

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.169 OF 2003

The State of Maharashtra
Through A.P.I.
Kasoda Police Station,
Taluka Erandol, Dist. Jalgaon

.. Appellant
(Ori. Complainant)

Versus

Ravindra Kashinath Ghodke
Age : 32 yrs, Occu : Labour,
R/o. Kasoda, Tal. Erandol,
District – Jalgaon

.. Respondent
(Ori. Accused)

....

APP for Appellant - State : Shri S.D. Ghayal
Advocate for Respondent : Shri G.V. Wani

.....

CORAM : SUNIL P. DESHMUKH &
P. R. BORA, JJ.

Reserved on : 27.04.2018
Pronounced on : 03.05.2018

Judgment (Per P.R. Bora, J) :

1. The State has preferred the present appeal against the Judgement and order passed by First Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.142/2001 decided on 13th November, 2002. Present respondent was prosecuted in the aforesaid sessions case for the offences under Sections 342 & 376 of Indian Penal Code (hereinafter referred to as the 'I.P.C.').

Respondent was alleged to have wrongly confined the prosecutrix a minor girl aged about 9 years in his house. He was also alleged to have committed rape on the said minor girl. Learned Sessions Judge however acquitted the accused of both the aforesaid offences. Aggrieved by, the State has filed the present Criminal Appeal.

2. On report lodged by one Bapurao Eknath Patil (PW-7) in the Police Station at Kasoda on 03.05.2001 to the effect that, the accused, in his house committed rape on his minor niece that the investigation was set in motion. Contents of F.I.R. reveal that, on 03.05.2001 sometimes in between 12:00 noon to 01:00 p.m. when informant Bapurao Eknath Patil (PW-7) was sitting in his shop in front of his house, the prosecutrix came there with steal tiffin containing vegetables therein in her one hand and a 10 rupees note in other hand. She was weeping at that time. The wife of Bapurao Patil (PW-7) then called him in the house and informed that, the prosecutrix was raped by the accused. She also informed to Bapurao Patil (PW-7) that, while the prosecutrix was coming towards their house, the accused, took the prosecutrix in his

house and locking the door of the house from inside committed rape on her. She also informed that, the blood was oozing from the private part of the prosecutrix. She also told that, the prosecutrix was threatened by the accused not to disclose the said incident and that he had given Rs.10/- to the prosecutrix.

3. On receiving such information, Bapurao Patil (PW-7) rushed to the house of the accused, however it was found to be locked from outside. Bapurao Patil (PW-7) therefore rushed to the house of the mother of the accused where the sister of the accused was also residing and enquired with them about the accused. The mother of the accused informed Bapurao Patil (PW-7) that, the accused had been to them in the early morning and was demanding Rs.500/- for attending marriage. The mother of the accused also informed Bapurao Patil (PW-7) that, since she could not give the money as demanded by the accused, he quarreled with her and subsequently by obtaining the money from other person had gone to village Dapora, Dist. Jalgaon at his father-in-laws place. Bapurao Patil (PW-7) then went to Police Station Kasoda along with the prosecutrix and lodged the report of the alleged incident.

4. On the basis of the report so lodged by Bapurao Patil (PW-7), crime was registered against the accused for the offences under Sections 342 and 376 of I.P.C. The victim girl was immediately referred by the police authorities for medical examination to Primary Health Centre at Kasoda, where she was examined by Dr. Suresh Girdhar Patil (PW-6). On her examination by Dr. Suresh Patil (PW-6), it was noticed that, there was vaginal bleeding due to traumatic forceful intercourse. It was also noticed that, her vagina was swollen. Dr. Suresh Patil (PW-6) had also noticed that, injury to the vagina of the prosecutrix was fresh. Dr. Suresh Patil (PW-6) after administering tetanus injection referred the prosecutrix to the Civil Hospital at Jalgaon for further treatment.

5. In the meantime, the spot panchanama was prepared and the articles which were found existing on the spot of occurrence were seized by the police. The police also recorded the statements of necessary witnesses. The sample of the blood, vaginal swab etc. were collected. In the meantime, the accused was also arrested and his medical examination was got done.

