

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 667 OF 1998

Munna Mohammed Shaikh
aged about 21 yeas, Occ. Service
residing at Mangalwar Peth,
Pune

.. Appellant

Versus

The State of Maharashtra

.. Respondents

...

Mr.N.M. Nadar i/b S.V. Marwadi for the appellant.
Mr.Y.Y. Dabake, APP for the State.

CORAM : BHARATI DANGRE, J.
RESERVED ON : 14th JUNE 2021
PRONOUNCED ON : 30th JUNE 2021.

JUDGMENT :-

1 The Appeal is directed against the judgment delivered by the Addl. Sessions Judge, Pune in Sessions Case No.404 of 1995 (State of Maharashtra Vs. Munna Mohammed Shaikh) whereby the appellant charged for the commission of offence punishable under Section 376 of IPC and 506 (2) of IPC, stand convicted and has been sentenced to suffer RI for 7 years and to pay fine of Rs.1,000/-, in default RI for 3 months, and on conviction under Section 506(2) of IPC, is directed to undergo RI

for 1 year and to pay fine of Rs.500/-, in default RI for one month. Both the sentences being directed to run concurrently along with the relief of set off for the period already in jail from 20th March 1995 to 6th May 1995. The Appeal is admitted on 28th August 1998 and the appellant is released on bail pending the Appeal, on the statement of the learned APP being recorded that the appellant has no criminal antecedents.

2 The prosecution case can be unfurled from the record, to the effect that the prosecutrix lodged a complaint with Mangalwar Peth Police Station, Pune on 16th March 1995 reporting about an incident which took place on 13th March 1995 when she was present in her house along with her daughter and father and retired to sleep at 10.00 p.m after having their meals. Her mother and one of her brother, also residents of the said house, were away on account of some reason. It was reported by the prosecutrix that at around 12.30 in the night, when she wanted to relieve herself, she opened the door of the house and after micturating near the nalla in front of the house, when was returning from the small lane adjoining the house, a boy (Appellant) in the neighborhood unexpectedly arrived there and gagged her mouth with his left hand and by brandishing a knife in the right hand, dragged her in the field of one Sibbu. She reported that he threatened her that if she shout, he would harm her and burn her house, he removed the clothes on her person; a

saree, petticoat and blouse and also removed the clothes on his own person and at the knife point, pressed her chest with the left hand and by inserting his private part, committed forcible sexual intercourse with her. She alleged that she was petrified with the said incident and ran naked in the house and since her mother was not there in the house, dressed herself in fresh pair of clothes and kept lying and did not report the incident to anyone. On 15th March 1995 at around 4.00 pm when her mother returned, she along with her mother, arrived at the police station and reported about the incident. The investigating machinery was set into motion and the Investigating Officer (PW 4) prepared the spot panchnama with the help of PW 3 (panch witness) and sent the prosecutrix for medical examination. The appellant came to be arrested on the same day and was subjected for medical examination. His arrest led to the discovery of a knife used by him for threatening the prosecutrix. On completion of investigation, the charge-sheet was filed.

3 The accused/appellant was charged for committing forceful sexual intercourse without consent of the prosecutrix on 14th March 1995 at 00.30 hrs in the open plot near his house, resulting in commission of offence punishable under Section 376 of IPC. He was also charged for criminal intimidation by threatening to kill the complainant if she would resist the sexual intercourse.

4 In order to establish the guilt of the accused, the prosecution examined four witnesses; PW 1 – the prosecutrix aged 33 years, PW 2 – the mother of the prosecutrix, PW 3 – panch on the discovery and the Investigating Officer as PW 4. Statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. During the course of trial, the learned APP moved an application under Section 294 of Cr.P.C and the accused was called upon to admit or deny the genuineness of four documents; being the spot panchnama recorded on 16th March 1995, seizure of clothes from the prosecutrix, medical examination report of the prosecutrix and the Chemical Analyser's certificate. On notice being issued to the accused, all the four documents vide document nos.1 to 4 were admitted by defence and permitted to be exhibited by the prosecution.

