

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.363 of 2015

Arising Out of PS.Case No. -144 Year- 1992 Thana -JOGAPATTI District-
WESTCHAMPARAN(BETTIAH)

- =====
- 1. **Chhathu Yadav**, Son of Late Jagarnath Yadav,
 - 2. **Bhikhari Yadav**, Son of Late Bhola Yadav,
 - 3. **Mangani Yadav @ Mangnu Yadav**, Son of Late Bhola Yadav, All residents of village - Ojha Barwa, P.S. - Yogapatti (Shanichari), District - West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 422 of 2015

Arising Out of PS.Case No. -144 Year- 1992 Thana -JOGAPATTI District-
WESTCHAMPARAN(BETTIAH)

- =====
- 1. **Dharam Yadav**, son of Late Bhola Yadav
 - 2. **Laxmi Yadav**, son of Late Muneshwar Yadav, All residents of village - Ojha Barwa, P.S. - Yogapatti (Shanichari), District - West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.363 of 2015)

For the Appellant/s : Mr. Umesh Chandra Verma-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

(In CR. APP (SJ) No.422 of 2015)

For the Appellant/s : Mr. Umesh Chandra Verma-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: 14-05-2018

Cr. Appeal (S.J.) No.363 of 2015 wherein Chhathu Yadav, Bhikhari Yadav, Mangani Yadav @ Mangnu Yadav are the appellants and Cr. Appeal (S.J.) No.422 of 2015 wherein Dharam



Yadav and Laxmi Yadav are the appellants originate against the common judgment of conviction dated 28.05.2015 and order of sentence dated 29.05.2015 whereby and whereunder appellant Dharam Yadav and Laxmi Yadav have been found guilty for an offence punishable under Section 376(g) of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months, additionally, under Section 342 of the I.P.C. and sentenced to undergo R.I. for one month. Dharam Yadav has further been convicted for an offence under Section 323 of the I.P.C. and sentenced to undergo R.I. for three months. Chhathu Yadav, Bhikhari Yadav and Mangani Yadav @ Mangnu Yadav have been held guilty for an offence punishable under Section 376(g)/ 34 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for six months by the 4th Additional Sessions Judge, West Champaran at Bettiah in Sessions Trial No.445 of 1996, whereupon have been heard together and are being disposed of by a common judgment.

2. PW-6, victim (name withheld) recorded F.I.R. on 11.07.1992 at about 10.30 a.m. disclosing therein that about 15-16 days ago (25.06.1992) at about 5.00 p.m. while she was returning from a field after scraping, collecting grass in basket and carrying the



same over her head. As soon as, she reached near the darwaza of Dharam Yadav, Dharam Yadav came out, caught hold her, began to assault with fists and slaps and then, threw her basket. Then, he dragged her. She at that very moment shouted for her rescue, during midst thereof, accused Laxmi Yadav came from behind, lifted her, took her inside the room and then, threw her on the ground. She tried to resist, but was overpowered by Dharam Yadav and then, after lifting her Sari, committed rape. During course thereof, he also tore her blouse. She raised alarm. She had heard murmuring of so many persons, even then, she was not at all released. After commission of rape by Dharam Yadav, she tried to come out, but was apprehended by Laxmi Yadav, who also threw her on the ground and then, committed rape. After the rape, anyhow she came out from the room and then, saw Bhikhari Yadav, Mangni Yadav and Chhathu Yadav armed with lathi and were keeping watch over the persons, who have assembled there, out of whom, she had identified Ramjit Prasad her Bhainsur and co-villager Lagan Rout, Aaliya Khan, Hiranman Prasad and others. After sometime, her husband came home, when she disclosed the occurrence. Villagers were also saying that no such type of occurrence had ever taken place. Now, it is difficult to preserve one's prestige. Then, they were about to proceed to police station, but were presented by the accused persons on the pretext of bhala and lathi. After spending two days, anyhow they succeeded in coming out



from their village and then, had gone to Superintendent of Police and placed an application before him. Subsequently thereof, having been informed by the Police Station, they came to Police Station and gave her statement. It has also been disclosed that accused persons are desperate fellow.

3. After registration of Yogapatti P.S. Case No.144 of 1992, investigation commenced and after concluding the same, chargesheet was submitted on the basis of which, the trial commenced and culminated in a manner, subject matter of instant appeal.

4. 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. It has also been pleaded that on account of land dispute persisting since before amongst the parties, this false case has been instituted by the informant at the instance of her husband and to substantiate the same, one DW has also been examined.

5. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1, Umesh Prasad, PW-2, Ramjit Rout, PW-3, Hiranman Rout, PW-4, Ramlagan Patel, PW-5, Surat Patel and PW-6, victim. Side by side, had also exhibited the document as Exhibit-1, formal F.I.R. As stated above, DW-1,



Rajendra Pal has been examined in defence.

6. The learned counsel for the appellant while assailing the judgment impugned has submitted that the finding recorded by the learned lower Court is not at all maintainable in the eye of law, because of the fact that A) there happens to be inordinate delay of 16 days in launching of instant case without any cogent explanation and that being so, the prosecution case is to be seen with suspicious eye, B) Doctor has not been examined and that being so, there happens to be absence of supportive evidence, C) I.O. has not been examined and on account thereof, apart from causing prejudice to the interest of the appellant, it has also caused dent in the prosecution case on account of absence of objective finding of the P.O., which could have been essential in the facts and circumstances of the case, more particularly when the evidence of the victim is that she was raped after dragging her inside the house of the appellant Dharam Yadav. None other have had claimed to have witnessed the occurrence and the manner whereunder they deposed cast doubt over credibility of the prosecutrix. So, the cumulative effect did not justify the finding recorded by the learned lower Court and on account thereof, the judgment impugned is fit to be set aside.

7. On the other hand, it has been submitted on behalf of learned Additional Public Prosecutor that from perusal of the



judgment impugned, it is apparent that the learned lower Court had considered each and every pros and cons coming out and after analyzing the same, rightly inferred against the appellants and that being so, the judgment impugned did not attract interference.

8. Admittedly, I.O. has not been examined. The non-examination of the I.O. really caused prejudice to the interest of the appellant so much so it has caused dent to the prosecution version is to be seen in overall consideration of the materials available on the record. In *Lahu Kamlakar Patil and another vs. State of Maharashtra reported in (2013)6 SCC 417*, it has been held:-

“18.It is an accepted principle that non-examination of the Investigating Officer is not fatal to the prosecution case. In *Behari Prasad v. State of Bihar*[(2010) 6 SCC 1], this Court has stated that non-examination of the Investigating Officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In *Bahadur Naik v. State of Bihar*[(1996) 2 SCC 317], it has been opined that when no material contradictions have been brought out, then non-examination of the Investigating Officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial judge nor the High Court has delved into the issue of non-examination of the Investigating Officer. On a perusal of the entire material



brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the Code. Thus, this Court in Arvind Singh v. State of Bihar[(2000) 9 SCC 153], Rattanlal v. State of Jammu and Kashmir[(2001)6 SCC 407] and Ravishwar Manjhi and others v. State of Jharkhand[(2007) 13 SCC 18], has explained certain circumstances where the examination of Investigating Officer becomes vital. We are disposed to think that the present case is one where the Investigating Officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

Same view has also been taken in ***Baldev Singh v. State of Haryana reported in 2016 CRL.L.J. 154.***

9. Furthermore, it is also evident that there happens to be inordinate delay in the launching of the prosecution. From the initial version, it is evident that in the F.I.R., there happens to be specific disclosure that while victim along with her husband was to proceed to P.S., the accused persons cordoned them on the point of deadly weapon and they were forced to remain inside their house and lastly, after spending three days, anyhow they got an opportunity, whereupon they came out and took necessary steps. On that very moment, PW-5,



husband of the victim at Para-4 and PW-6 at Para-3 had detailed properly. It is further evident from the record that on the factum of approaching to S.P. Sahab, PW-5 was cross-examined under Paras-14,15 whereas PW-6 at Para-39 has been tested and more or less, they have corroborated their earlier version. Moreover, 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...”

10. Doctor has not been examined. There happens to be definite assertion at the end of the PW-6, victim when she was examined by the doctor after 15-16 days of the occurrence. Admittedly, such long interval, made the medical report of no consequence. That being so, examination or non-examination of the doctor is not going to help either of the side and so, the non-examination of the doctor could not be found adverse to the interest of prosecution.