His blood and semen samples were also collected. Investigating Officer then forwarded the articles, recovered from the spot of occurrence as well as handed over by the prosecutrix, to the Chemical Analyzer for their chemical analysis.

6. After completing the investigation the charge-sheet was filed against the respondent – accused for the offences under Sections 342 ad 376 of Indian Penal Code. Since the offence under Section 376 of I.P.C. was exclusively triable by the Court of Sessions, learned Judicial Magistrate, First Class committed the case to the Court of Sessions. After the case was committed, learned First Ad-hoc Additional Sessions Judge, Jalgaon framed the charge against the accused on 05.07.2002. The accused did not plead guilty and claimed to be tried.

7. In order to prove the guilt of the accused, the prosecution examined as many as 10 witnesses and also placed on record several documents. The defence of the accused was of total denial and false implication. Learned trial Judge after having assessed oral as well as documentary evidence brought before him, acquitted the accused of all the charges levelled

against him. Aggrieved by, the State has preferred the present appeal.

8. Shri S.D. Ghayal, learned APP appearing for the State assailed the impugned Judgment on various grounds. Learned APP submitted that, the trial Judge has failed in properly appreciating the evidence brought on record by the prosecution. Learned APP further submitted that, by drawing unwarranted inferences on some erroneous grounds, learned trial Judge has declined to believe the testimony of the prosecutrix. He further contended that, the medical evidence on record has also been rejected by the trial Court for wrong reasons. Learned APP submitted that, in fact the testimony of the prosecutrix coupled with the medical evidence on record was sufficient to hold the accused guilty for the offences charged against him. Learned APP submitted that, the trial Court has adopted too technical approach while appreciating the evidence on record and has given undue weightage to the minor contradictions and omissions. Learned APP further submitted that, total false defence was raised by the accused and that was the additional circumstances indicating his guilty mind, however

the trial Court has failed in appreciating the said aspect. Learned APP submitted that, the report of the alleged incident was most promptly lodged within 2 hours of the alleged occurrence and the prosecutrix was immediately referred for a medical examination. Learned APP submitted that, in the medical examination of the prosecutrix, it was revealed that, she was subjected to forcible penetrative intercourse. The blood was found oozing from vagina and it was also noticed that, the vagina was swollen. Learned APP further submitted that, it was also noticed that, the injuries caused to the prosecutrix were appearing to be fresh. Learned APP submitted that, the evidence which was brought on record by the prosecution, was thus sufficient to hold that the prosecutrix was raped. Learned APP further submitted that, the accused was specifically named by the prosecutrix. However, the trial Court wrongly reached to the conclusion that, identity of the accused was not established. Learned APP submitted that, considering the evidence on record, the Judgment and order of acquittal deserves to be set aside and quashed and accused needs to be held guilty for the offences charged against him.

9. Shri G.V. Wani, learned Counsel appearing for the respondent i.e. original accused supported the impugned Judgment and order. Learned Counsel submitted that, a well reasoned order has been passed by the trial Court. Learned Counsel submitted that, there are several discrepancies in the evidence of the prosecution witnesses and as such, the trial Court has rightly disbelieved the said evidence. Learned Counsel submitted that, most importantly the prosecution has failed in bringing on record any credible evidence as about the identity of the accused. Learned Counsel submitted that, having regard to the admissions given by the prosecutrix in her cross-examination, it is quite evident that, she was fully tutored by the informant as well as by the police. Learned Counsel bringing to my notice admission given by the prosecutrix that the accused was shown to her by the police and that was the reason she had identified the accused, submitted that in such circumstances in no case the conviction could have been based of the accused. Learned Counsel submitted that, the trial Court has rightly disbelieved the evidence of both the child witnesses and has correctly acquitted the respondent - accused. Learned Counsel, therefore, prayed for dismissal of the appeal.

10. We have carefully considered the submissions made by learned APP appearing for the State and learned Counsel appearing for the respondent. We have perused the impugned Judgment and the entire evidence on record.