5 The complainant/prosecutrix stepped into the witness box and deposed that she was a married lady, her marriage being solemnized 18 years back but was arduous and relationship with her husband strained since last 8 years, and consequently she was residing at Mangalwar Peth, Pune in the house of her parents along with her youngest daughter. One Roshanbi was residing near her house and the accused was identified as her son. She deposed about the incident which took place two to three years

back, which she had reported to the police. In sync with her complaint, she deposed before the Court. She reiterate that the accused dragged and took her with him to a field at a distance of 200 feet from her house and under the threat of a knife, removed all her clothes and also removed his clothes and by falling on her body, committed sexual intercourse with her and being scared, she ran away from the place without wearing any clothes, and in the early morning, went to the spot and collected her saree, which was handed over to the police, but her other clothes were missing from the spot.

6 The prosecutrix was subjected to extensive cross-examination on the topography of house and the adjoining area and admitted that there are two to three houses near her house and there is a narrow lane adjoining her house having width of 1½ feet. The three houses near her house were described by her to be belonging to the accused and his relatives and the third house belonged to one lady Sakhubai. She admitted that all the persons were present in the house at the time when the incident took place and further elaborated that there were about 10 persons in the three houses. She admitted that the houses are adjoining to one another. She accepted that there are two houses on the way to the field and the lane in front of her house, reaches straight to the field and there is no other lane near her house. About the actual incident, she admitted that she made attempt to

rescue herself from the clutches of the accused on her way being carried to the field. She state that since she was scared of the knife, she did not shout at that time. She admitted that her father was keeping good health and was working till date and her younger brother Vithal was sleeping on the pavement. She denied the suggestion that the police chowky is situated just after the open drainage. She denied the suggestion that there used to be quarrel between her family members and the family of the accused and she had filed a false case.

7 PW 2 – the mother of the complainant corroborate her on material particulars on the basis of the information given to her by her daughter. She reiterate that she was told by her daughter (PW 1) that accused Munna Shaikh had committed rape on her when she came out of the house to ease herself, by taking her to the field by threatening her by a knife. About the location of the house, PW 2 has admitted that there are two houses adjoining her house, but in the locality, there are about 100 houses. She also admitted that the area is crowded till 11 pm, and there are electrical lights in that area. PW 2 admit that there is one lane from the house to the field. PW 2 also admit that some times there used to be quarrels between the female members of her family and family of the accused but denied the suggestion that for the said reason, PW 1 and PW 2 had grudge against the accused.

8 PW 3 is a panch who has proved the Memorandum Panchnama dated 16th March 1995 leading to discovery of a knife at the instance of the accused from his house. The knife (Article 1) recovered is the one having wooden handle and the blade with length of 4 inches. The panchnama record recovery of other articles belonging to the accused, being pant (Article 2), Shirt (Article 3), banyan (Article 4) and underwear (Article 5). About the location of the house of the accused, the witness deposed that it was at the distance of half kilometer from Gadital police chowky but admit that once when they started from the police chowky, they reached the house of the accused within five minutes. PW 4 is the Officer on duty in Gadital Police Chowky when complainant lodged her complaint. The Investigating Officer admit that after drawing the Memorandum Panchnama (Exhibit-14), he accompanied the accused and panchas to the house of the accused, situated behind Shivaji Stadium, which led to discovery of the clothes and knife which were seized vide seizure panchnama (Exhibit-15). The IO deposed that the saree of the prosecutrix was produced by the mother of the complainant and it was seized vide seizure panchnama (Exhibit-7). About the slum area where the incident took place, the IO state that there are 250-300 shanties in the area out of which some are adjoining each other, whereas others are spaced out from one another. He state that the distance between the house of the

accused and the prosecutrix is 50 feet. He further depose that there are about 50 hutments near the house of the accused and the complainant. He speak of recording of statement of one of the neighbour, by name Shingve, but not being cited as witness. The IO give the location of the spot of incident to be at about 5 minutes walking distance from Gadital Police Chowky.

9 This, in nutshell, is the framework of the prosecution case as led before the trial Court. The accused was examined under Section 313 of the Code of Criminal Procedure and he denied the case of the prosecution and when posed a question as to why the prosecution witnesses are deposing against him, he responded by stating that there used to be quarrels between the complainant and his sister on minor issues and since he had intervened, being agitated, the prosecutrix had lodged a false complaint and on her say, the witnesses are deposing falsely and the prosecution to be a faux.