11. Now, coming to material witnesses, admittedly, PW-1 is formal in nature and so, his evidence is not relevant in the present context. PW-2 is the elder brother of husband of the victim (PW-6). He had stated that while he was coming from his field and reached near the house of Panditji, he had seen the victim coming along with grass, who was apprehended by Dharam Yadav. She raised alarm, whereupon he rushed. Bhikhari Yadav, Mangni Yadav and Chhathu



Yadav attempted upon him to assault with lathi, whereupon he escaped there from, claimed identification of the accused. Then had stated that after half an hour when victim came, he had seen her blouse torn. She had also disclosed that she was raped by Laxmi and Dharam Yadav. During cross-examination at Para-4, she had stated that he is separate from the victim. At Para-5, he had stated that quarrel took place at the darwaza of Dharam Yadav. He had further stated that when he came, he met with the victim. She talked with him and during course thereof, she had disclosed that she was assaulted. He had not disclosed the same to any of the villagers. In Para-6, he had admitted that he had not made statement before the police that at that very time, he was coming from his field. He had seen victim coming with grass, who was caught hold by Dharam Yadav and then, both of them indulged in scuffle and then thereafter, she was taken away, victim had raised alarm. He had not named Bhikhari Yadav, Mangni Yadav, Chhathu Yadav and Dharam Yadav. He was not at his house. Victim had disclosed that Laxmi and Dharam have raped upon her and then, had denied the suggestion that he had deposed falsely.

12. PW-3 had deposed that on the alleged date and time of occurrence, he was returning from the shop of Laxmi Thakur after purchasing lantern glass and during course thereof, he had seen Dharam Yadav having caught hold the victim and assaulted with fists



and slaps. Then thereafter, Dharam Yadav dragged her inside his house. When he tried to intervene, Chhathu Yadav, Mangni Yadav, Bhikhari Yadav and Dharam Yadav chased him with lathi, whereupon he ran away. After half an hour, he met with the victim, who had disclosed that she was raped by Dharam Yadav. Again said that the victim had disclosed that she was raped by Laxmi Yadav and Dharam Yadav. He had not seen the incident. He had seen cloth of the victim in torn condition. During course of cross-examination, he had disclosed the genealogical table of the accused as Dharam Yadav, Mangni Yadav and Bhikhari Yadav were the full-brothers while Chhathu Yadav was cousin brother. Laxmi Yadav was the agnate of Dharam Yadav. Then had disclosed the boundary of the P.O. as North-house of Karam Yadav and Ganesh Rout, South-house of Bhikhari Yadav, East-house of Mangru and Laxmi Yadav and West-house of Kilandi Baitha. House of Dharam Yadav happens to be thatched one. He had not gone inside his house. Then had shown the distance of house of each of the accused from the house of Dharam Yadav. He had further stated that while he was returning from the shop, he had seen Laxmi Yadav, Dharam Yadav and the victim at the darwaza of Dharam Yadav. He had further stated that Dharam Yadav was in Lungi and Ganji. At that very time, Laxmi Yadav was at Mardani Kurta. Victim was wearing Sari and blouse of red colour. Her bangle was broken. When he saw her, there was cloth over her



body. She was in middle of the road. Three accused were in between him as well as the victim. He is unable to say how many injuries were over the person of the victim. Victim had not fallen over the ground rather she was taken away by dragging. At that very time, she had raised alarm. At that very time, none other than, he was present. She was being assaulted by Dharam Yadav only. During course thereof, Sari had fallen from her body. When other accused chased him, at that very time, victim was taken away inside the house of Dharam Yadav. Then, he came to his house, he had not gone to inform Chaukidar. After sometime, when he had gone to the house of Dharam Yadav, so many villagers were present. He had not seen incident of rape. Then there happens to be contradiction.

13. PW-4 had stated that on the alleged date and time of occurrence, he was at his darwaza. At that very time, victim was going towards her house carrying grass. As soon as she reached in front of darwaza of Dharam Yadav, Dharam pushed the bucket and then, dragged her inside his house. What had happened then thereafter, he is unable to say. At that very time, none was along with her. Subsequently thereof, he had not talked with the victim. Identified the accused. At Para-5, he had stated that as he had not gone to P.O. on account thereof, he is unable to say what had occurred inside the house. So many persons have assembled there, but he is



unable to disclose their names. Then had denied the suggestion that no such type of occurrence had ever taken place, but being the henchmen of the victim had deposed falsely.

14. PW-5 is the husband of the victim. He had stated that on the alleged date and time of occurrence while he was engaged in menial work by the Mukhiyaji, his son Kamlesh aged about 8 years came and informed that his mother has been taken away by the accused persons inside the house of Dharam Yadav. While he was in a way, Pancham and his wife have forbade him not to go, otherwise his life will be at stake, whereupon he had gone to the Darwaza of Ramakant. Subsequently thereof, his wife came at the darwaza of Mukhiyaji weeping and disclosed that Dharam and Laxmi committed rape inside the house of Dharam and at that very time, Mangru, Bhikhari and Chhathu Yadav armed with lathi were keeping watch. He had seen blouse of his wife torn. There was Panchayati at the place of Mukhiyaji, but it could not be materialized. Mukhiyaji then directed to come on the following day on which date, they again gone, but nothing happened. Then thereafter, he had gone to S.P., who had directed him to go to P.S. Daroga had taken his statement, identified the accused. During cross-examination at Paras-6, 7, 8, 9, 10 and 11, there happens to be cross-examination relating to family status of the accused persons. In Para-12, he had stated his son along with Pancham and his wife had disclosed regarding the occurrence.



