

IN THE HIGH COURT OF ORISSA, CUTTACK

JCRLA No.74 of 2015

From judgment and order dated 24.09.2015 passed by the Sessions Judge -cum- Special Judge, Sundargarh in Sessions Trial No. 114 of 2013.

Baman Charan Munda Appellant

-Versus-

State of Odisha Respondent

CRLA No.529 of 2015

Patra @ Pabitra Mahakud Appellant

-Versus-

State of Odisha Respondent

CRLA No.19 of 2016

1. Arjun Singh
2. Siba Singh Appellants

-Versus-

State of Odisha Respondent

For Appellants: - Mr.Sahasransu Sourav
(in all the cases) Advocate

For Respondent: - Mr. Manoranjan Mishra
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 21.07.2022 Date of Judgment: 16.08.2022

S.K. SAHOO, J. JCRLA No.74 of 2015 was registered on the basis of the prisoner's petition received from the appellants Arjun Singh, Baman Charan Munda and Siba Singh, which was admitted on 20.02.2017. Since the appellants Arjun Singh and Siba Singh filed a separate appeal, i.e. CRLA No.19 of 2016, as per the submission made by the learned counsel for the appellants, JCRLA No.74 of 2015 was confined only with respect to the appellant Baman Charan Munda as per order dated 28.03.2022.

CRLA No.529 of 2015 filed by the appellant Patra @ Pabitra Mahakud was presented before this Court on 28.10.2015 and admitted on 29.07.2016.

CRLA No.19 of 2016 filed by the appellants Arjun Singh and Siba Singh was presented before this Court on 05.01.2016 and admitted on 03.08.2016.

2. All the appellants faced trial in the Court of learned Sessions Judge -cum- Special Judge, Sundargarh in Sessions Trial No.114 of 2013 for offences punishable under sections 376-D/506/34 of the Indian Penal Code and section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989 (hereafter 'S.C. & S.T. (PoA) Act') on the accusation that on 27.02.2013 at about 2.00 p.m. they forcibly committed rape on the victim 'MM' inside Silikata jungle near village Kaunala and criminal intimidation by threatening the victim who was a member of Scheduled Tribe.

Learned trial Court vide impugned judgment and order dated 24.09.2015 though acquitted all the appellants of the charge under section 3(1)(xi) of the S.C. & S.T. (PoA) Act, but found them guilty under sections 376-D/506/34 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.10,000/- (rupees ten thousand) each, in default, to undergo further rigorous imprisonment for two years each for the offence under section 376-D of the Indian Penal Code and to undergo rigorous imprisonment for two years each and to pay a fine of Rs.2,000/- (rupees two thousand) each, in default, to undergo further rigorous imprisonment for three months each for the offence under section 506/34 of the Indian Penal Code and both the sentences were directed to run consecutively.

3. The prosecution case, as per the F.I.R. (Ext.10) lodged by the victim (P.W.5) on 01.03.2013, in short, is that on 27.02.2013 she was returning home from village Bhaludunguri and she got down at Gurundia bus stand and proceeding on foot

towards her village Tumbei and at about 2.00 p.m., while she was passing near a rivulet, locally known as 'Kaunala' running by the side of Silikata village jungle road, four youths of her village, who were coming from the side of her village towards Gurundia, suddenly intercepted her way noticing her alone. They started physically manhandling her. The victim shouted, but there was no one nearby to respond to her shouting and thereafter, out of the four appellants, appellant Patra @ Pabitra Mahakud (in CRLA No.529 of 2015) dragged her to the road side jungle holding her hands while the rest of the three appellants pushed her in the same direction. Inside the jungle, the appellant Patra @ Pabitra Mahakud forcibly raped her first and then the appellant Baman Charan Munda (in JCRLA No.74 of 2015) followed by appellant Siba Singh (appellant no.2 in CRLA No.19 of 2016) and appellant Arjun Singh (appellant no.1 in CRLA No.19 of 2016) raped her one after another. After committing rape on her, the appellants also threatened her not to disclose about the occurrence before anybody or else she and her husband would be killed. The victim sustained injuries on different parts of her body and about one hour after the occurrence, she proceeded towards her village after taking some water from the house of Muktu Bhumij (P.W.15). Thereafter, somehow or other the victim managed to reach her village and ultimately in her house. Immediately, she