10 It is in the backdrop of the aforesaid material placed before the Sessions Judge, the accused was convicted with a finding rendered that there is unchallenged evidence on record to the effect that on the date of the incident, when the prosecutrix was alone in the house with her father and her younger daughter, the accused forcibly committed sexual intercourse without her consent. The conduct of the prosecutrix to wait till her mother to

return and then to lodge a report was found to be justified one since the prosecutrix could have confided only in her mother and did not deem it appropriate to report about the incident to her aged father or to her daughter, nor was it possible for her to approach the police station alone. As per the Sessions Judge, the delay in lodging of the FIR being properly explained, the prosecution did not face any hindrance. About the truthfulness of the incident, the trial Court recorded that incident took place at midnight at 00.30 hours, when everyone was in deep slumber and the prosecutrix was shaken, since the accused threatened her with knife and dragged her to the field and hence, she did not raise any shout and since the version of the prosecutrix was found to be reliable and free from any doubt, the prosecution was held to have succeeded in proving the charges.

11 Learned counsel Mr.N.M. Nadar for the appellant would urge that the testimony of the prosecutrix and her conduct make prosecution case wholly incredible and the learned trial Judge has lent credence to the testimony on assumed reasoning. Further, the learned counsel would submit that the medical evidence does not support the prosecution case and the evidence of the prosecutrix is not so unblemished or trustworthy, that solely on the basis of her testimony, the conviction can be recorded and in this background, the medical evidence would have gained significance but the prosecution has failed to examine

the Doctor. According to the learned counsel, the prosecution case do not inspire confidence; by unnatural conduct of the prosecutrix and the delay in lodging the FIR and without any corroboration, the conviction imposed cannot sustain.

12 Per contra, learned counsel for the State would urge that the prosecutrix was under constant fear as the act was committed by brandishing a knife and her conduct is natural, when her case is that she did not deem it appropriate to report about the said incident of rape to her father, brother or anyone else but she waited for her mother to return. The learned APP would also submit that the background of the prosecutrix is of great significance, being of a rural background and a rustic illiterate woman, she was dead scared when the incident took place and she did not feel it proper to disclose or discuss about the incident to any male member. The learned APP, would therefore, support the impugned judgment which has accepted the version of the prosecutrix whole-heartedly since the learned trial Judge was of the opinion that it inspired confidence and therefore, there was no need to look for any corroboration. According to the learned APP, the delay itself cannot be said to be fatal in the backdrop of the circumstances and particularly the trauma faced by the victim on account of the said incident where she was put to shame by her own neighbor's son. Learned APP agree that the impugned judgment calls for no interference as the Court has

rightly appreciated the evidence brought on record by the prosecution and recorded finding of guilt in a grave offence of violating dignity of woman and imposed befitting sentence on the accused.

13 I would briefly refer to the settled position of law about whether the conviction can be based on the sole testimony of the prosecutrix/ victim. Where the testimony of the victim is found to be reliable and trustworthy, the law is that the conviction on the basis of her sole testimony is permissible.

14 The Apex Court in case of Madho Ram vs. State of Uttar Pradesh, (1973) 1 SCC 533, led the way for appreciation of evidence of the prosecutrix. In paragraph 11 of the judgment, it was held as under :-

“The principles that have to be borne in mind by Courts when considering evidence of the prosecutrix, have been clearly laid down by several decisions of this Court. It has been held that the prosecutrix cannot be considered to be an accomplice. As a rule of prudence, however, it has been emphasized that Courts should normally look for some corroboration of her testimony in order to satisfy itself that the prosecutrix is telling the truth and that a person, accused of abduction or rape, has not been falsely implicated. The view that, as a matter of law, no conviction without corroboration was possible has not been accepted. The only rule of law is the rule of prudence namely the advisability of corroboration should be present in the mind of the Judge or the Jury, as the case may be. There is no rule of practice that

there must in every case, be corroboration before a conviction can be allowed to stand. As to what type of corroboration may be required when the Court is of the opinion that it is not safe to dispense with that requirement, it has also been laid down that the type of corroboration required must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence with which a person is charged.

