

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No.513 of 2004**

1. Kushalram, aged about 26 years, son of Shri Motiram Gond,
2. Kamlesh Kumar alias Kamal, aged about 19 years, son of Shri Kanhaiyalal,
3. Dilip, aged about 18 years, son of Shri Amar Singh Gond,

All are residents of Village-Belargaon, P. S. Sihawa, District Dhamtari (CG)

---- Appellants

(Accused persons in jail)

Versus

- State Of Chhattisgarh

---- Respondent

For Appellants	:	Shri Avinash K. Mishra, Advocate
For Respondent/State	:	Shri Suryakant Mishra, Panel Lawyer

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava
Hon'ble Smt. Justice Rajani Dubey

CAV Judgment

Per Manindra Mohan Shrivastava, J.

15/07/2019

1. This appeal is directed against the impugned judgment of conviction and order of sentence dated 30-04-2004 passed by the Additional Sessions Judge, Dhamtari in Sessions Trial No.231/2002, whereby and whereunder the appellants have been held guilty for commission of offence under Section 376(2)(g) and 506-B of IPC and sentenced them, as described below-

Section- 376(2)(g) IPC	Rigorous Imprisonment for 12 years and fine of Rs.2000/-, in default of payment of fine, additional R.I. for 1 year.
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506-B of IPC Rigorous imprisonment of five years and fine of Rs.1,000/-, in default of payment of fine, additional rigorous imprisonment for six months.

2. The prosecutrix, Sarita, PW-3, lodged FIR in Ex.P-6 at Police Station Sihawa on 23-02-2002 at about 12.30 hours, wherein it was stated that while she, along with her friend Basanti, PW-13, were crossing through the agricultural field for attending a function in the house of one of her friend Bhuneshwari, the appellant Kamlesh came from behind and caught hold of her, mouth was gagged and she was also caught by two other accused-appellants- Kushal Gond and Dilip and dragged towards the agricultural field. Her friend- Basanti, PW-13 was dragged to other side by Kailash Yadav, Bhooshan Gond and Phagnu Gond. It was further stated in the FIR that Dilip was asked to keep watch and inform if some passer-by is seen and thereafter, she was first raped by Kushal Gond and thereafter by Kamlesh. Thereafter, when prosecutrix-Sarita was returning, she met Basanti on the way. The appellants threatened them not to disclose the incident. On way, they met with one Indal Sahu and thereafter, along with Basanti, came to her house and informed her mother and father and number of villagers gathered and thereafter, mother and father of Basanti were also called in the house of Sarita. Thereafter, Basanti went to her own house, since by that time, it was too late in the night, report could not be lodged in the night and on the next morning, the report is being lodged. After recording FIR and registering crime against the appellants, alleging commission of offence of rape, the prosecutrix was sent for medical examination and she was examined by Dr. Abha Rani Singh, PW-2. Undergarments and clothes of the appellants and the prosecutrix were seized. Slides of semen of the accused appellants and slides of vaginal swabs were also prepared and sent for examination to the Forensic Science Laboratory. Upon completion of usual investigation, charge sheet was filed and on the basis of the allegations contained in the charge

sheet, the appellants were charged of having committed offence of gang rape on the prosecutrix, which was denied. As far as appellants-Kushal and Kamlesh Yadav are concerned, it was alleged that they committed rape on the prosecutrix, whereas as against accused-Dilip, it was alleged that he aided other accused in the commission of offence of rape. The appellants having abjured guilt, were subjected to trial. In order to prove its case, the prosecution examined as many as 16 witnesses which included Prosecutrix, PW-3 and her friend Basanti, PW-13, who was also allegedly subjected to rape by Kamlesh and three other persons. In addition, the prosecution also examined mother and father of Sarita (prosecutrix) and the doctor, who had medically examined the prosecutrix. The Court also examined, as a Court witness, Senior Scientific Officer and Assistant Chemical Examiner, State Forensic Science Laboratory, Raipur. The appellants were examined under Section 313 of Cr.P.C. in respect of incriminating evidence and circumstances appearing against them in the evidence led by the prosecution. The appellants denied having committed any offence and stated that the appellants were falsely implicated. No defence witness was examined.