11. On perusal of the impugned Judgment, it is revealed that, learned trial Judge has disbelieved almost entire evidence of the prosecution, which was brought on record during the course of the trial. Learned trial Judge has disbelieved the evidence of the prosecutrix as well as the evidence of PW-4 Yogesh, a minor boy. As has been observed by the learned trial Judge, the identity of the accused itself was not cogently established. The trial Court has also held that, about the time of the alleged occurrence and about the spot of occurrence also the prosecution has failed in bringing on record any dependable evidence. Not raising of any alarm by the victim girl at the time when the accused is alleged to have committed rape on her, non-existence of any injury on person of the prosecutrix, absence of any injury to the male organ of the accused, absence of semen in the vaginal swab as well as on apparels of the

prosecutrix and on the chadar, on which, the accused is alleged to have committed rape on the prosecutrix are held by the learned trial Judge to be the circumstances in favour of the accused. The medical evidence brought on record by the prosecution has also not been relied upon by the learned trial Judge.

12. First information report of the alleged incident was lodged by PW-7 Bapurao Patil at about 02:30 p.m. on 03.05.2001. It is thus evident that, the FIR was promptly lodged without loss of any time within two hours of the alleged occurrence. We have noted the contents of the F.I.R. in para 2 above. In the FIR, it was specifically alleged that, the accused took the prosecutrix inside of his house and committed rape on her.

13. After the FIR was registered by the police, the prosecutrix was immediately referred to the Primary Health Centre at Kasoda.

14. As has been deposed by Dr. Suresh Patil (PW-6), who

was attached to the Kasoda Primary Health Centre as Medical Officer on 03.05.2001, the prosecutrix, a minor girl aged about 8 years, was brought to Primary Health Centre, Kasoda for examination. Dr. Patil (PW-6) has further deposed that, when he examined the prosecutrix he found vaginal bleeding due to traumatic forceful intercourse. Dr. Patil (PW-6) has also deposed that, the vagina of the prosecutrix was swollen and injury to her vagina was fresh.

15. It was argued by the learned defence Counsel that, Dr. Patil in his cross-examination has admitted that, before examining the prosecutrix, he had not obtained the consent of the parents or guardians of the prosecutrix. Dr. Patil (PW-6) had also admitted that, he did not obtain the signature or the thumb impression of the victim girl on the certificate issued by him after her examination. Dr. Patil (PW-6) also admitted that, the certificate at Exh.22 issued by him was not in the prescribed format.

16. According to the learned defence Counsel, in the above circumstances no reliance can be placed on the evidence

of Dr. Patil and the certificate Exh.22 issued by him.

17. The question arises whether the admissions as are given by Dr. Patil (PW-6) will nullify or prove the facts as are deposed by him in his examination-in-chief to be concocted and false. Dr. Patil (PW-6) is an independent witness. At the relevant time, he was holding a responsible post of Medical Officer at the PHC, Kasoda. Nothing has been brought on record to show that, there was any reason for Dr. Patil to state any incorrect or false information before the Court or to suspect that he had any animus against the accused or was in any way interested in issuing false medical certificate.

18. In the circumstances, though it may be a fact that, before examination of the prosecutrix, he did not obtain the consent of the prosecutrix or her parents, the fact that, he examined the prosecutrix and on such examination found that, there was vaginal bleeding and her vagina was swollen and that the injury was fresh cannot be held to be false. The facts which have come on record through the evidence of Dr. Patil (PW-6) therefore cannot be discarded or disbelieved on the basis of

certain admissions as above given by the said witness. Through the evidence of Dr. Patil (PW-6) the prosecution has undoubtedly proved that, on 03.05.2001 the prosecutrix was taken to PHC at Kasoda and was medically examined there. The prosecution has also proved that, at the relevant time there was bleeding from the vagina of the prosecutrix due to traumatic forceful intercourse as opined by Dr. Patil. It has also been proved that, the vagina was swollen and injury of her vagina was a fresh injury.