15 In case of State of Rajasthan vs. N.K., 2000 (5) page 13, the three Judges Bench of the Apex Court further strengthened the position of law on the said point while dealing with a case of rape of a girl above 16 years of age and to ascertain whether she was a consenting party in absence of marks of external injuries, and expressed that no father of a young girl would put the life of a daughter at stake on a false case. In para-11, it held as under:-

11 It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend

assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do. Reference may be had to a long chain of decisions, We may quote from the last of the above said decisions where the rule for appreciating the evidence of the prosecutrix in such cases has been succinctly summed up in the following words :-

“If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

The Courts are expected to be alive to the fact that in case of rape, no self respecting woman would come forward just to get herself humiliated at the hands of the members of the Society, against her honor. Seeking corroboration when the prosecutrix is found to be truthful and lend complete credence to the case of the prosecution, would be adding insult to her injury and to her woes including the mental trauma which she has suffered at the time of the assault.

16 If the Court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial by way of assurance. Assurance, short of corroboration, as understood in the context of an accomplice is sufficient. The evidence of a prosecutrix has to be accorded more weightage and to be considered as more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons which necessitate looking for corroboration and the Court should find no difficulty in acting on the testimony of a victim of sexual assault to convict an accused if her version is reliable and inspire confidence. Minor contradictions or insignificant discrepancy should be no ground for throwing out an otherwise reliable prosecution case, is the position of law as it stands.

17 This position of law being well settled on one hand, it is also equally well accepted position that her testimony cannot always be presumed to be a gospel truth. The possibility of exaggeration or embellishment or false implication, at times, cannot be ruled out.

 In Rajoo & Ors vs. State of M.P. (2008) 15 SCC 133, the Apex Court expressed a word of caution in the following words:-

The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her

statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

18 In the recent judgment of the Apex Court in Ganesan Vs. State reported in 2020 (10) SCC 573, the Hon'ble Apex Court reinforced the earlier law, being that the sole testimony of prosecution can result in conviction if her evidence is absolutely trustworthy, unblemished and should be of 'sterling quality'. Their Lordships reiterated the existing law on the said point and defined "who is a sterling witness in para 9.3 of the report.

Who can be said to be a "sterling witness", has been dealt with and considered by this Court in the case of Rai

Sandeep alias Deepu v. State (NCT of Delhi), (2012) 8 SCC

21. In paragraph 22, it is observed and held as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all 12 other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely,

oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.” On evaluating the deposition of PW3 – victim on the touchstone of the law laid down by this Court in the aforesaid decisions, we are of the opinion that the sole testimony of the PW3 – victim is absolutely trustworthy and unblemished and her evidence is of sterling quality”.

19 The case of the prosecution will therefore have to be appreciated in the backdrop of the aforesaid prevailing legal position as expounded through the various authoritative pronouncements.

 The prosecution solely rely upon the evidence of the prosecutrix and it is to be noted that though the medical certificate is exhibited being admitted, the prosecution has failed to examine the author of the said certificate. The certificate at Exhibit-8 do not indicate injuries to the genitals; in column no.11, examination of the hymen/vagina, reveal “old tears – two fingers are admitted easily”.

 Final opinion given by the Dean of the Sassoon General Hospital is “No signs of recent forced intercourse, accustomed to intercourse”

20 The prosecutrix was medically examined on 16th March 1995 at 5.00 p.m. The incident reported, occurred on 4th March 1995 at 00.30 hours and the history given by her is forcible penetrative vaginal intercourse. The two important

points cannot be lost sight of; one being the prosecutrix, aged 33 years is a woman married for 18 years and has borne four children. The opinion in the medical report that she is habituated to sexual intercourse and the vagina could admit two fingers easily, indicative of her sexual activity. The second point being, she came to be examined after lapse of 48 hours and therefore, no sexual activity could be seen. However, in the final opinion, the Doctor has opined about no signs of recent forced intercourse and refer to old hymenal tears being present. To extract what is the explanation of the said two remarks, particularly, what is meant by 'Recent' and the term 'old tears', meaning how old, ought to have been clarified by the person medically examining the prosecutrix, but the prosecution for the reasons best known fail to examine the Medical Expert.

Accepting the said position, the medical report do not support the case of the prosecution as the examination of the prosecutrix do not reveal any sign of recent forced intercourse.

21 To establish the case of forcible sexual assault, the prosecution has relied upon PW 1 and PW 2; *albeit*, PW 2 only speaks of the incident as narrated to her by her daughter, and therefore, she do not render much strength to the prosecution case. The prosecutrix therefore, is the only witness to prove the case of rape and criminal intimidation and it will have to be ascertained from her evidence and conduct whether she is a

‘Sterling witness’ as expressed by the Apex Court in case of Ganesan Vs. State (supra).