Learned trial Court, relying upon the evidence led by the prosecution, particularly the evidence of the prosecutrix that two of the appellants committed rape on her and third one i.e. Dilip aided in commission of offence of rape, held the appellants guilty of commission of offence of gang rape as also administering threat of life and they were accordingly sentenced, as described above, giving rise to this appeal.

3. Assailing correctness and validity of the impugned judgment of conviction and order of sentence, learned counsel for the appellant argued that the appellants have been falsely implicated in this case and they have not committed any offence. It is contended that the evidence of Sarita, the

prosecutrix, not only suffers from material contradictions and omissions, but also inherent improbability. Her allegation that she was subjected to rape by two of the appellants one after the other in quick succession, is not supported from the medical evidence. Dr. Abha Rani Singh, PW-2, who has examined the private parts of the prosecutrix, has clearly stated that hymen of the prosecutrix was found intact and vagina hardly allowed penetration of 1/4th of the index finger. He would argue that even according to the prosecution, the prosecutrix was approximately 16 years of age and had there been slightest penetration of male genital organ, some kind of injury would have been found. He further submits that according to the prosecution, it was a case of gang rape and the prosecutrix has stated that two of the appellants have committed rape on her one after the other without any time gap, in such a situation, it is wholly improbable that no swelling or redness would be found in the vagina of the prosecutrix. According to him, in such an event of gang rape with the girl of such an age by the appellants, who are grown up boys, hymen could not have remained intact. Further argument of learned counsel for the appellants is that according to the prosecutrix, she was dragged towards the field and made to lie on the uneven ground of agriculture field and subjected to rape, but no injury was found on any other part of the body of the prosecutrix including her back. Moreover, it is argued that the prosecutrix has not come out with the case that she offered resistance or called for any help. He would also argue that the conduct of the prosecutrix in not disclosing anything to Indal Sahu, PW-12, whom she met while coming back along with her friend Basanti, immediately after the incident, near the agriculture field, renders the prosecution story furthermore doubtful. Learned counsel for the appellants argued that the plausible and possible defence, as emerging from the evidence led by the prosecution including that of Indal Sahu, PW-12 and Domar Singh, PW-12 that

both the prosecutrix, Sarita, PW-3 and her friend Basanti, PW-13 went towards the agriculture field late in the evening, on a whistle call given to them probably by their lovers and when the appellants and other boys of the village (appellants of connected Criminal Appeal No.512 of 2004), chased them and caught them in the field, their lovers ran away and the appellants caught the two girls including the prosecutrix at the spot, they were scolded and were brought back to their house. When this is became open in the village, the prosecutrix and her friend Basanti, PW-13 made false allegation of commission of offence of rape on the appellants to save themselves. Therefore, the appellants are entitled to be given benefit of doubt

4. On the other hand, learned State counsel would support the impugned judgment of conviction and order of sentence by submitting that the conviction of the present appellants is founded on strong and firm evidence of prosecutrix, Sarita, PW-3. The prosecutrix, who has clearly stated that while she along with her friend Basanti, PW-13 were going towards the house of her friend Bhuvneshwari for attending the function, one of them were caught by other boys (appellants in the connected Criminal Appeal No.512/2004), she was caught hold of by the present appellants and taken towards the agriculture field and she was subjected to rape by the appellants Kushalram and Kamlesh one after the other. He would further argue that the prosecutrix has clearly stated that appellant-Dilip, though did not commit any offence, he aided in commission of offence as he watched over the public moment, so that, if anyone comes, the situation may be handled. He would further argue that the prosecutrix-Sarita has remained firm on her statement and whatever contradictions and omissions elicited, are not very material. On all material aspects, she has remained firm and coherent. He would further argue that testimony of the prosecutrix-Sarita, PW-3 is fully corroborated from the evidence of another victim, Basanti, PW-13,