19. The prosecution has also examined Dr. Pandhari Chindhu Bawaskar (PW-9), the then Medical Officer at Civil Hospital, Jalgaon. It has come on record through the evidence of Dr. Bawaskar (PW-9) that, the prosecutrix was referred to Civil Hospital at Jalgaon by PHC, Kasoda. As has further come on record through his evidence, the prosecutrix remained in Civil Hospital, Jalgaon as an indoor patient from 04.05.2001 to 10.05.2001. Dr. Bawaskar has also deposed that, he had referred the prosecutrix to Dr. Udaysing Patil, and said Dr. Udaysing Patil had examined the prosecutrix in his presence. Dr. Bawaskar has also deposed that, as noticed in the speculum examination done

by Dr. Udaysing Patil there was third degree perineal tear, hymen was torn and there was bleeding from vagina. Dr. Bawaskar has also deposed that, under general anesthesia vaginal tear was repaired on 04.05.2001 and the prosecutrix was discharged on 10.05.2001. Dr. Bawaskar has also deposed that, there was strong possibility that rape was committed on the prosecutrix.

20. In the cross-examination of Dr. Bawaskar, similar admission is given by him that before examination of the prosecutrix the written consent of the parents of the prosecutrix was not obtained. However, to our mind for the said reason and on the said ground, the substantial facts as are deposed by Dr. Bawaskar as about the examination of the prosecutrix cannot be ignored or kept out of consideration. In our opinion, Dr. Bawaskar was also an independent witness and was not having any vested interest so as to state something false. We reiterate that, through the evidence of the aforesaid two witnesses, the prosecution has beyond reasonable doubt proved that, the prosecutrix was subjected to rape.

21. From the evidence as above, the fact stated in the FIR to the extent that, rape was committed on the prosecutrix stands proved beyond reasonable doubt.

22. As noted by us herein above, the FIR of the alleged incident was promptly lodged within 2 hours of the occurrence of the alleged incident. We have also noted that, immediately after registration of the FIR, the prosecutrix was referred for her medical examination. From the material on record, it is further revealed that, the police immediately visited the spot of occurrence and carried out the spot panchanama and recovered the incriminating articles from the spot of occurrence. PW-2 Chandrakant was one of the panch witness on the spot panchanama. As has been deposed by PW-2 Chandrakant, the house of the accused was shown by his mother. He has further deposed that, from the said house a pinkish coloured chadar (bed sheet) and the slipper were seized. PW-2 Chandrakant has also deposed that, on the chadar so seized, stool was noticed. The spot panchanama was prepared during 03:00 p.m. to 03:45 p.m. on 03.05.2001. As has further come on record, the prosecutrix did identify that the slipper seized from the house of

the accused was belonging to her. If the statement of the prosecutrix is considered, it was stated by her in her evidence before the Court that, when accused committed rape on her she had defecated. The facts so stated by the prosecutrix in her statement has been corroborated by the evidence of PW-2 Chandrakant. The spot panchanama at Exh.17 demonstrates that, one nicker was also seized from the spot of occurrence. The prosecutrix in her evidence before the Court did identify that it was her nicker when the same was shown to her. The prosecutrix has also identified the chadar.

23. It was sought to be contended by learned Counsel appearing for the accused that, in his examination-in-chief PW-2 Chandrakant did not mention about the existence of nicker on the spot. Inviting my attention to the spot panchanama, learned counsel submitted that, the panchanama so drawn apparently reflects that, the item at Sr. No.3 has been subsequently included. Learned Counsel also submitted that, even the prosecutrix in her testimony has not stated any such fact that, she had also left her nicker at the house of the accused though it was specifically deposed by her that, her slipper was left at the

house of the accused. According to learned Counsel, the seizure of the nicker was therefore doubtful. Learned Counsel submitted that, the material on record reveals that, it was tried to be manipulated and item no.3 (nicker of the prosecutrix) is subsequently included in the articles recovered from the spot of occurrence. In the circumstances, learned Counsel submitted that, no reliance can be placed on such evidence to base the conviction of the accused.