In the complaint, the prosecutrix state that she had opened the door of her house and she had stepped out of the house at 12.30 am for relieving herself and after she had urinated near the nalla in front of her house and while she had turned back to the house, the accused approached her from the adjoining lane. In her examination in chief, she deposed that at 12’O clock, she came out of the house to ease herself and at that point of time, the accused caught hold of her. In the complaint, she alleged that she was dragged by the accused and taken to field of Sibu, whereas before the Court, she has deposed that she was directed to accompany the accused on a threat that if she shout, he will burn her house. She do not speak of the accused threatening her that he would stab her with the knife if she do not comply. There appear inconsistency in the version of the prosecutrix.

The version of prosecutrix is that in one hand, the accused had a knife and in other hand, he removed her clothes and also removed his own clothes. The prosecutrix did not raise any alarm at all when carried to the field and she deposed that she was put under fear of knife. When in the field, the accused indulged with her by pressing himself upon her person and while he committed the alleged act of rape. At that time also, she do not raise any alarm. Here, the location where the act is committed gains importance.

The IO has admitted that the spot which was shown by PW 2, pertinent to note that the spot is not shown by the prosecutrix herself, is located at a distance of 5 minutes from Gadital police chowky. The spot panchnama (Exhibit-6) reflect the spot to be located to the southern end of Shivaji Stadium adjoining the nalla and is an open plot admeasuring half acre. At the southern end of the spot, is the slum. PW 2 had shown the place of incident to be located in the center of the plot. On the north side of the said spot is the nalla and the wall of Shivaji Stadium located at 65 feet and the spot panchnama mention presence of tin houses. From the spot where the rape is alleged to have taken place, the house of the accused is located at a distance of 125 feet and the house of the victim is 10 feet apart. Spot panchnama do not record any indication of disturbance of the grass or small shrubs which are found to be standing as per the spot panchnama. The version of the prosecutrix is she was made to lie down and the accused forced himself upon her, but the spot panchnama gives no indication of breaking of the continuity of the grass standing there. Pertinent to note that during the entire act of sexual intercourse, the prosecutrix would have raised a cry for help, which she admittedly did not, and in fact, if she would have raised a cry, the location and the version of PW 4 reveal that it is a densely populated area and being a slum, it can be assured that some of the members of the family were for sure sleeping outside their houses in the Courtyard, as the brother

of the prosecutrix was. A cry for help from the prosecutrix was a natural reaction and it can be very well understood that while she was dragged, she could not raise an alarm as her mouth was gagged by the accused by his left hand, but on reaching the spot where the act was actually committed and which consumed some time since all the clothes of the prosecutrix were removed by the accused and thereafter, he removed his own clothes and thereafter, forced himself upon her which would have afforded an opportunity to the prosecutrix to raise an alarm, which she fail to do. It is not her version that while the actual act of physical indulgence was being committed, it was with the knife being pointed out to her nor this is possible.

22 The version of the prosecutrix that she ran from the spot (field) naked and entered her house, which is a room admeasuring 8 x 10 feet where her father and her daughter, aged 10 are sleeping, nobody noticed her entering nor anybody noticed her putting on clothes, as per her version. Her brother was sleeping outside in the Courtyard but surprisingly, her ingress did not stir his sleep. This conduct of the prosecutrix create a cloud of suspicion as it appear to be unnatural. Further, once reaching home, she kept mum. Her father is an able bodied person, which PW 1 has admitted in her cross examination but she did not turn to him for help. Her brother was also present in the house but she did not disclose the incident to any of the male member in