who has also stated that when she along with the prosecutrix were going, they were surrounded and overpowered by a group of boys and two out of them namely Kushal Gond and Kamlesh Yadav committed rape on the prosecutrix-Sarita. Her friend Basanti, PW-13 was also subjected to rape by another group of assailants. She also informed regarding commission of offence of rape on her. The prosecutrix-Sarita and her friend Basanti were surrounded by number of persons and they were also threatened. In these circumstances, the prosecutrix being girl of tender age were completely overpowered and made to surrender. She has not stated that she received any injury, therefore, only on the ground that no injury was found on any part of the body, her evidence of being subjected to rape, could not be doubted. Further submission of learned State counsel is that though, the private parts of the prosecutrix have not been found to be injured and hymen was found to be intact, the evidence of Dr. Abha Rani Singh, PW-2 supports the evidence of the prosecutrix, because Dr. Abha Rani Singh, PW-2 has stated that partial penetration was possible. He would argue that in any case, if the evidence of the prosecutrix is found to be reliable, law does not require that it must necessarily be corroborated from the medical evidence and in all cases, absence of injury would not render testimony of prosecutrix doubtful. He would further argue that the clothes of the prosecutrix and the appellants have been found to be stained with seminal stains and even the vaginal swab collected from the vagina of the prosecutrix were found containing spermatozoa, which corroborates the prosecution story. As far as defence is concerned, learned State counsel argued that the defence of the appellants is improbable and only an attempt to somehow defend them. No clinching evidence has been led by the defence nor emerged from the evidence of the prosecution witnesses to render probable and plausible defence story.

5. Having considered the submission of learned counsel for the parties, we

have perused the records of the case.

6. The prosecutrix, Sarita, PW-3, in her evidence, has clearly stated regarding lodging of FIR in Ex.P-6 and proved signatures thereon. Investigating Officer, S. K. Dubey, PW-16 has deposed that on the report lodged by the prosecutrix, he recorded FIR in Ex.P-6 on 23-02-2002. FIR was lodged at 12.30 Hours in the afternoon of 23-02-2002 reporting commission of offence of rape in the evening of previous day i.e. on 22-02-2002.

7. Submission of learned counsel for the appellant that the prosecution story is rendering doubtful, because there is delay in lodging of FIR, does not merit acceptance. As per the evidence of the prosecutrix, PW-3, she was subjected to rape in the evening of 22-02-2002 at about 7 to 8 PM in the night. Her evidence is that after the incident of rape, the prosecutrix and her friend-Basanti came to house of the prosecutrix-Sarita in the village, wherein the incident was reported to her mother and father. Thereafter, the parents of Basanti, PW-13 were also called in their house. The villagers had also gathered. Domar Singh, PW-14, Up-Sarpanch of the Village was also informed and the appellants were also called. Allegations and counter allegations were leveled and in this manner, it became too late in the evening, therefore, report could not be lodged on the same day and on the next day, she went to the police station and lodged report. As per the FIR, the police station is stated to be about 16 Kilometers away from the village, therefore, the delay, if any, in lodging the FIR, is fully explained. The entire case of the prosecution with regard to commission of offence of rape rests mainly on the testimony of Sarita, PW-3, the prosecutrix herself and her friend Basanti, PW-13. At this stage, it would be relevant to mention here that another criminal case of commission of offence of rape against Basanti, PW-13 was also recorded in the police station on the FIR lodged by Basanti, which led to registration of crime and trial of one of the present appellants-Kamlesh and

three other persons in Sessions Trial No.217 of 2002, wherein four accused including Kamlesh have been held guilty of commission of offence of rape against Basanti. Connected Criminal Appeal No.512 of 2004 arises out of conviction in the aforesaid case.