could not disclose about the incident before anybody, but subsequently, she informed everything to her husband Dambaru Munda (P.W.6), who on 01.03.2013 brought her to Gurundia police station. At Gurundia police station, the victim reported the matter orally before S.K. Mallick, S.I. of the police station, who reduced her version into writing, which was treated as F.I.R. and Gurundia P.S. Case No.04 of 2013 was registered under sections 376-D/506/34 of the Indian Penal Code and section 3(1)(xi) of the S.C. & S.T. (PoA) Act. As one of the offences i.e. under section 3(1)(xi) of the S.C. & S.T. (PoA) Act was there, the then S.D.P.O., Bonai, Sri A.K. Panda (P.W.17) took up investigation of the case, examined the victim as well as her husband at the police station and recorded their statements, sent the victim for medical examination on police requisition, visited the spot, visited the village of the victim and examined the witnesses. During course of investigation, P.W.17 arrested the appellants Baman Charan Munda, Patra@ Pabitra Mahakud and Arjun Singh and thereafter, he also arrested the appellant Siba Singh on 23.05.2013 and forwarded all the appellants to judicial custody. P.W.17 made various seizures, examined other material witnesses, sent requisition to the concerned Tahasildar for issue of caste particulars of the victim as well as the appellants and on completion of investigation, he submitted charge sheet on

23.05.2013 against all the appellants under sections 376-D/506/34 of the Indian Penal Code and section 3(1)(xi) of the S.C. & S.T. (PoA) Act.

4. After submission of charge sheet, the case was committed to the Court of Session following due formalities, where the learned trial Court framed charges against the appellants on 20.03.2014 and since the appellants refuted the charges, pleaded not guilty and claimed to be tried, the sessions trial procedure was resorted to prove the guilt of the appellants.

5. During course of trial, in order to prove its case, the prosecution examined as many as seventeen witnesses.

P.W.1 Moris Soren, who was the police constable attached to Gurundia police station, is a witness to the seizure of biological samples of the appellant Siba Singh as per seizure list Ext.1.

P.W.2 Topi Chandra Patra and P.W.8 Jaspin Jate, who were the Home guards and P.W.12 Chakradhar Bag, the then police Havildar attached to Gurundia police station, are the witnesses to the seizure of biological samples of the victim as per seizure list Ext.2.

P.W.3 Krushna Mahakud, who was the Home guard and P.W.13 Bella Ekka, who was the Grama Rakhi attached to

Gurundia police station, are the witnesses to the seizure of wearing apparels of the victim as per seizure list Ext.3.

P.W.4 Chittaranjan Bag and P.W.9 Chamara Xalxo, who were the Home guards attached to Gurundia police station, are the witnesses to the seizure of biological samples of the appellants as per seizure list Ext.4 and the wearing apparels of the appellant Patra @ Pabitra Mahakud as per seizure list Ext.5.

P.W.5 is the victim, who is also the informant in the case and she narrated about the incident as to how the appellants ravished her.

P.W.6 Dambaru Munda is the husband of the victim, who stated about the disclosure made by the victim about the occurrence before him and then he proceeded to Gurundia police station with the victim to lodge the first information report.

P.W.7 Mathias Munda was the Grama Rakhi attached to Gurundia police station who came to know from the victim that on account of rape case instituted by her, the appellants were arrested.

P.W.10 Manbodh Munda, who is the father-in-law of the victim (P.W.5), is a post occurrence witness.

P.W.11 Sabita Patra, who is the sister-in-law of the victim (P.W.5) being husband's sister, stated that the victim had been to her house on 25.02.2013 and left her house on

27.02.2013 and after some days, P.W.6 informed her about the occurrence.

