

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.167 of 2015

Arising out of P. S. Case No. -1163 Year- 2001 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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Ubed, son of Latifur Rahman, resident of Village- Bijwar, P.S.- Angarh, District -
Purnea.

.... Appellant/s

Versus

1. The State of Bihar
2. Nazmin, D/o Yusuf, R/o Vill- Bijwar, P.S.- Angarh, District- Purnea.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Prawesh Kumar-Advocate
For the Respondent/s : Mr. Z. Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 08-10-2018

Appellant Ubed has been found guilty for an offence punishable under Section 376 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo R.I. for two years, additionally, under Section 313/511 of the I.P.C. and sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to R.I. for one year, additionally, with a further direction to run the sentences concurrently vide judgment of conviction dated 03.03.2015 and order of sentence dated 04.03.2015 passed by the 2nd Additional Sessions Judge, Purnia in Sessions Trial No.242 of 2004/ 852 of 2014.



2. Name withheld (PW-6), victim filed Complaint Petition No.1163 of 2001 on 03.11.2001 disclosing the date of occurrence from the last six months to one week prior to the filing of the complaint, showing the place of occurrence to field of the complainant along with her house and further, divulging the prosecution case as she happens to be minor aged about 15 years. About 5-6 months ago at about 4.00 P.M. while she had gone to her field to pluck jute leaves for vegetable, Ubed (appellant) caught hold her, dragged her inside the field and committed rape. At that very moment, he was armed with knife and had threatened of dire consequences, in case she is going to divulge to the extent of murdering her. Being minor, she became afraid of the threatening having at the end of the accused, whereupon she could not disclose. About a week thereafter, while she had gone to same field for plucking jute leaves, accused Ubed, all of a sudden, arrived and again on the pretext of knife, committed rape. Subsequently thereof, he had also committed rape as a result of which, she became pregnant. Her mother, seeing some abnormal symptoms, enquired, whereupon she narrated the incident of rape. Her parents were in a way to police station, were prevented by the villagers on the pretext of getting the matter resolved at the village level itself and for that, Panchayati was convened wherein there was admission at their end and then, the



Panchayat resolved that accused should marry with her, but they have not obeyed the dictum of the Panches. On the other hand, all the accused, so named, came with a medicine and tried to administer the same forcibly, which she spat. The witnesses along with neighbours intervened and got her rescued. It has also been disclosed that accused persons are influential person of the locality having their direct connection with the police officials and that being so, complaint is being filed.

3. On the basis of the aforesaid complaint, complainant was examined on S.A., other witnesses were also examined during course of an inquiry as provided under Section 202 of the Cr.P.C. Complainant was also examined by the doctor as directed, who had found her to be pregnant and then, took cognizance of an offence punishable under Section 376 as well as 313/ 511 of the I.P.C. solely against the appellant, which happens to be the basis of trial, meeting with the ultimate result, subject matter of instant appeal.

4. The defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. It has also been pleaded that the victim has developed intimacy with Jahrul Haque, Dewar of her sister Umeda and out of such intimacy, she became



pregnant. There was rumour in the village, whereupon father of the appellant along with other respectable persons of the village rebuked the father of the victim and directed him to get the victim married with Jahrul Haque, otherwise they will be ousted from the village. As Jahrul refused to marry and got himself married at other place, whereupon in revengeful activity, this case has been filed by the father of the victim projecting the victim with false and frivolous allegation. In order to substantiate the same, DWs have also been examined.

5. In order to substantiate this case, prosecution had examined altogether seven PWs, who are PW-1, Md. Abdul Kalam, PW-2, Asma, PW-3, Md. Yunus, PW-4, Hakimuddin, PW-5, Salimuddin, PW-6, victim and PW-7, Dr. Lata Madhav. Side by side, had also exhibited, Exhibit-1, medical report. On the other hand, three DWs have also been examined on behalf of appellant, who are DW-1, Md. Suleman, DW-2, Latifur Rahman, the father of the appellant and DW-3, Md. Junaid Alam. No documentary evidence has been adduced at the end of the defence.