24. It appears to us that, even if the seizure of the nicker from the spot of occurrence is kept aside, since apparently certain doubts are raised about the existence of the said nicker at the spot when the spot panchanama was prepared, there seems no reason to doubt the recovery of the chadar as well as the pair of slipper from the spot of occurrence about which PW-2 Chandrakant has specifically deposed. PW-2 Chandrakant is an independent witness. Nothing has been brought on record in his cross-examination to show that, there is any reason for him to falsely state that, he visited the spot and that the spot panchanama was prepared in his presence and further that, chadar as well as pair of slipper were recovered from the spot of

occurrence.

25. The trial Court has held that, the prosecution has failed in brining on record sufficient evidence to prove the spot of occurrence. Considering the evidence which we have discussed herein above, finding recorded by the trial Court that the spot of occurrence has not been proved, would not sustain. Merely because the prosecution has not filed on record 7/12 extract or the city survey record pertaining to the house in question, no such conclusion can be drawn that, it was not the spot where the alleged incident happened. The trial Court has failed in appreciating that, the spot, of which the panchanama is at Exh17 was shown by the mother of the accused to be the residence of the accused. Chandrakant (PW-2) has specifically deposed that, the spot was shown by the mother of the accused. The fact so deposed by Chandrakant (PW-2) has not been denied or disputed by the accused. Moreover, because of the seizure of slipper of the prosecutrix from the said spot, it is confirmed that, the alleged incident did occur at the said spot.

26. The trial Court has discussed that the prosecution

evidence is not clear whether the house of the accused is in Indira Nagar or in Kudarat Nagar. From the evidence on record, it has been sufficiently proved that, the house of the accused is in Kudarat Nagar. It is true that, in the FIR the accused is stated to be residing in Indira Nagar. The maternal grand-mother of the prosecutrix resides in Indira Nagar and Kudarat Nagar is adjacent locality. In the circumstances, it appears that, in the FIR the accused is stated to be residing in Indira Nagar. However, in view of the subsequent evidence there may not be any confusion that, the accused was residing in Kudarat Nagar. From the evidence on record, thus it has been proved beyond reasonable doubt that, the rape was committed on the prosecutrix at the spot described in the panchanama (Exh.17). It is not the case of the accused that, he was not residing at the said spot. As such according to us it may not much matter whether the said house is in Kudarat Nagar or in Indira Nagar.

27. In background of the facts as aforesaid, the evidence of the prosecutrix will have to be scrutinized. It is not in dispute that, the prosecutrix was 9 years old when the alleged incident happened. The defence has not disputed the age of the

prosecutrix. At least there is no dispute that, the prosecutrix was a minor girl below the age of 16 years. When the evidence of the prosecutrix was recorded before the Court she was 10 years old.

28. From the record, it appears that, initially some general questions were put to the victim girl by the learned trial Judge so as to ascertain and verify whether she was capable of understanding the questions put to her and to give answers to those questions. After having put about five questions, it appears that, learned trial Judge was satisfied that the victim girl was competent to give evidence before the Court. The learned trial Judge has, therefore, allowed learned APP to record the examination-in-chief of the victim girl and then permitted the defence Counsel to cross-examine her.

29. In her examination-in-chief the prosecutrix has narrated the incident as had occurred. She has specifically implicated the name of the accused and also described the overt acts committed by him which amount to rape. She also specifically deposed that, there was bleeding from her private part and she had defecated on the bed sheet. She also deposed

that, after coming to the house of her maternal aunt, she disclosed about the alleged incident to her and she was thereafter taken to the police station by her maternal aunt and the husband of her maternal aunt. She has also deposed that, from the police station, she was sent to the hospital at Kasoda and from there she was taken to Civil Hospital, Jalgaon.

30. During the course of her oral evidence before the Court, she identified her frock as well as slippers. She also identified the accused.

31. The evidence of the prosecutrix however has not been relied upon by the learned trial Judge. As has been observed by the learned trial Judge, the possibility of the prosecutrix being tutored by the police and her parents was difficult to be ruled out. During the course of his arguments, learned defence Counsel had also brought to our notice the admissions given by the prosecutrix in her cross-examination.