P.W.14 Gangay Ekka, who was the Home Guard attached to Gurundia police station, is a witness to the seizure of personal belongings of the appellants Arjun Singh, Baman Munda and Siba Singh as per seizure lists Exts.6, 7 and 8 respectively.

P.W.15 Muktu Bhumij, who is an independent witness, did not support the prosecution case, for which he was declared hostile.

P.W.16 Dr. Jayashree Ketan Mohapatra was the Medical Officer of C.H.C., Gurundia, who examined the victim on police requisition and submitted her report as per Ext.9.

P.W.17 Amaresh Kumar Panda, the S.D.P.O., Bonai was the Investigating Officer of the case, who on completion of investigation submitted charge sheet against the appellants.

The prosecution exhibited fourteen numbers of documents. Exts.1 to 8 are the seizure lists, Ext.9 is the requisition for medical examination of the victim, Ext.10 is the formal F.I.R., Ext.11 is the topography of the spot, Ext.12 is the office copy of letter No.528 dated 27.04.2013 of Tahasildar, Gurundia indicating the caste of the victim, Ext.13 is the letter No.529 dated 27.04.2013 of Tahasildar, Gurundia indicating the

caste of the appellants and Ext.14 is the forwarding report of S.D.J.M., Bonai for chemical analysis.

6. The defence plea was one of denial and false implication in the case due to land dispute. The main plea of the defence is that the appellant Baman Charan Munda was the Chairman of the local V.S.S. Centre, Tumbei. The family members of the victim had constructed their house encroaching upon some land of the said V.S.S. Centre area and when the appellant Baman Munda along with other appellants approached the victim to vacate the encroached area, the victim instead of vacating the same used to threaten them to pay off the scores. For such dispute between the parties, the family of the victim had bore grudge against the appellants and ultimately, a false case has been foisted against them.

D.W.1 Hemanta Kumar Singh is a co-villager of P.W.5 so also the appellants who stated that the victim had encroached upon and amalgamated some portions of land from V.S.S. Centre into her homestead area and the appellants were the members of the said Centre and there was dispute between them. He further stated that on the date of alleged incident, the appellants were working in the thrashing floor of the appellant Arjun Singh.

7. The learned trial Court after assessing the evidence on record, came to hold that the prosecution has not been able to prove its case under section 3(1)(xi) of the S.C. & S.T. (PoA) Act. It was further held that the testimony of P.W.5 vis-à-vis the medical evidence provides sufficient credence to the allegation of the prosecution and nothing improbable or impeachable could be found in the testimony of P.W.5 as well as her husband (P.W.6) and accordingly, it was held that on the date of occurrence, the appellants had conjointly sexually assaulted the victim (P.W.5) near Kaunala rivulet and the very conduct of the appellants reflects that at the relevant time, they had attacked with common intention to sexually assault the victim for which all the appellants were held guilty for the offence under section 376-D of the Indian Penal Code. With regard to the charge of criminal intimidation, it was held that the version of P.W.5 is quite believable and trustworthy and the appellant Baman Munda had threatened the victim after she was sexually assaulted by the appellants. It was further held that though only appellant Baman Munda had pressed her neck and threatened her, but since the appellants have sexually ravished her one after another having acted in consort with common intention, therefore, the above threat of appellant Baman Munda would cover the misdeed of all the appellants towards their common intention. It was held that

all the appellants are liable for criminal intimidation causing alarm to P.W.5 whereby she was desisted to take immediate steps against them and accordingly, they were held guilty for the offence under section 506 Part II of the Indian Penal Code.