8. Sarita, PW-3 has stated that on the date of incident, in the evening at about 7 to 7.30 PM, when she was going along with her friend Basanti, towards the house of Bhuneshwari to attend a function, while crossing through the agriculture field, Kushal came in and gagged her mouth and Kamlesh caught hold of her from waist. Basanti was also caught hold of by one Kailash. While she was taken towards the agriculture field, Basanti was also taken towards the agricultural field. When Sarita, PW-3 asked Kushal as to why she was brought there, she was threatened by Kushal and given 2-3 slaps and thereafter, she was made to lie on the field, her clothes were removed and Kushal committed rape on her. When she attempted to get up, she was again threatened and she was overpowered by holding her hands and thereafter, Kamlesh also committed rape on her. She has further deposed that during this period, Dilip was sitting to keep watch over public moment. She has further deposed that her friend Basanti was brought back on the road, they were escorted by as many as six boys namely Dilip, Kamlesh, Kushal, Kailash, Bhushan and Phagnu. All the six boys brought back Sarita and Basanti to their house as also administered threat by saying that if they disclosed the incident to anybody, they would be stabbed to death. While coming back, Indal Sahu was also surrounded by three boys and asked to run away else, he would be stabbed. Thereafter, she and Basanti ran away. When the prosecutrix reached her house, she informed her father regarding the act of rape. After sometime, her father came back along with Kushal, Kamlesh, Dilip, Kailash, Bhushan and Phagnu. Thereafter, Kushal again threatened her and slapped. These persons also threatened her father

and attempted to strangle. She further deposed that on the next day in the morning, she went to the police station-Sihawa along with her mother and father, Basanti and her parents, where she disclosed the incident, on which, FIR was lodged. She has been subjected to detailed cross-examination. Certain contradictions and omissions regarding she having been threatened, abused and slapped by Kushal and the reason as to why she diverted towards agriculture field and that after the incident, six boys brought her and Basanti and on the main road, they abused and threatened the prosecutrix not to disclose the incident, having not been stated in the case diary statement, Ex.D-1 and FIR, Ex.P-6, have been elicited. However, on the material aspect, particulars regarding she and Basanti having been intercepted in the agriculture field, gagging of mouth, catching hold of her and taking inside the field and then subjected to rape firstly by Kushal and then by Kamlesh and the manner, in which, she was subjected to rape, have remained uncontroverted and no material contradiction and omission in that regard could be elicited in her examination.

9. The evidence of prosecutrix-Sarita, PW-3 is fully corroborated on material particulars with regard to the incident of commission of offence of rape, from the evidence of her friend Basanti, PW-13, who also deposed on the similar lines regarding the manner, in which, she and the prosecutrix were caught hold of, while crossing through the agriculture field. Basanti, PW-13 has also stated in her testimony that while she and her friend Sarita were going towards the house of Bhuneshwari in the evening for attending a function, Kushal, Kamlesh, Kailash, Bhushan, Phagnu and Dilip came from behind, in which, Kailash and Phagnu gagged her mouth and caught hold of her hair and dragged towards the agriculture field. She has also deposed that Sarita was also dragged towards the agriculture field by Kushal and Kamlesh. She has further deposed that when

she and her friend Sarita stated that they will call for help, they were threatened by stating that they would be killed. In her testimony, Basanti, PW-13 has further deposed that Sarita was subjected to rape by Kushal and Kamlesh, as informed to her by Sarita. She has stated that when she was subjected to rape by four persons namely Kailash, Bhushan, Phagnu and Kamlesh one after the other. Thereafter, while she and her friend-Sarita were returning, they met Indal Sahu, who was surrounded by Kailash and others, they were threatened by Kushal not to disclose the incident, thereafter, she and her friend-Sarita went towards the house of Sarita. After reaching the house of Sarita, she narrated the whole incident to the parents of Sarita. After that, Maikuram, father of Sarita left the house and went towards the house of Kushal and came out by stating that on the way, he was surrounded by Kushal and her mother came and saved her father from attack. Thereafter, father and mother of Sarita came back to their house along with Kushal and others. She deposed that Kushal had slapped Sarita. Thereafter, quarrel took place between the father of Sarita, Maikuram and Bhushan. Her parents were also called and they were also informed regarding the incident. From there, they went to the house of Kotwar and he was also informed about the incident. Thereafter, they went to the house of Up-Sarpanch, Domar Singh, who also enquired about the incident. Domar Singh called accused-Kushal and others along with their fathers. Thereafter, in presence of all of them, incident was disclosed and statement was recorded. She further deposed that Domar Singh suggested to compromise the dispute, but the aggrieved party was not agreeable and therefore, they lodged report in the Police Station Sihawa. In her cross-examination, certain omissions have been elicited regarding the fact of they (Basanti herself and Sarita-the prosecutrix) having been intercepted by the boys in intoxicated condition, due to which, she and Sarita diverted the way by crossing through the field and the