Furthermore, they had also disclosed that in case, he would go to house of Dharam, will be assaulted. In Para 13, he had stated that he met with his wife at the house of Mukhiyaji at about 5.30 P.M, She was weeping. She disclosed with regard to occurrence. Mukhiyaji was also present. As the guests were there on account thereof, he had not given much time. At Para-14, he had stated that when Panchayati did not materialize, then they have gone to the S.P. where filed an application and the same was sent to the concerned police station. In Para-17, he had stated that whatever been deposed by him in the Court, was stated by him before the police also and on that very score, there happens to be contradiction. Then had denied the suggestion that at the instance of Mukhiyaji, this case has been instituted.

15. PW-6 is the victim. She had deposed that on the alleged date and time of occurrence while she was returning from the field after scraping grass and as soon as reached in front of darwaza of Dharam Yadav, Dharam Yadav pulled bucket full of grass and then, took her inside his house, assaulting her. After taking her inside the house, he threw her on the ground and then, committed rape after lifting sari. When Dharam Yadav came out, Laxmi came in, who also caught hold her, forced her to lie down and then, committed rape on her. They have also torn her blouse. When she came out from the house, she had seen Mangru Yadav, Bhikhari Yadav, Chhatu Yadav armed with lathi and were saying, whoever will dare to come, will be



assaulted. She had seen Hiranman Patel, Ramji Patel, Lalan Patel, Lagan, Aalim Mian along with others, standing away therefrom, who have seen the occurrence. When her husband came, she disclosed, whereupon her husband opined to go to police station, but accused persons became adamant to assault, whereupon out of fear, they remained inside their house for two days. Then thereafter, they got an opportunity, came out and then, met with S.P. before whom, presented an application, which was sent to the local police. Thereafter, police had recorded her statement, whereupon she along with her husband put their thumb impression, identified the accused. During cross-examination at Para-7, she had stated that 50-60 houses lies at her village belonging to all caste. Then had disclosed that Mukhiyaji is Brahmn by caste. She had disclosed at Para-8 that she along with wife of Kapildeo was engaged in scraping the grass. At Para-9, she had disclosed the boundary of the P.O. as West-house of Dharam Yadav, South-house of Birandi Baitha, North-house of Bhikhari Yadav, East-houses of Chhathu Yadav and Mangru Yadav. In Para-10, she had stated that Dharam Yadav has thatched house. The house of Chaukidar lies at village-Sikta, having more than half kilometer. Then at Para-12, there happens to be cross-examination relating to inter se relationship amongst the accused. In Para-13, she had stated that at the time of occurrence, none of female members, children were present at the house of Dharam Yadav. There were 4-5 family members at the



time of occurrence. They might have gone to scrap the grass. In Para-15, she had stated that the road lies in front of house of Dharam at a distance of two Laggi. At Para-17, she had stated that she had got no animosity with the accused persons. Her house lies after 4-5 houses from the P.O. Then at Para-18 and 19, there happens to be cross-examination relating to houses of the witnesses including others. In Para-22, she had stated that at the time of occurrence, she was wearing green sari and blouse of red colour. Now, those cloths are not available. Darogaji had seen blouse. In Para-23, she had stated that during course of returning to her house after carrying grass, the wife of Kapildeo got separated and gone towards her house. In Para-24, she had stated that when she reached in front of house of Dharam, none was present over the road. Accused was also not present. Then had stated that when her bucket was pulled, she raised alarm. She tried to flee. Grass scattered. She was assaulted approximately half an hour. She was also assaulted over her mouth. In Para-25, she had stated that she had not fallen over the road rather she was dragged. At Para-26, she had stated that she knew the meaning "Balatkar". Then had stated at Para-27 that she was dragged. In Para-28, she had stated that occurrence took place for 10-15 minutes. At that very time, the darkness had not fallen nor it was full of light. In Para-29, she had stated that she was conscious at the time of commission of the occurrence. She was not at all assaulted after the occurrence. She had