8. Mr. Sahasransu Sourav, learned counsel appearing for the appellants contended that the prosecutrix changed her version during her examination in Court relating to what happened prior to the actual commission of rape on her that she had narrated in the F.I.R. and her narration is different in the F.I.R. and 161 Cr.P.C. statement in comparison to her deposition in Court. It is further contended that in the F.I.R. and 161 Cr.P.C. statement, the victim alleged that she was pulled by one of the appellants and pushed by the other appellants to the spot whereas in her deposition, she stated that she was virtually lifted by the appellants to the spot. Learned counsel further contended that the date on which the victim stated to have narrated the incident before her husband (P.W.6) in the F.I.R. and her deposition in Court is quite contradictory to each other. There are inconsistencies in the statement of the prosecutrix and she is not a witness of sterling quality and there is no material corroboration to her evidence. Learned counsel further contended that P.W.15 is a post-occurrence witness and his evidence does not corroborate with the evidence of the victim

with regard to taking water by the victim in his house. This creates a doubt in relation to her story in that respect and in view of section 6 of the Evidence Act, the same is a relevant fact as res gestae. It is argued that the medical evidence does not support the case of the prosecutrix as there was no sign of recent sexual intercourse as per the evidence of the doctor (P.W.16). He further argued that the I.O. has stated that there were no clues at the spot whereas the prosecutrix has stated that her wearing apparels were stained with mud which shows that the place was muddy and in such a situation, there should have been marks of violence at the spot. It was argued that the victim's wearing apparels were seized and those were sent for chemical examination but the prosecution having failed to prove the Chemical Examination Report, the truthfulness of the prosecution case is doubted. It is further argued that the victim admitted her previous land dispute with the appellants and on account of delayed lodging of the first information report, the chance of false implication of the appellants and concoction of the case cannot be ruled out and therefore, it is a fit case where benefit of doubt should be extended in favour of the appellants. Reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of **Krishan Kumar Malik -Vrs.- State Of Haryana reported in (2011) 49 Orissa Criminal Reports**

(SC) 929, Rai Sandeep @ Deepu -Vrs.- State Of NCT of Delhi reported in (2012) 53 Orissa Criminal Reports (SC) 286 and Raja and others -Vrs.- State of Karnataka reported in (2016) 65 Orissa Criminal Reports (SC) 845.

Mr. Manoranjan Mishra, learned Addl. Standing counsel for the State while supporting the impugned judgment and the order of conviction contended that conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and the learned trial Court rightly accepted the evidence of the victim (P.W.5). It is further submitted that the Court should examine the broader probabilities of a case and not get swayed away by minor contradictions or insignificant discrepancies in the statement of the victim, which is not fatal in nature. The evidence of the victim is supported by her husband (P.W.6) before whom she narrated the incident. He argued that the doctor (P.W.16) has noticed multiple injuries on the victim and stated that chance of intercourse could not be denied and therefore, the appeals should be dismissed. Reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of State of Himachal Pradesh -Vrs.- Raghbir Singh reported in **(1993) 2 Supreme Court Cases 622, State of Punjab -Vrs.- Gurmit Singh and others reported in (1996) 2 Supreme Court Cases 384 and Mukesh and another -Vrs.- State of**

NCT of Delhi and others reported in (2017) 6 Supreme Court Cases 1.

9. Adverting to the contentions raised by the learned counsel for the respective parties, let me discuss the evidence of the star witness on behalf of the prosecution who is none else than the victim (P.W.5) herself. She is the informant in the case and she stated that she knew all the four appellants and the occurrence took place on 27.02.2013 and at about 1.30 to 2.00 p.m. while she was returning home from the house of her sister-in-law, she got down from the bus at Gurundia and started walking on foot as there was no automobile communication to her village. She further stated that the road was lonely and both the sides of the road were jungle and while she was going, near Kaunala, she saw the four appellants coming from the other side and noticing her alone, all the appellants pounced upon her and virtually lifted her and they took her to the side of Kaunala and then one after another, the appellants committed rape on her. After committing rape on her, she was threatened by appellant Baman Charan Munda not to disclose about the occurrence before anybody or else she would be killed. She further stated that after all the appellants left the spot, she sat there almost dumbfounded and after sometime, she could gather courage and energy to return to her village and on the way, she took water

from the house of P.W.15 Muktu Bhumij. She stated that her wearing apparels were stained with mud and after reaching the house, she narrated the incident before her husband (P.W.6) and then both of them went to lodge the first information report on 01.03.2013 whereafter she was sent for medical examination and her wearing apparels were seized.