32. According to us, merely on the basis of the aforesaid admissions, it would be unsafe to draw any such conclusion

that, no such incident as deposed by the prosecutrix had in fact happened and that the prosecutrix falsely implicated the name of the accused being tutored by the police and her parents. The evidence of the prosecutrix will have to be read as a whole and the admissions allegedly given by her in her cross-examination cannot be isolatedly considered. In her examination-in-chief the prosecutrix has deposed that, near the house of her grandmother there is the house of mother of the accused. From the fact as aforesaid deposed by the prosecutrix, it is evident that, it was well within the knowledge of the prosecutrix that, the house which was adjacent to the house of her grand mother was the house of the mother of the accused. It also clearly spells that, the prosecutrix was knowing the accused as well as the mother of the accused. It is also revealed that, the prosecutrix was knowing the accused by name. It is true that the prosecutrix could not tell the names of the neighbours of her aunt as well as her grand-mother, when such a question was put to her in her cross-examination. However that does not mean that prosecutrix was not knowing the accused or not knowing his name.

33. Further, referring to and relying upon some

Judgements as about the credibility of the evidence of child witnesses, the trial Court has declined to rely upon the evidence of the prosecutrix.

34. Having regard to the facts as are involved in the present matter, the finding so recorded by the learned trial Judge is apparently noticed to be unsustainable. The law is not that the testimony of a child witness is inadmissible in evidence. The tender age and the old age are of course the factors, which law regards as capable of affecting testimonial capacity of a person, but the mere fact that a witness is of a tender age is hardly sufficient to conclude that, he has no testimonial competence. In the instant matter, learned trial Judge had put certain questions to the prosecutrix and was satisfied with her rational replies. That being the position it cannot be said that, the prosecutrix had no maturity to understand import of the questions put or to give rational answers. The prosecutrix was cross-examined at length and in spite thereof she had described in detail the scenario implicating the accused to be the author of the crime. The answers given by the prosecutrix would go to show that, she was not only repeating what somebody else had

asked her to say. She gave vivid account of the occurrence. Though varied questions were put to her in her cross-examination, she has answered all those questions at her own, which rules out the possibility of any tutoring. Mere reading over her statement to her by the police and further asking her that, she has to state whatever is there in the report in our opinion would not amount to tutoring. The further fact admitted by the prosecutrix that, the police told her if she would not depose as per the statement read over to her, the accused will not be punished and has also told her that, the accused again would give her trouble after he would come at his house, also according to us shall not be taken adversely. From the aforesaid facts, no such conclusion is liable to be drawn that, the police was asking the prosecutrix to state something false against the accused, which had never happened. It cannot be forgotten that, the prosecutrix was the victim of sexual assault. She was not likely to forget the face of the person, who abused her. In the circumstances though the prosecutrix has very innocently admitted the suggestion given to her in her cross-examination that, the parents and police shown her the accused, no such inference can be drawn that, she could not have identified the

accused, if the police and the parents had not showed the accused to her. The further admission that, 'for the first time today I am seeing the accused before the Court' also cannot be taken adversely. The admission only means that, before the Court the prosecutrix has first time seen the accused. It does not in any way mean that, previously or in the past she had never seen the accused. We reiterate that, the prosecutrix being victim of the sexual assault, was definitely in a position to identify the culprit. The mere fact that, she was asked to say about the occurrence and as to what she saw, cannot be a reason to jump to the conclusion that, it amounted to tutoring and that she was deposing only as per the tutoring what was not otherwise what she actually saw. Learned trial Court as we mentioned herein before has failed in appreciating the aforesaid aspects and swayed by certain admissions intelligently obtained by the defence reached to the conclusion that, no reliance was liable to be placed on the testimony of the prosecutrix.