tried to save herself. She had not bite as her both hand were caught hold by the accused. In Para-30, she had stated that at the time of occurrence, she had raised alarm, but none other came as accused had kept watch outside the darwaza. When she was lying over the ground after having been raped by Dharam Yadav, Laxmi Yadav came. At that very time, also she raised alarm. She had made an effort to save herself, even then Laxmi Yadav also raped her. In Para-33, she had stated that the villagers were seeing the event standing away from the house of Dharam, out of fear. Then at Para-34 had stated that when Laxmi came out, she also came out. Darkness had fallen. She had seen so many persons present there. In Para-36, she had stated that she on her own came out weeping from the house of Dharam. Sari and saya were soiled, bangles broken down. In Para-37, she said that on account of breakage of bangle, she had not sustained injury. Then had stated that at a distance of two laggi from the house of accused persons, villagers were present. She is unable to disclose the names of all the villagers. In Para-38, she had stated that other accused namely Bhikhari, Mangru and Chhathu were standing one and half laggi away from the darwaza. In Para-39, she had stated that she had disclosed the occurrence to her husband. They have gone to S.P. after three days. She met with S.P. She had presented the application before the S.P., which was sent to the police. She was medically examined after 15-16 of the occurrence. Her statement was recorded by the police.



Police had also came to her village. Police had gone inside the house of the accused, but she is unable to say what the police did. In Para-42, she had stated that when she had not informed the Chaukidar rather she had gone to Mukhiyaji. At Para-43, she had stated that she was not treated of the assault. She had disclosed regarding assault to the police. In Para-44, she had denied the suggestion that no such type of occurrence had ever taken place rather accused persons have been implicated on account of animosity. Then was suggested that during course of scrapping of grass, she had quarreled with the female members of the accused persons, whereupon lodged this false case.

16. DW-1 is Rajendra Pal, who had come to depose that his house lies by the side of the house of Surat Patel, husband of the informant. He had further stated that there happens to be land dispute in between Surat Patel and accused persons as land of both the parties happen to be contiguous to each other. In the aforesaid background, Surat Patel got this case instituted at the instance of his wife. During cross-examination, he had stated that his house happens to be at village-Sikta Morha. P.O. village happens to be his Nanihal. He has got no document to support that he is residing at his Nanihal. At Para-8, he had stated that there happens to be no other case in between the parties. He had further stated that there was no dispute amongst the parties since before the occurrence. Then again said that land dispute was there. Then had stated that he is unable to disclose the khata



number, khesra number and boundary of the land.

17. After analyzing the evidence available on the record, it is evident that two kinds of evidences have been adduced by the prosecution, the first part happens to be, who have not seen the occurrence, but came to know after having been informed by the victim, corroborative in nature and the second kind happens to be that of victim.

18. So far rape case is concerned, considering the Indian social infrastructure, whereunder prestige of woman is found of paramount consideration, whereupon there happens to be consistent judicial view that the evidence of the victim happens to be that of prima importance. Unless and until, there happens to be cogent reason to disbelieve the same on account of persistence of material development, animosity, inconsistency, the evidence of prosecutrix is to be accepted. From the evidence available on the record that while cross-examining the victim as well as while examining DW-1, defence had not been able to place the prevailing animosity, if any, even the land dispute as suggested by the DW-1 has not properly been substantiated as DW-1 had failed to disclose the survey plot number or boundary of the land of both the parties being contiguous to each other and that happens to be reason behind absence of definite plea while cross-examining the prosecutrix. Apart from this, from the evidence of the victim (PW-6), it is evident that she was not cross-



examined on the factum of occurrence that means to say, over the rape by way of dragging the victim inside the house of Dharam Yadav and the manner whereunder she was overpowered by Dharam Yadav during course of commission of rape and then, by Laxmi Yadav. That being so, whatever been deposed by the victim is found uncontroverted. In likewise manner, there happens to be status of remaining three appellants. In ***State of Himachal Pradesh vs. Sanjay Kumar alias Sunny (Supra)***, it has been held:-

“31. After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the court finds it



difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See [Bhupinder Sharma v. State of Himachal Pradesh](#) (2003) 8 SCC 551}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

That being so, the evidence of victim is found reliable and is accepted.

19. However, it is made clear that in terms of Explanation-1 of Section 376 of the I.P.C. (the then prevailing) there was no occasion for the learned lower Court to have identified the appellants Chhathu Yadav, Bhikhari Yadav and Mangni Yadav with the add of Section 34 of the I.P.C. rather in likewise manner, they would have also been identified under Section 376(g) of the I.P.C.



20. With the aforesaid modification, instant appeal sans merit and is accordingly, dismissed. Appellants are on bail, hence their bail bonds are hereby cancelled directing them to surrender before the learned lower Court within four weeks to serve out the remaining part of sentence, failing which, the learned lower Court will be at liberty to proceed against them in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	17.05.2018
Transmission Date	17.05.2018