The learned counsel for the defence cross-examined the victim at length but she withstood the test of cross-examination. The learned counsel for the appellants contended that the victim has admitted that on the way to her village after the occurrence, she had not narrated about the occurrence before anyone of the villages which fell on the way and even P.W.15 has not supported that the victim had come to his house to take water on the date of occurrence. P.W.15 has been declared hostile by the prosecution and he has been put leading questions by the learned Public Prosecutor under section 154 of the Evidence Act. It is pertinent to note that the victim has stated that after taking water in the house of P.W.15, she slowly proceeded to her house and on being asked by P.W.15 about her condition, in that state of body and mind, she could not gather courage to say anything about the incident out of fear as she was threatened.

In my humble view, on account of physical, mental, emotional and psychological trauma faced by the victim after the occurrence, she would not have in a position to narrate before each and everyone who came on her way and she must be trying to reach her house as soon as possible and therefore, in the factual scenario, non-disclosure of the incident before others immediately after the occurrence, no way affects the credibility of her evidence. Even though P.W.15 has not supported the prosecution case that the victim came to his house to take water, but the truthfulness of the version of the victim cannot be doubted on that score. Of course, in the F.I.R., the victim stated that one of the appellants pulled her towards jungle by holding her hands and the other three appellants pushed her whereas in her evidence, she stated that the appellants pounced upon her and virtually lifted her but law is well settled that the evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. The Courts shoulder a great responsibility while trying the accused charged of rape. Such cases must be dealt with utmost sensitivity. The Court should examine the broader probabilities of the case and not get swayed away by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature to throw away otherwise reliable prosecution

case. If the evidence of prosecutrix inspires confidence, it must be relied upon without seeking corroboration to 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. The testimony of the prosecutrix must be appreciated in the background of the entire case and the Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults (**Ref.: Gurmit Singh (supra) and Mukesh and another (supra)**).

The learned counsel for the appellants argued that the victim admitted about her previous dispute with the appellants in her cross-examination and she has stated that the appellants along with other village members had raised V.S.S. Centre building and Anganwadi Centre on Government land covering some of her occupied land and therefore, the false implication by the victim cannot be ruled out. In my humble view as has been held in the case of **Rajinder @ Raju -Vrs.- State of Himachal Pradesh reported in (2009) 44 Orissa Criminal Reports (SC) 140** that in the context of Indian culture, a woman-victim of sexual aggression would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and

until she is a victim of sex crime, she would not blame anyone but the real culprit. No self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, a look for corroboration of her testimony is unnecessary and uncalled for. Therefore, the contention of the learned counsel for the appellants that on account of previous dispute with the victim, the appellants have been falsely entangled in the case is not acceptable.

The victim (P.W.5) stated that in the house, she narrated the incident to her husband and her husband told her to report the matter before the police and finally they came to Gurundia police station on 01.03.2013 and orally reported the incident before the police and she further stated that on 01.03.2013, it was a weekly market day at Gurundia and therefore, the vehicles were plying on the road and the road was busy for which they preferred to report the matter at the police station on that day, as on the other days, there was no automobile communication between her village and Gurundia. P.W.6 also stated that the victim arrived at the house on 27.02.2013 at about 5.00 p.m. and by that time, she was in a shattered condition having minor injuries on her back and elbows and she was looking pale and exhausted and on his asking as to how such condition happened to her, she disclosed that the