35. As we have noted herein before, the evidence of the prosecutrix has to be considered in background of the facts and circumstances, which have come on record. The F.I.R. in a

criminal case is a vital and valuable piece of evidence though may not be a substantive piece of evidence. In the instant case, the FIR was lodged within two hours of the alleged occurrence, wherein the name of the accused and the spot of occurrence were specifically disclosed. The promptness in lodging the FIR was an assurance regarding the truth of informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened and who was responsible for the offence in question. Further, as has been elaborately discussed by us, the prosecutrix was immediately referred for her medical examination and the evidence, which has been brought on record by the prosecution, it has been beyond reasonable doubt proved that, the prosecutrix was subjected to rape few hours before her examination. As has been noted by us, the spot of occurrence is also immediately visited by the police and incriminating articles were recovered from the said spot, which has confirmed the allegations made in the FIR. In this background, if the testimony of the prosecutrix is considered, it inspires full confidence and appears to be fully believable. Few stray admissions given by the prosecutrix may not be enough to wipe out the entire evidence of the prosecutrix. Even though

the prosecutrix at one point of time in her cross-examination stated that, she came out of the house of the accused at about 05:00 p.m., the said part of her evidence has to be just ignored for the reason that, the other circumstances, which have come on record and have been proved beyond reasonable doubt demonstrate that, the FIR in the matter was lodged at 02:30 p.m. and the prosecutrix was thereafter immediately referred for her medical examination. The spot panchanama of the alleged spot of occurrence was also prepared during the period 03:00 p.m. to 03:45 p.m. on the same day i.e. 3rd May. At that time prosecutrix was not there but was in the hospital.

36. Same is about the evidence of PW-4 Yogesh, a minor boy of the age of 7 years, residing near the house of the accused. PW-4 Yogesh has also deposed that, the alleged incident happened at about 05:00 p.m. Having regard to the other proved facts on record, the evidence of PW-4 Yogesh also has to be simply ignored and no much capital can be made of the facts stated by the said witness in his testimony before the Court.

37. The accused has taken the defence of his false

implication. It is his contention that since his mother and sister purchased the vacant land owned by the mother-in-law of PW-7 Bapurao and erected structure thereupon, PW-7 Bapurao had nurtured a grudge against the accused. It was the further contention of the accused that, PW-7 Bapurao was interested in purchasing the said land and he had therefore given an offer to the mother of the accused and the sister to accept money from him and to return the property to him. However the said proposal was rejected by the mother of the accused. It is the further contention of the accused that PW-7 Bapurao was annoyed because of the said incident and he, therefore, falsely implicated him in the alleged crime.

38. The defence so raised by the accused is liable to be rejected at the threshold. Firstly when the subject land was purchased by the mother and sister of the accused, there was no reason for PW-7 Bapurao to nurture any grudge against the accused. In such case, it must have been against the mother and sister of the accused. Further, the offer given by PW-7 Bapurao according to the version of the accused was not rejected by the accused, but was rejected by his mother and the sister. In this

eventuality also, grievance must have been against the mother and the sister of the accused and certainly not against the accused.

39. In such circumstances, it appears quite improbable that, for the aforesaid reason PW-7 Bapurao would have indulged in lodging an absolute false case against the accused that too of rape. The prosecutrix is admittedly the niece of informant Bapurao. The parents of the prosecutrix in no case would have allowed informant Bapurao to put to stake the honour of their minor daughter for settling his score with the accused. Even it cannot be accepted that, the informant Bapurao would risk the honour of his minor niece to level such a serious accusation of rape against the accused even if he had some dispute with the accused to settle the said score. The defence so raised by the accused must be therefore rejected.

40. After having considered the entire material on record, we have reached to the conclusion that, the learned trial Court has grossly erred in appreciating and analyzing the evidence brought on record by the prosecution. The Hon'ble

Apex Court time and again has said that, the cases of rape are to be differently tried and the judge conducting such trial needs to be more sensitive. The Hon'ble Apex Court in **State of Andhra Pradesh Vs. Gangula Satya Murthy, Judgment Today 1996**

(10) SC 550 has observed thus :

“.... Courts are expected to show 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 witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection and we must emphasise that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation.”

