6"(tender) on the upper part of left thigh. They also found bruises present over left buttock, side by side, measuring 1"x1" and 1/2"x1/2". Thus, on closure scrutiny we find no ambiguity worth the name, in two reports; and the two medical reports fully support the factum of rape on the victim in the night of 16.4.2010.

29. This takes us to the next issue whether it is the appellants who have committed rape along with two others. The victim both in her fardbeyan and deposition as well as in her 164 Cr.P.C. statement has reiterated the prosecution case and perpetration of rape. There are minor discrepancies in her version, but they do not go to the root of the case, to render it improbable. She has identified the three appellants in the Test Identification Parade held on 20.4.2010 in the jail premises where they were mixed with 30 other persons. Besides this, the victim also identified her belongings recovered from the house of appellant Pappu Kumar



and from possession of two other appellants.

30. Learned counsel for the appellants argued that the Test Identification Parade of the accused was a farce, as the internal palm of the hand of the three appellants were marked with one or the other of the three numbers i.e.1,2 and 3. As per evidence of P.W. 3, the Judicial Magistrate who conducted the T.I. Parade, the three appellants were mixed with 30 other persons of more or less similar features and there is no allegation that the marks on the palm of the appellants were made bare (open) at the time of T.I. Parade. It was further contended by the appellants that the identification is doubtful as the victim was raped at a lonely place where there was no source of light. We find that the victim in para-17 of her evidence has categorically stated that she identified the accused in the moonlight, Besides this, she saw them talking at tempo stand in the light burning there. As such, we do not find any infirmity in holding of the T.I.Parade and the identification of the accused by the victim.

31. The appellants next argued that the seized belongings of the victim was not mixed with any other items and as such the T.I. Parade of the seized articles i.e. Credit Cards, Passport with Visa, Fuji Camera, Japanese currency would not hold any meaning. We find that the informant in the F.I.R. stated that her Credit Cards,



Passport with Visa, Fuji Camera, Japanese currency were looted by the accused. Almost all these items including Credit Cards, except all entire Japanese currency, were seized from either the house or the possession of the appellants. The Investigating Officer (P.W.12) and the seizure list witnesses P.W.2 and P.W. 4 in their evidence have supported the recovery. It is true that the informant did not mention Credit Cards among the list of articles looted from her. In our view, the omission would not be viewed grave or unnatural, considering that the victim was a hapless foreign tourist, just raped by five persons with no acquaintance, much less any friend in the town or country. As such, it is not in doubt that the seized articles recovered from the possession of the appellants, were the ones, that were snatched by them from the victim, after committing the rape.

32. The appellants further argued that they ought to have been medically examined as required under section 53A of Cr.P.C. with a view to eliminate any chance of false implication of a person charge of rape. Section 53A provides for examination of person accused of rape by Medical Practitioner, if there is reasonable ground for believing that examination of a person will afford evidence as to the commission of such offence. Such examination not only helps to gather evidence for the prosecution but would be also a guard against false implication. Relying upon the order ***dated***



29th September, 2011 passed by the learned Single Judge in the case of *Ram Sewak Rai vs State of Bihar*, in *Criminal Appeal (SJ) No.1156 of 2008*, learned counsel for the appellants argued that non-examination of accused would weaken the prosecution case. On the other hand, counsel for the informant and the State submitted that no useful purpose would be served, by examining an accused alleged of committing rape arrested after 40 hours of occurrence, as by which time, there is all possibility of symptoms of having entered into sexual inter course washed out.

33. We have noticed that submissions of the parties on the issue. Section 53A of Cr.P.C. was inserted vide amendment Act 25 of 2005 in Cr.P.C., which provide examination of the accused by a Doctor to eliminate any chance of false implication under a charge of rape. Medical opinion of experts invariably point out that male genital organ has a deposit around it and whenever a male enters into coitus with a female that deposit is removed which may be found, if the genital organ of the accused is examined by an expert. The submission of the appellants is that on examination if no deposits are found around male genital organ, it would be inferred that he had sexual intercourse. In other words, the provision would at best be attracted in case a person suspected of committing a rape is nabbed and examined soon after the occurrence, but the same



may not generally hold good, if the accused is nabbed after long delay, as there is every chance of the deposits accumulated, being washed out on account of cleaning and washing. As such, non-examination of accused who were arrested after 40 hours would not falsify prosecution case in view of incriminating evidence appearing against.