6. While challenging the finding recorded by the learned lower Court, it has been pleaded by the learned counsel for the appellant that same happens to be perverse, cryptic, whereupon it fit to be set aside. To substantiate the same, the learned counsel for the



appellant raised manifold arguments. The first and foremost happens to be that there happens to be inordinate delay in instituting of the complaint. There happens to be no cogent explanation at the end of the prosecution and that being so, on the sole ground of delay, the prosecution case is fit to be brushed aside. Then, it has been submitted that being a cognizable offence, the matter would have been reported to the police. It is not under controversy that complaint petition cannot be filed, but police happens to be competent enough to see the place of occurrence, got the witnesses examined, got the other material collected, which could have been relevant for the purpose of adjudicating upon the trial. The non-filing of the case before the police, is a circumstance, which cast doubt over the authenticity of the prosecution case. Then, it has been submitted that now, coming to status of the witnesses, all others, save and except PW-6, are hearsay, because of the fact that whatever they deposed, on the basis of disclosure having at the end of the victim. When the evidence of victim is taken, it also speaks a lot over veracity of her evidence. To substantiate the same, it has been submitted that once the victim was raped in a jute field, then what was occasion for her to re-visit the said field that too, after a short interval, which could have probably been refused at her end or would have divulged at least to her mother that because of such misfortune, she was not adamant or ready to go to the



said jute field. Even accepting for a moment, that prosecution case happens to be true, then in that circumstance, the conduct of the victim suggest that she was a consenting party otherwise there was no occasion for her to go to the jute field. It has further been submitted that doctor (PW-7), during course of examination of the victim, had not ascertained her age. In the complaint petition, there happens to be disclosure at the end of the victim that she was aged about 15 years, but surprisingly, she kept mum over her status to be minor or major or in the aforesaid background as well as in the background of the fact that Court had estimated her age to be 22 years as is evident from deposition form, the victim was major on the alleged date and time of occurrence and was a consenting party. So, no offence would be found duly substantiated and that being so, neither the offence under Section 376 of the I.P.C. made out nor under Section 313 of the I.P.C. due to paucity of evidence on that score. That being so, the judgment of conviction and sentence recorded by the learned lower Court suffers from conjectures and surmises and is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor while controverting the submission made on behalf of learned counsel for the appellant has submitted that victim has not been cross-examined over the occurrence. That being so, mere suggesting that the victim without cross-examining her, developed



intimacy with Jahrul and whatever outcome, she had alleged, is on account of physical relationship having been developed in between her as well as Jahrul. That being so, whatever allegation has been attributed at the end of the victim remained unchallenged. So far suggestion is concerned, less said is better. Three DWs have been examined. DW-3 had stated that he along with DW-2, father of the appellant had rebuked the father of the victim over the activity of the victim, but there happens to be no explanation or nothing has been said at their end, why this case has been filed only against the appellant and not against DW-3 or his family members. Apart from this, there also happens to be absence of positive evidence as well as disclosure at the end of the DWs that they have ever seen the victim in company of Jahrul. They have only disclosed that they heard rumour and in likewise manner, is the suggestion having at the end of the appellant. It has not been disclosed that Umeda, sister of the victim, was married in the village itself having frequent access. So, unless and until, there happens to be possibility of presence of Jahrul at the place of victim or the victim was found in the company of Jahrul, the suggestion or the examination of the DWs on that very score, will serve no purpose. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower Court happens to be just, proper, legal and is fit to be confirmed.



8. Before coming to analyze the evidences available on the record, adduced on behalf of respective parties, it is manifest that by way of suggestion, there happens to be an admission at the end of the appellant that victim was pregnant, but with an explanation that was on account of physical intimacy with Jahrul, Dewar of her sister namely Umeda. That means to say, pregnancy of the victim has gone out of controversy and for that, two versions are there, the one version at the end of the prosecution to be an outcome as a result of rape having committed by the appellant while according to defence, she carried pregnancy on account of physical intimacy in between Jahrul and the victim. So, victim having been ravished or being a consensual, irrespective thereof, is found admitted in the background of pregnancy of the victim. The aforesaid theme is also found duly substantiated at the end of doctor (PW-7), who had found victim carrying pregnancy of 20 weeks on the date of her examination i.e. on 13.11.2001. Now, coming to oral evidence, it is apparent that witnesses like PW-1, PW-2, PW-3, PW-4 and PW-5, whatever been stated at their end with regard to commission of rape over the person of victim (PW-6), is based upon the disclosure having made by the victim herself on a query made by PW-2, her mother after perceiving her with abnormal symptoms.