41. The Hon'ble Apex Court in **State of Punjab Vs. Gurmit Singh and others, (1996) 2 Supreme Court Cases 384** has observed thus :

“The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for *corroboration* of her statement, the courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or

sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

42. We are constrained to observe that, learned trial Judge has overlooked the guidelines laid down by the Hon'ble Apex Court in conducting the rape trials and has given undue weightage to the minor omissions and contradictions. While raising suspicion on account of the admission given by the

prosecutrix that, she came out of the house of the accused at 05:00 p.m., the trial Court ignored the other evidence on record, which was clinchingly indicating that, at the relevant time, the prosecutrix was in the hospital and not at the house of the accused. The trial Court also failed in appreciating that, the spot panchanama was conducted during 03:00 p.m. and 03:30 p.m. and it is not the case that the prosecutrix was noticed in the house of the prosecutrix at that time. The trial Court in such circumstances must have realized that, there was some inadvertent mistake occurred by the prosecutrix while stating that timing. It cannot be forgotten that, at the relevant time, the prosecutrix was a tender aged girl.

43. The question raised by the learned Sessions Judge as to why the prosecutrix did not make a complaint immediately to the neighbours of the accused, also according to us, much irrelevant. A minor girl after having undergone the trauma of sexual assault is not expected to speak about the said incident to the strangers. In natural course, she would state about the incident to her near once and preferably to her parents or aunt, uncle etc., and not to the neighbours.

44. The further observation made by the learned trial Court that, why the police did not record the statement of the prosecutrix immediately, also is unwarranted. As has come on record, the prosecutrix was in hospital. She was operated in the Civil Hospital at Jalgaon on 04.05.2001 and was there in the hospital till 10.05.2001. In such circumstances, if her statement was recorded on 8th of May, in no case it can be said that, intentionally the delay was committed in recording the statement.

45. Some other observations made by the learned trial Judge for doubting the case of the prosecution are equally unjust and uncalled for. Even if it is assumed that the prosecutrix did not raise any alarm would it mean that she was a consenting party? Further, how can the non-detection of semen in the vaginal swab and absence of any injury to the penis of the accused, be the grounds to doubt or disbelieve the testimony of the tender aged prosecutrix. It is well settled that to constitute the offence of rape what needs to be established is the act of penetration and not seminal emission. The medical evidence

showing that there were IIIrd degree perineal tears and vagina of the prosecutrix was swollen proves beyond doubt that there was deep penetration. Law is equally well settled that absence of injury to the male organ of the accused may not lead to an inference in all the cases that the accused did not have sexual intercourse.

46. Having considered the entire material on record, we have no doubt in our mind that, the prosecution has beyond reasonable doubt proved that, the accused wrongfully confined the prosecutrix in his house and committed rape on her. The medical evidence fully establishes that, the accused had penetrative sexual intercourse with the prosecutrix, who at the relevant time was a minor girl aged about nine years. We, therefore, hold the accused guilty for the offences punishable under Sections 342 and 376 (2)(i) of I.P.C. and pass the following order.

ORDER

- (i) The Judgment and order passed by First Ad-hoc Additional Sessions Judge, Jalgaon in Sessions Case No.142 of 2001 decided on 13th November, 2002 is quashed and set aside.

- (ii) The accused namely - Ravindra Kashinath Ghodke is held guilty for the offences under Sections 342 & 376 (2)(i) of I.P.C. and is sentenced to suffer Rigorous Imprisonment for one year for the offence under Section 342 of I.P.C. and to suffer Rigorous Imprisonment for 10 years for the offence under Section 376 (2)(i) of I.P.C. and to pay fine of Rs.5,000/-, in default to suffer Rigorous Imprisonment for six months.
- (iii) Both the sentences shall run concurrently.
- (iv) The accused shall be entitled for the set off as envisaged under Section 428 of Code of Criminal Procedure of the period of imprisonment already undergone by him.
- (v) The accused shall surrender before the trial Court to undergo sentence of imprisonment imposed upon him within four weeks, failing which, the trial Court shall take all necessary steps to secure the presence of the accused and send him to jail to serve out the sentence imposed upon him.

. Criminal Appeal thus stands allowed in the aforesaid terms.

[SUNIL P. DESHMUKH]
JUDGE

[PR. BORA]
JUDGE