34. The defence next argued that the accused Pappu Kumar and Uday Singh have been implicated in the instant case at the instance of P.W.5, the interpreter of Japanese language, whose father was defeated in the election of Mukhiya by one Sidheshwar Singh (D.W.2), who happens to be the maternal uncle of accused Pappu Kumar and also a relative of accused Uday Singh. In cross-examination, Sidheshwar Singh, who has been examined as D.W.2 by the appellants, stated that the election of Mukhiya took place 40 years ago and no altercation or incident had taken place between them, since then. In view of the own statement of D.W.2 Sidheshwar Singh that the election of Mukhiya took place 40 years back without any black lash, it is very difficult to accept the contention that P.W. 5 has implicated the two appellants on account of said political dispute after 40 years. Nothing has been brought on record showing any animus between the two appellants and P.W.5 at any time in the past. As such, I find no merit in the submission of



the appellants that they have been falsely implicated at the instance of P.W.5. Further more, the appellants have not been able to produce any material to establish that P.W. 2 has falsely implicated them in the case. As such, the plea of false implication at the instance of P.W. 2 is devoid of merit.

35. The appellants lastly argued that the entire prosecution case is fit to be rejected as true translation of the evidence of the victim was not recorded in accordance with Section 277 of Cr.P.C. or prepared by an approved translator. Neither the fardbeyan of the victim (Sachie Nomura) nor her evidence was recorded or videographed so as to preserve her original version. It was argued by the appellants that what we have in the record is the translated version of the victim P.W. 5, who is not a certified interpreter. Furthermore, though three certified interpreters of Japanese language were available in Gaya, none of them were requisitioned by the prosecution for the official translation of the version of the victim. Besides this, the translation made by the interpreter (P.W.5) was in violation of section 4(b) of the Oaths Act, which requires that translation should be made on oath. Furthermore, P.W.5 could not have been used as an interpreter as he had played active role in investigation. In support of their submissions, learned counsel has relied upon a judgment in the case



of *Ragzan Chhodop vs Emperor*, reported in *A.I.R (35) 1948 Lahore 97*.

36. The submissions made by the appellants, albeit raises following more questions:

(i) Whether the interpretation of the original version of the victim is in accordance with section 277 Cr.P.C.?

(ii) Whether the translation made by P.W. 5 was invalid being in violation of Section 4 of the Oaths Act?

(iii) Whether the interpreter played an active role in investigation so as to render himself incompetent to become an interpreter in the case?

Issue No.(i):- Whether the interpretation of the original version of the victim is in accordance with section 277 Cr.P.C.?

Before we answer the issue, it would be relevant to notice section 277 Cr.P.C., which is quoted hereinbelow:

“277. Language of record of evidence.- In every case where evidence is taken down under section 275 or section 276.-

(a) If the witness gives evidence in the language of the Court, it shall be taken down in that language;

(b) If he gives evidence in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be



prepared as the examination of the witness proceeds, signed by the Magistrate or presiding Judge, and shall form part of the record;

(c) where under clause (b) evidence is taken down in a language other than the language of the Court, a true translation thereof in the language of the Court shall be prepared as soon as practicable, signed by the Magistrate or presiding Judge, and shall form part of the record:

Provided that when under clause (b) evidence is taken down in English and a translation thereof in the language of the Court is not required by any of the parties, the Court may dispense with such translation.

37. Counsel for the appellants argued that as per Section 277(b), it was imperative to record the evidence of P.W. 1 who was a foreign national in her language or at least ought to have videographed her version. Furthermore, if it is not practicable to do so, a true translation of the evidence in the language of the court should have been prepared. We have carefully gone through Section 277 Cr.P.C. which relates to language of record of evidence. Section 277(a) states that if a witness makes a statement in the language of the Court, it shall be taken down in that language. Section 277(b) which is relevant in the context, states that if the evidence is given in any other language other than language of the court, it may, if practicable, be taken down in that language. It thus



appears from minute reading of the provision that it in no manner convey that if the evidenced is not taken down in the language of the person which is not the language of the court, the evidence would be inadmissible or invalid. The legislature was conscious that a situation may arise when it may not be practicable to take down the evidence in the language of the witness which is not the language of the court. Keeping in view such eventuality the legislature provided a leverage in section 277(b) by inserting the words “it may, if practicable” such condition be taken in that language and not making it compulsory that such evidence necessarily has to be taken down in that language. The case of the prosecution is that the entire administration swung in action, as a foreign nationalist, who had come to Bodh Gaya on pilgrimage was raped. The administration took help of the first possible interpreter (P.W. 5) who was available immediately. The defence has also not questioned the proficiency of the interpreter (P.W. 5) in the language. Thus, the State has taken due steps to prepare a true translation of the evidence of the victim in the language of the Court.