details regarding as to how Sarita was subjected to rape, threat administered to her, has been elicited. Therefore, there appears to be some contradictions with regard to what happened between Maikuram and the accused after the incident was disclosed, have been elicited. However, as far as her statement on material particulars that while going towards the house of Bhuneshwari along with her friend Sarita, crossing through the agriculture field, both of them were intercepted by the appellants and other persons and taken towards different directions by different persons and Sarita was taken by the present appellants, has remained firm. Moreover, her evidence that while returning to the house, after the incident, met Indal Sahu as also evidence regarding narrating details of the incident after reaching the house of Sarita, not only have remained intact, but also corroborates the evidence of the prosecutrix-Sarita, PW-3, in all material particulars.

10. Munni Bai, PW-4, mother of the prosecutrix, has stated that her daughter Sarita and Basanti both left the house at about 7 to 7.30 PM in the evening and went towards the house of Bhuneshwari and at about 9 to 9.30 PM, both of them came back. Sarita disclosed that Kushal and others had committed rape on her. Sarita had also informed her father, whereafter her father went to meet Kushal. She has also deposed that quarrel took place between Kushal and her husband. She has also deposed regarding information being given to the parents of Basanti and their arrival followed by information to the Kotwar. She has also stated that thereafter, they went to the house of Domar Singh, Up-Sarpanch, who enquired into the matter. The boys were also called and at this stage, Domar Singh suggested the parties to come to compromise, but it was not acceptable to them and they had decided to lodge report. On the next day, they went to the police station to lodge the report. In her cross-examination, certain omissions have been elicited by confronting with her case diary

statement, Ex.D-2. She has also admitted suggestion that in the house of Up-Sarpanch, Domar Singh, Sarita had disclosed that she was teased. Similar is the evidence of Maiku Ram, PW-5, father of Sarita. He also states that Sarita disclosed that Kushal and others have committed rape. Rest of the story of arrival of the parents of Basanti, meeting with Kotwar and then approaching the Sarpanch-Domar Singh are similar, as stated by his wife-Munni Bai, PW-4.

11. Indal Sinha, PW-6, stated in his evidence that mother of Sarita disclosed that Kushal, Kamlesh and Kailash had committed rape. Sarita and Basanti both of them also disclosed that they were subjected to rape. In his cross-examination, he admits that in the house of Domar Singh, Sarita and Basanti disclosed that the appellants have committed the act of teasing.

12. Ram Bai, PW-7 has also stated that when she and her husband went to the house of Sarita, they were told by Munni Bai and Maiku Ram that Sarita and Basanti have been subjected to rape.

13. Indal Sahu, PW-12 has deposed that on the date of incident, two girls namely Sarita and Basanti came to his house enquiring about liquor by stating that relatives have come and thereafter, both the girls went towards the field and he heard whistles. He further deposed that on the same date, when he was sitting in front of his house, he saw certain boys running away. Thereafter, he proceeded towards the field to respond to the call of nature, on way, some boys were seen coming back with the girls and Kushal told that the girls had gone towards the field and they are being taken to their house as it was late in the evening. In his cross-examination, he admits that girls had gone towards agriculture field after hearing whistle call and after 5-7 minutes, Kailash, Kamlesh, Phagnu, Bhushan, Kushal and Dilip also went towards the agriculture field and after 2-3 minutes, Kailash, Kamlesh, Phagnu, Bhushan, Kushal and Dilip were seen coming back along with Sarita and Basanti.