9. It is further evident from her evidence that for that,



there was Panchayati, wherein it was resolved to marry, which has been declined. Furthermore, after Panchayati, the accused persons indulged in criminal activity after coming to the house of the victim whereunder they unsuccessfully tried to administer medicine to facilitate abortion, but on account of spitting thereof, by the victim, could not swallow. It is also evident that during course of trial, she begotten a child, who died. Be that as it may, aforesaid theme is out of controversy, has never been challenged at the end of the appellant. So far Panchayati is concerned, it may be a surrounding circumstance, however, PW-1 in Para-5 has not been cross-examined, at whose place, Panchayati was convened, though he had substantiated the same. PW-2 at Para-8, 9 has been cross-examined and during course thereof, she had stated that she was not present in the Panchayati, but had divulged the resolution taken in the Panchayati. PW-3, during cross-examination at Para-6, Para-7, Para-8, was cross-examined over the Panchayati wherein he detailed and further, identified the place of Suleman where Panchayati was convened. PW-5 had stated during his examination-in-chief, that he came to know about the occurrence during course of Panchyati and on that very score, from Para-3 of his cross-examination, it is evident that he reiterated the same. PW-6, the victim, during course of her examination-in-chief at Para-4, had detailed the event of Panchayati and she has been tested under Paras-



17, 18 of her cross-examination wherein she had stated that Panchayati was convened at the house of Suleman.

10. Now, coming to the main occurrence, PW-6, during course of her examination-in-chief, had stated that on the alleged date and time of occurrence, when she had gone to her own jute field in order to pluck it leaves, accused arrived, caught hold her, thrust scarf in her mouth, opened the Salwar and then, committed rape. He had shown knife and said that in case of raising of alarm, she will be murdered. She became afraid of, whereupon could not dare to disclose the event. After 3-4 days thereafter, she had again gone to the aforesaid jute field and during course thereof, the accused pounced upon her, dragged her and then, committed rape. At that very moment, also he sustained over her on the pretext of knife with a threatening that in case of disclosure at her end, she will be murdered. Then had disclosed that at one another occasion also, she fallen under grip of accused, who again committed rape on the pretext of knife as a result of which, she became pregnant. Seeing her abnormal appearance, her mother inquired, whereupon she disclosed the occurrence. Then thereafter, her mother disclosed the same to her father and then, both of them proceeded to police station carrying her, but were forbidden by the villagers on the score of matter to be resolved in the village itself and for that, Panchayati was convened wherein there was



admission at the end of accused and further, an undertaking of marriage, which later on declined. Subsequently thereof, the accused persons, so named, came with medicine and tried to forcibly administer, which she spat. It has further been disclosed that then thereafter, they came to Court, got the complaint scribed and then, filed. Also submitted that during course of trial, she begotten a child, who subsequently died, identified the accused.

11. During cross-examination at Para-7, she had stated that first incident of rape was committed four months prior to the date of filing of the complaint petition. The first occurrence is of the month of 'Ashadh'. At that very time, it was 5.00 P.M. At Para-8, the present location of the land has been tested. In Para-9, she had disclosed that she is unable to disclose the boundary of the P.O. At that very time, the jute plant attained seven hands height. At that very time, none was present in surrounding. As soon as, she reached at the jute field, accused Ubed caught hold her and then, pulled her inside the jute field. During course thereof, she had fallen down even then, was dragged. She had not sustained any injury over her thigh, but she had sustained injury over her buttock. However, she had not examined herself by a doctor with regard to the aforesaid injury. In Para-10, she had stated that after dragging inside the jute field, first of all, he shown knife and threatened in case of raising of alarm, she will be



murdered, whereupon she became stunt and then, he broken string and then, committed rape. During course thereof, the accused continued to threaten her with the knife. She had further stated that accused had not come to her place nor had threatened her after coming to her place. In Para-11, she had disclosed that while she was carrying pregnancy of four months, her physical feature was perceived by her mother, whereupon she inquired. On query, she disclosed about the occurrence. Panchayati was convened after 4-5 days thereafter and the case has been instituted 10-12 days after the Panchayati. At Para-12, she had stated that second incident had occurred after 4-5 days of the first incident in the same field. She had denied the suggestion that in her statement before the Chief Judicial Magistrate, she had disclosed that 8-10 days after the first incident, 2nd incident took place. She had further stated that while she had gone to the field in order to pluck the leaves of jute, she was raped on the pretext of Chhura. In Para-13, she had stated that at the time of first incident of rape, she had protested. She had raised alarm. At Para-14, she had stated that she is exactly not remembering how much time from today, Panchayati was convened and in likewise manner, the time when accused persons came to administer medicine. She had further stated that at the time of first incident, Ubed had caught hold her both hands, pressed her leg by his own leg and then, committed rape. At that very time, he was armed