the family and waited for her mother to come back, defeats the human prudence. It baffles once common sense since the accused was the immediate neighbor of PW 1 and she could have confronted him or his family with the said act with the help of her father or brother who were present on the day of the incident and till she approached police. She remained mum for the whole of the day and the next night and only divulged the incident to her mother – PW 2 when she returned on 15th March 1995. For some unfathomable reason, the version of the prosecutrix do not inspire confidence and the story set up appear to be wholly incredible. PW 1 is a matured married lady, mother of 4 children and if she had undergone such a traumatic attack on her privacy, she would have revolted immediately and raised alarm once she returned home and particularly when the accused was just a distance of 10 feet apart from where she was present but she does nothing. True, it is that delay may not be fatal to the case of the prosecution, taking into account the trauma faced by the victim of sexual assault and the circumstances which she is placed in, particularly the fear of humiliation and of being traumatized, but in this particular case, justification is offered by PW 1 as to why she kept mum, do not appeal to any conscience. As per PW 2, the area used to be crowded till 11.00 pm and there was sufficient light on the road. As per PW 1, there is only a single road which passes from her house and reach the field where the alleged incident took place and on the way, there are 2 – 3 houses. In

view of this case of the prosecution coming through these witnesses, when the incident alleged is said to have taken place between 12 to 12.30, it is inconceivable that PW 1 was dragged on the main road by the accused and no one has witnessed this or overheard any movement, particularly when the houses are closely connected in a slum area.

23 The learned trial Judge however, has infused reason for the delay, being that it was but natural for the prosecutrix to wait till her mother returns and she was uncomfortable narrating the said incident to her father or brother being male members. This some how is beyond comprehension as PW 1 subsequently narrated the incident in form of a complaint to a male Officer. When a serious violation has occurred, instead of seeking immediate help and assistance of her able bodied father or from any other woman folk in the locality, as according to the version of the prosecutrix, there were atleast 10 persons who were present in their houses in close proximity of their house, she would have received the necessary support and assistance. This unnatural conduct of the prosecutrix in absence of any medical evidence or circumstantial evidence remotely lending support to her version do not lend credence to the case of the prosecution, as evidence has to be weighed and not counted. The conviction can no doubt be recorded on sole testimony of prosecutrix only if her evidence inspire confidence and here, there is absence of

circumstances which mitigate against her veracity. She fails to meet the standard of sterling witness and therefore, in my considered opinion, the trial Judge has fallen in error on relying upon the testimony of the prosecutrix solely and making it the base of conviction of the accused.

24 The version of the prosecutrix that she went to the spot early morning and collected her saree but her other clothes were missing from the place also raise a doubt and dent in her testimony. Her conduct in not complaining to anybody about the incident is wholly unnatural. Apart from the fact that she had several opportunities to raise an alarm/cry for help but in the whole incident, she failed to do so and what is more trouble some is the accused continued to stay next door to her till he was arrested but she did not deem it fit to report the incident to her father and her brother. This conduct of the prosecutrix warranted certain corroboration, but there is none. The conviction of the accused is based on the sole testimony of the prosecutrix . Accepting it to be the gospel truth in uttering the ignorance of the unnatural and doubtful conduct of the prosecutrix which make the story of the prosecution improbable.

25 The trial Court has completely ignored the attempt on part of the accused in putting forth an alternate version which could not be brushed it lightly. In the statement under Section

313, the accused specifically attributed a reason for his false implication being the trivial quarrels between the family of the complainant and his family and since he had intervened. PW 2 admit that there used to be quarrels between the female members of the family and only it would include PW 1 and PW 2 and the family of the accused. The trial Court ought to have analysed the version of the accused deeper before clamping the said evidence as false and untrustworthy. Section 313 afford an opportunity to the accused to explain any circumstance appearing in the evidence against him and sub-section (4) of Section 313 contemplate that the answers given by the accused may be taken into consideration in a trial, and put in evidence for or against him. The said aspect of the statement of the accused recorded under Section 313 has been completely ignored while finding him guilty of the allegations levelled, without any accompanying evidence either in form of medical evidence or any independent witness in the locality being examined. The allegation of false implication, therefore, cannot be ruled out since prosecution witness had admitted about the quibbles between the two families. The testimony of the prosecutrix in the peculiar facts and circumstances of the case therefore, cannot be accepted as a gospel truth, in absence of corroboration and the material brought on record by the prosecution is scanty and not sufficient to prove the charge levelled against him i.e. committing forcible sexual intercourse without the consent of the prosecutrix on the night of

14th March 1995 and the charge of criminal intimidation.

26 Resultantly, the Appeal is allowed.

The judgment of conviction and sentence by the Addl. Sessions Judge in Sessions Case No. 404 of 1995 is set aside. The appellant stands acquitted of the charges levelled against him.

SMT. BHARATI DANGRE, J