14. Domar Singh, PW-14, Up-Sarpanch of the Village, has deposed that in his house, parents of Sarita and Basanti arrived in the night of 24-02-2002 along with some other persons and Basanti and Sarita complained that the boys had misbehaved with them and attempted to commit rape. He then states that statement regarding rape was not made. He further states that Sarita disclosed that they were caught hold of by six boys. He also states that Sarita had disclosed that Basanti was caught hold of by three boys and taken towards the agriculture field and misbehaved. Sarita has also disclosed that Basanti was taken towards agriculture field and Dilip was along with those three boys, but Dilip did not do anything and stayed near "*bund*" around the agriculture field. Thereafter, the girls were abused and Bhushan slapped Sarita by stating that they were indulged in bad things and that Kushal has also scolded the girls by stating that if they repeat this things, they would be killed.

15. From the evidence of the aforesaid witnesses, what emerges is that while the prosecutrix-Basanti, PW-3 and her friend Basanti, PW-13, who was also alleged to be subjected to rape and parents of Sarita namely, Munni Bai, PW-4 and Maiku Ram, PW-5, Indal Sinha, PW-6 and Ram Bai, PW-7 have stated regarding disclosure of commission of offence of rape. Indal Sahu, PW-12 has stated that the girls had gone towards the agriculture field and they were also followed by the appellants and some other boys and they were seen coming back and according to him, Sarita and Basanti were taken to their respective house. Moreover, in the evidence of aforesaid witnesses, a discrepancy has also come in the evidence of some of the witnesses that some have stated regarding disclosure of commission of offence of rape on Basanti and Sarita and some of them have stated regarding subjected to teasing, outraging of modesty. The words like "बेइज्जती" and "छेडखानी" are also said to have been uttered by Sarita and Basanti. But, Basanti and Sarita both have remained firm

on their disclosure before the Court that they were subjected to gang rape. Sarita has remained firm on her evidence that she was taken towards the agriculture field by use of force by the present appellants and further that some of the boys accompanied Basanti in the same agriculture field. Both Sarita and her friend Basanti, PW-13 (prosecutrix in another connected Criminal Appeal No.512 of 2004) have very firmly stated regarding commission of offence of rape on Sarita by the present appellants and some other persons (accused in another connected Criminal Appeal No.512 of 2004) having committed rape on Basanti. The manner, in which, the incident was reported to the parents by Sarita in the night and arrival of parents of Basanti in the night, information given to the Kotwar and Up-Sarpanch of the Village and accused-appellants and their parents were also called in the evening, clearly shows that it was not a case of false implication. Soon after the incident, Basanti and Sarita disclosed the incident of commission of offence of rape to number of persons including their parents and villagers had gathered around and the matter went open. It has also come that Up-Sarpanch of the Village, after discussing with all the parties, suggested to compromise, which the prosecutrix and her parents did not acceded to and they decided to lodge report in the police station.

16. The defence built up on the basis of the evidence of Indal Sahu, PW-12 is that according to the prosecution witnesses itself, the girls had gone towards the field on a whistle call, probably they called by their lovers and other boys of the village chased them and having found that two boys had run away, the present appellants and other boys scolded Sarita and Basanti as to why they were indulging in this type of activity with some other boys and they were brought back to their house. Further defence is that Sarita and Basanti had gone towards the agriculture field to meet their friends in the night, but, in order to save themselves from the allegations of affair, both girls i.e. Sarita and Basanti

cooked up a false story of rape of Basanti by the present appellants and other persons/boys in another criminal case.