with knife having in one hand. In Para-16, she had also stated that at the time of second incident also, she was threatened of dire consequences. In Paras-17, 18, there happens to be cross-examination with regard to Panchayati wherein she had stated that Panchayati was convened at the darwaza of Suleman wherein he along with her father, brother and members of the society were present, Ubed was also present in Panchayati. His father was absent. Ubed had admitted to marry. Then had stated that she had not spoken before the Chief Judicial Magistrate that Ubed declined to marry. In Para-19, she had stated that she was raped thrice by Ubed. She had denied to have stated that she slept with Ubed four times. Then had stated that he forcibly called her. In Para-21, he had stated that she had begotten a dead child at her house. She had not obtained certificate regarding the same. She was medically examined on an order of the Court. The child begotten after four months from the date of her S.A. In Para-22, she admitted Jahrul Haque to be Dewar of her sister Umeda. Then had denied the suggestion that she had developed illicit relationship with him about 5-6 months prior to the institution of the case as a result of which, she became pregnant. After coming to know about the same, the other co-villagers including father of Ubed rebuked and further, directed her father to marry her with Jahrul, otherwise will be ousted from the village. As Jahrul declined to marry, whereupon this case has



been instituted levelling false and frivolous allegation.

12. PW-2 is the mother, who had deposed that victim is her daughter. On query, she disclosed about 3 ½ years ago that on the pretext of knife, Ubed had committed rape upon her and further, threatened that in case of divulgence, she will be murdered. She had also disclosed that Ubed had raped her thrice as a result of which, she became pregnant. Panchayati was convened, but on account of absence of Ubed, had gone frustrated. Thereafter, Ubed, Samad, Latifur forcibly administered medicine to the victim in order to abort. This case lastly been instituted. Her daughter had begotten a dead child. During cross-examination, she had stated that at Para-5 that at the time of disclosure at the end of victim, she was pregnant of three months. After three months, Panchayati was convened. At Para-6, she had stated that at the time of her statement before the Magistrate, victim was carrying pregnancy of eight months. In Para-7, she had stated that after third incident of rape, she had disclosed commission of rape on her on query. At that very time, she was carrying pregnancy of three months. In Para-8, she had stated that Panchayati was convened three months after the last incident of rape. She had not participated. She is not knowing, who had participated during course of Panchayati. The accused persons came ten days after the Panchayati to administer medicine. In Para-10, she had stated that



victim begotten a child four months after the institution of the case. At Para-12, she admitted Jahrul to be son of her Samdhi. Then had denied the suggestion that victim had developed illicit relationship with Jahrul about six months prior to the institution of case, whereupon villagers came to know whereupon, father of Ubed and other co-villagers scolded and further, directed to marry the victim with Jahrul Haque, otherwise they will be ousted from the village. Jahrul declined to marry, so this case has purposely been instituted against Ubed.

13. PW-3 is the father. During his examination-in-chief, he had stated that on the disclosure made by his daughter to his wife. He also made query, whereupon she disclosed that on account of commission of rape by Ubed, she has become pregnant. She had also disclosed that she was raped when she had gone to pluck jute leaves from her own field. Panchayati was convened wherein all the accused persons have threatened, as such, had gone frustrated. Then thereafter, Ubed, Samad, Latifur came at his place, administered medicine to victim, but his daughter spat the same. Later on, his daughter begotten a dead child. Identified the accused. During cross-examination at Para-3, he had stated that during course of statement before the Magistrate, he had stated that when his daughter had gone to pluck jute leaf, she was raped by the appellant. In Para-4, he had stated that



he had not seen the occurrence. He came to know on the disclosure made by the victim on query based on an information given by his wife regarding the occurrence. Then, there happens to be disclosure with regard to Panchayati at Paras-5, 6, 7, 8 and 9. In Para-10, he had stated that he had not gone to the police station. Why not he had gone to police station, he is unable to explain. Then had stated that he came to Court after four months of Panchayati. He is unable to disclose the reason behind it. Then had denied the suggestion that his daughter had developed illicit relationship with Jahrul Haque, whereupon father of Ubed and others scolded him and further, directed to get the victim married with Jahrul, otherwise will be ousted from the village. Because of the fact that he became annoyed with the activity of the father of Ubed, on account thereof, he got this case filed.