38. Furthermore, in his evidence, P.W.5 stated that he interpreted the question put to prosecutrix in Japanese language and then interpreted her answer in the language of the court. P.W.5 had



also endorsed his signature on the evidence as well as on the fardbeyan of the informant. The fairness of P.W. 5 can be well inferred from paragraph 19 of his deposition, wherein he stated that besides him there are other persons who were well conversant with Japanese language and also registered and as such had even requested the Police to requisition them for interpretation of the version of the prosecutrix. The defence has also not denied that P.W. 5 has been to Japan a number of times and is conversant with Japanese language. Thus, we have no reason to hold that P.W. 5 was not conversant with Japanese language and had not made correct translation/interpretation of the original version of the victim. We, accordingly, hold that there has been substantial compliance of section 277 Cr.P.C. in recording the evidence of the victim. As such, this issue is answered against the appellants and in favour of the prosecution.

39. The appellants have also argued that the evidence of P.W.1, the prosecutrix, who was a foreign national, ought to have been videographed in order to rule out all the apprehension in correct translation. As a matter of precaution, we may broadly agree with the submission of learned counsel for the appellants that it would be safe to have video record of the statement of a victim, who is a foreign national and cannot speak the language of the court, in order to rule out all apprehension of any unfair play. However, non-recording of



the video statement of the victim would not render the evidence of the victim invalid, where due care has been taken for proper translation of her evidence. As such, the prosecution case would not be rendered invalid due to non-videography of the statement of the victim (P.W.1)

40. Issue No.(ii) Whether the translation made by P.W. 5 was invalid being in violation of Section 4 of the Oaths Act?

The defence contended that P.W. 5 made translated version of the victim without taking oath which is in violation of section 4 of the Oaths Act. Section 4 of the Oaths Act is quoted herein below:

“4. Oaths or affirmations to be made by witnesses, interpreters and jurors.-

(1) Oaths or affirmations shall be made by the following persons, namely.-

(a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by, witnesses; and

(c) jurors:

(2) ”

41. We find that P.W. 5 was also examined as witness on oath and has sworn that translation/interpretation of the original version of the informant is true and correct. As such, we find that there has been substantial compliance of Section 4 of Oaths Act, which



requires an interpreter to make his statement on oath. This issue is answered against the appellants and in favour of the prosecution.

42. **Issue No.(iii):** Whether the interpreter played an active role in investigation so as to render himself incompetent to become an interpreter in the case?

The other point raised by the appellant is that P.W. 5 ought not to have acted as an interpreter as he had taken active part in the investigation. In support of his submission, the appellants have relied upon a decision reported in *A.I.R. 1976 Calcutta 922*, referred to also in *1948 Labore Page 97*. In the aforesaid case, the learned Court deprecated the role of a witness who was not only an interpreter but had taken active part in police investigation. In our view the aforesaid judgment would not be applicable in the instant case as the facts are different. In the case in hand, we find that P.W. 5, the interpreter of Japanese language, has not played any active role in the investigation save and except being used for the purpose of interpretation of the version of the victim to facilitate communication between the Police and the Prosecutrix, who was a Japanese national. It is true that the police also asked him (P.W. 5) to accompany them while taking the prosecutrix to the place of occurrence, but the same was again for the purpose of facilitating communication. Thus, we are of the considered view that as P.W. 5



has not taken any active part in the investigation. The evidence of victim recorded with his help was relevant for being used by the prosecution. This issue is also answered against the appellants and in favour of the prosecution.

43. In backdrop of the discussions made above, we find that the prosecutrix has fully supported the prosecution case in her deposition as well as in her statement recorded under section 164 Cr.P.C. There is no material discrepancy in her evidence. Time, manner and place of occurrence have been fully established. The version of the prosecutrix is also duly corroborated from the medical evidence and the T.I. Parade in which accused were identified. The evidence of the prosecutrix is fully trustworthy and is even sufficient in itself to hold the appellants guilty of the charge under section 376(2)(g) and 379/34 of the Indian Penal Code without any corroboration.

44. For the reasons stated hereinabove, we uphold the judgment of the Trial Court convicting the appellants under section 376(2)(g), 379/34 of the Indian Penal Code. In view of the gravity of the offence in which hapless foreign tourist was gang raped, we do not find any reason to interfere in the sentence awarded by the trial court.

45. In the result, these appeals are dismissed.



46. Office to take steps for communication of a copy of the judgment to the victim Sachie Nomura daughter of Late Tadatoshi Nomura, House No.2-2-1-118, Kitakunitachi-she, Tokyo, Japan, who was a Japanese national, through the Ministry of External Affairs, Government of India, New Delhi.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

(Arun Kumar, J)

Md. Jamaluddin Khan.

AFR/NAFR	A.F.R.
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