17. The evidence on record shows that both girls, not only Sarita, but Basanti also, are of tender age of 16 years. Kotwari Register recording date of birth of Sarita as 19-01-1984 has been produced. In the evidence of Basanti also, her age has been recorded as 16 years. Both girls are not mature girls. To say that when they were caught with their friends by the present appellants and other boys, in orders to save themselves from the allegation of affair, they immediately cooked up a story that they have been subjected to rape, cannot be accepted as probable. The manner of commission of offence of rape on the prosecutrix has been narrated in sufficient details and there is no reason as to why those statements should be disbelieved.

18. One of the main contention of learned counsel for the appellants is that the medical evidence does not at all supports the evidence of prosecutrix-Sarita. Even according to Dr. Abha Rani Singh, PW-2, her hymen was found intact and hardly allowed insertion of the index finger, which completely rules out even partial penetration of male genital organ by any of the appellants.

The evidence of Dr. Abha Rani Singh, PW-2 does not state that there was no possibility of any rape having been committed. She has deposed in para 7 of her testimony that no definite opinion can be given, but possibility of partial penetration cannot be ruled out. Ocular evidence of the prosecutrix, Sarita, PW-3 of she having been subjected to rape and the manner, in which, it was described, does not create any doubt on her statement, it may be that though there was slight penetration. The evidence of Sarita, PW-3 shows that she was overpowered by number of boys and she was abused and threatened also. She does not say that she could offer in serious resistance. Therefore, the evidence of the prosecutrix could not be disbelieved only on the ground the injury was not

found on any part of the body or private parts. It is not invariable rule of law that the evidence of the prosecutrix, unless corroborated from the medical evidence, is liable to be disbelieved.

19. We also find that according to Dr. Abha Rani Singh, PW-2, vaginal swabs of the prosecutrix were also collected and sent for examination to the Forensic Science Laboratory. Learned trial Court recorded a finding and we have also found that in the Forensic Science Laboratory report, Ex.P-27, Slide "F" confirmed seminal stains and spermatozoa. Silde "F", as mentioned in Ex.P-27, is said to have been seized by the Constable Rajendra Dewangan, No.142, dated 02-05-2002.

20. The evidence of S. K. Dubey, Investigating Officer, PW-16 is that he had seized slide prepared from the vaginal swab of the prosecutrix in Ex.P-23. Dr. Abha Rani Singh, PW-2, has stated that the prosecutrix-Sarita was produced before her by the Police Constable Rajendra Prasad, No.142 of Police Station Sihawa for medical examination and after examination of the prosecutrix and after collecting vaginal swabs and preparation of slides of vaginal swabs of the prosecutrix, it was handed over to the same Constable in a sealed condition with an advise for chemical examination. Therefore, it is clear that the article collected by Rajendra, the police constable mentioned in memo dated 21-02-2003, Ex.P-26 of Forensic Science Laboratory and Slide "F", has been found to be containing spermatozoa. Prosecutrix's underwear Article "A", underwear of Kushal, Article "C" and other slide of Article "E" were found containing seminal stains and spermatozoa. The presence of spermatozoa in the vaginal swabs of the prosecutrix, corroborates the evidence of the prosecutrix-Sarita and that she was subjected to rape.

21. Even though, Dilip has not committed the offence of rape, but he has aided in the commission of offence and his involvement in the entire incident is

fully proved. Dilip is also involved with the other appellants in catching hold of the prosecutrix and dragging her inside the agriculture field. Dilip was asked to watch others during the period, two other appellants committed rape on the prosecutrix. Therefore, it is proved that Dilip is also involved in the commission of offence of gang rape. Even on the aspect of sentence, we do not find any ground to interfere with the same as the present is not a case of imposition of life imprisonment on the appellants and they have been convicted for commission of offence of gang rape and imposed jail sentence of 12 years.

22. In view of above, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence. Accordingly, this appeal is dismissed. As the appellants are on bail, their bail bonds stand cancelled and they shall be taken into custody and sent to jail for serving remaining part of the sentence, after adjusting the period during which, they remained in jail prior to grant of bail by this Court vide order dated 26-06-2007.

SD/-
(Manindra Mohan Shrivastava)
Judge

SD/-
(Rajani Dubey)
Judge