14. PW-1 is the brother. During course of his examination-in-chief, he reiterated the prosecution version. He had also stated that with regard to convening of Panchayati. He had further stated that after institution of the case, statement of the victim, she had begotten a dead child. During cross-examination, at Paras-2, 3, there happens to be contradiction. In Para-4, had stated that he is not an eye witness to occurrence. At Para-6, he had stated that he is not remembering the exact date, time of commission of the rape. He had further stated that victim was examined by the doctor about four



months after the occurrence. At Para-8, he had denied the suggestion that his sister was inclined to marry with Jahrul. He had denied the suggestion that she had developed illicit relationship with Jahrul Haque 5-6 months prior to the institution of case, whereupon father of Ubed had scolded and as Jahrul declined to marry then thereafter, this case has been instituted putting false and frivolous allegation.

15. PWs-4 and 5 are the co-villagers, who have corroborated the evidence on hearsay basis. During cross-examination, they have stated that they have not seen the occurrence.

16. Defence had also examined three DWs. DW-1 is Md. Suleman. He had stated that he knew informant/ victim as well as accused Ubed being co-villagers. He had further stated that for commission of rape by Ubed over the victim, no Panchayati was convened at his darwaza. He had not come to know that victim was raped by Ubed. Then had stated that there was rumour in the village that victim was carrying illicit relationship with Jahrul about 5-6 months prior to the institution of the case for which, villagers as well as father of Ubed had scolded the father of victim and had further, directed to get the victim married as early as possible. He had further stated that father of Ubed was Ex-Sarpanch and so, he had directed that in case of disobedience of his direction, the prosecution party will be ousted from the caste. In the aforesaid background, this case has



been registered out of malice, grudge. This case is false, Ubed is of good character. Victim is of bad repute. Then had disclosed that cousin of victim is married with his son. During course of cross-examination, he had said that he had come to depose at the instance of accused. He had further stated that he came to know about the rape after institution of the case.

17. DW-2, is Latifur Rahman, father of the appellant. He had stated that he was Sarpanch of the Panchayat about 30 years. He had further stated that the victim has instituted a case against Ubed on 03.11.2001. 5-6 months prior to institution of this case, a rumour floated in the village that the victim was carrying illicit relationship with Jahrul, who happens to be Dewar of sister of the victim. Villagers have directed the father of the victim to get both of them married, otherwise they will be ousted from the village. Jahrul declined to marry with the victim, because of the fact that he had scolded father of the victim, on account thereof, this case has been instituted falsely against his son. He has got no information with regard to incident of rape. He had further stated that since 3-4 years back, the character of the victim is under question mark. During cross-examination, he had stated that he had not informed anywhere with regard to illicit relationship in between Jahrul and victim. He had further stated that he had not intimated anywhere with regard to



threatening having given by the father of the victim. Then had denied the suggestion that in order to save his son, he has come forward to depose falsely. He had denied the suggestion that victim was raped by his son.

18. DW-3 had stated that he happens to be Mukhiya of the Panchayat since 2001. Again corrected, Mukhiya is his wife. He knew the victim as well as Ubed. Then had stated that before institution of case a rumour floated that the victim was carrying illicit relationship with Jahrul. He had further stated that father of accused Ubed is Ex-Sarpanch. He along with Sarpanch had directed the father of the victim to get her marriage with Jahrul, but Jahrul did not accept the same, whereupon father of Ubed had scolded him as a result of which, the victim had instituted this case against Ubed on an order of her parents. He had further stated that for the 7-8 months prior to the institution of the case, there was rumour over character of the victim. He had further stated that he does not know with regard to Panchayati. He had further stated that character of Ubed is good. There was no complaint against him. He had further stated that this case happens to be false to his best of knowledge. During cross-examination, he had stated that during his tenure, he had not received any sort of complaint over character of the victim. He had further stated that he was not knowing presence of any kind of evidence divulging illicit



relationship in between the victim with Jahrul. Then had stated that there was no document prepared during course of Panchayati. Then had denied the suggestion that being old friend of the father of Ubed, he has falsely deposed.

19. As stated above, the accused had not denied the victim stressed sexually, pregnancy, but having a counter version that she carried the same on account of suffering illicit relationship with Dewar of her sister namely Jahrul. When the aforesaid them is taken together, it is evident that though prosecution witnesses were suggested, but during course of examination of DWs that it is evident that DW-1 had not spoken a single word on that very score. DW-2, father of the accused, had not shown presence of DW-3 while DW-3 had stated that he had along with father of the accused namely DW-2, had scolded the father of the victim. In the aforesaid background, why not DW-3 was also dragged in the proceeding, when he was also actively involved during course of scolding of the victim is not at all explained.

20. In the background of admitted fact, there happens to be nothing adverse to the prosecution case on account of status of the witnesses, who had not claimed to be an eye witness, rather whatever they deposed, on the basis of disclosure of the victim on query. So, by such evidence, they corroborated the evidence of the victim (PW-6).



21. In *Sham Singh v. State of Haryana* reported in *A.I.R. 2018 SC 3976*, it has been held:-

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. (see [State of Punjab vs. Gurmit Singh](#), (1996) 2 SCC 384 (para21)).

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a



court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (see [Ranjit Hazarika vs. State of Assam](#), (1998) 8 SCC 635).

8. It is also relevant to note the following observations of this Court in the case of [Raju vs. State of M.P.](#) (2008) 15 SCC 133, which read thus:

“10. The aforesaid judgments lay down the basic



principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

We have assessed the entire material on record to satisfy our conscience once again, keeping in mind the



aforementioned set principles in such matters.

22. In ***Wahid Khan v. State of Madhya Pradesh reported in 2010 SC 1***, it has been held:-

“21. It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are.

22. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible”.

23. In the background of principle as referred hereinabove, now the evidence of the prosecutrix (PW-6) has to be



seen. It is evident that with regard to 2nd and 3rd incident of occurrence, the allegation may suggest some abnormal conduct, but as she was not at all tested how she dared to visit the place repeatedly, moreover, the first incident of rape is found also not been properly dealt with a specific cross-examination on that very score, when she had disclosed the manner of occurrence during cross-examination at Paras-9, 12, 16.

24. Now, the question remained, there happens to be inordinate delay in launching of the prosecution. Whether the same would be a good ground for rejection of the prosecution case. In ***State of Himachal Pradesh vs. Sanjay Kumar alias Sunny reported in 2017 CRI.L.J. 1443***, it has been held:-

“24. When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in [Tulshidas Kanolkar v. State of Goa](#)[(2003)8 SCC 590]:

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the



accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.”

25. [In Karnel Singh v. State of Madhya Pradesh](#)[(1995)5 SCC 518], this Court observed that:

“7...The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of



society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false..."

26. Likewise, in [State of Punjab v. Gurmit Singh & Ors.](#) [(1996)2 SCC 384], it was observed:

"8...The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged..."

25. In ***Gian Chand & others vs. State of Haryana*** reported in 2013(4) P.L.J.R. 7 (S.C.), it has been held:-

"11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

"31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of



it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of



missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

26. From the evidence of the doctor (PW-7), though is also found admitted at the end of the defence that the victim was carrying pregnancy, has been corroborated by the doctor to be of 20 weeks, goes out of controversy. Apart from this, even in worst case accepting the victim to be a consenting party for the time being, the defence had not suggested her to be major. On the other hand, there happens to be specific disclosure in the complaint petition that at the time of occurrence, she was less than 15 years of age, which has not been challenged. That being so, at that very moment, she was not at all competent enough to give her consent.

27. So far application of Section 313/ 511 I.P.C. is concerned, it is not at all found duly substantiated in the background of the fact that in spite of inconsistency, there happens to be no disclosure that she was administered liquid or tablet, whereupon did not justify its application. Hence, is set aside. However, so far finding relating to Section 376 I.P.C. is concerned, after having analytical scrutiny of the material available on record.

28. The finding recorded by the learned lower Court did not attract interference. Consequent thereupon, the same is confirmed.



As appeal to that extent sans merit, whereupon dismissed. Appellant is on bail, hence his bail bond is hereby cancelled directing him to surrender before the learned lower Court to serve out the remaining part of sentence within four weeks, failing which the learned lower Court will proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.10.2018
Transmission Date	12.10.2018