appellants raped her on the way forcibly despite her protest and resistance. The conduct of P.W.5 in disclosing about the incident before her husband (P.W.6) lends corroboration to her evidence and it is admissible under section 6 of the Evidence Act as res gestae. The explanation for delayed disclosure is acceptable. Even though the victim stated in the F.I.R. that she disclosed about the occurrence before her husband on 28.02.2013 and not on the date of occurrence itself, in my humble view, the same cannot be a ground to arrive at a conclusion that the appellants have been falsely entangled in the case and that the case is a concocted one. There are no such contradictions or discrepancies regarding the prosecution case narrated in the first information report and the statement of the victim (P.W.5) recorded under section 161 Cr.P.C. vis-à-vis her evidence in Court during trial. Even the victim's evidence is consistent about the sequence of rape by each of the appellants. The contention of the learned counsel for the appellants that in the F.I.R. and 161 Cr.P.C. statement, the allegation of the victim that she was pulled by one of the appellants and pushed by others to the spot where rape was committed on her, whereas her evidence in Court that the appellants pounced upon her and virtually lifted her to the spot, in my humble view cannot be a ground to come to a finding

that these are major discrepancies, which create doubt on the truthfulness of the version of the victim.

The victim stated in her evidence that the appellants were more in number and they overpowered her for which her resistance could not work and they ravished her one after another by force and that her wearing apparels were stained with mud. The saree and other wearing apparels of the victim were seized during course of investigation and those were also sent for chemical analysis but no Chemical Examination Report has been proved in the case.

It is a usual feature that the preparation of chemical and serological examination reports in the State Forensic Science Laboratory and Regional Forensic Science Laboratories are getting delayed mainly on the ground of lack of infrastructure so also staff. Instances are there when assurance has been given by none else than the learned Advocate General of the State to fill up the vacant posts in the laboratories at an earliest and it is expected that the State Government shall take adequate steps to expedite it so that the reports of the laboratories reach at the concerned Courts at an earliest for speedy disposal of the trial cases. However, in the case in hand, even in absence of Chemical Examination Report, since the evidence of the victim and other circumstantial evidences are clinching against the

culpability of the appellants, the contention of the learned counsel for the appellants that for the lack of C.E. Report, the truthfulness of the prosecution case is affected is not acceptable.

The evidence of the I.O. (P.W.17) indicates that he visited the spot and prepared the topography of the spot on the crime detail form, which has been marked as Ext.11. The date and time of visit to the place of occurrence has been mentioned in the report as 01.03.2013 at 7.00 p.m. Of course, the I.O. has stated that during his spot visit, he could not find any clues or any foreign material there but it should not be forgotten that the spot was visited two days after the occurrence and nobody knows what changes might have happened at the spot or to the weather in the meantime particularly when it was an open space under the sky. The time of visit to the spot in the evening hours is another feature which might not have made it possible for the I.O. to mark everything clearly. Unless the spot is visited at an earliest, properly guarded and preserved, it would be too difficult to find any clues there.

The doctor (P.W.16) examined the victim on 01.03.2013 and he noticed abrasion on both the knees, multiple abrasions on the back of the victim and abrasions on both the elbows of the victim and the duration of the abrasions were forty eight hours from the date of her examination. Though the doctor

has stated that there was no sign or symptom of recent sexual intercourse but she has stated that chance of intercourse with the victim cannot be denied. Therefore, the contention raised by the learned counsel for the appellants that for lack of corroboration from the medical evidence to the case of the victim, benefit of doubt is to be extended to the appellants is not acceptable.

Learned counsel for the appellants placed reliance in the case of **Krishan Kumar Malik** (supra), in which it has been held that solitary evidence of the prosecutrix to bring home the charge of abduction and commission of rape by the appellant does not inspire confidence and is not of sterling quality for which it is neither prudent nor safe to hold the appellant guilty of the commission of the offences under sections 366 and 376(2)(g) of the Indian Penal Code. In the factual scenario, after considering the evidence of the victim, the surrounding circumstances and medical evidence, such observation was made by the Hon'ble Supreme Court. In the case of **Rai Sandeep @ Deepu** (supra), reliance upon which was placed by the learned counsel for the appellants, it was held that the sterling witness should be of a very quality and caliber 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 everyone 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 other similar such tests to be applied, it can 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. In the case of **Raja and others** (supra), reliance upon which was placed by the learned counsel for the appellants, it was held the evidence of the prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should always without exception, be taken as gospel truth. The essence of this verdict which has stood the test of time proclaims that though generally the testimony of a victim of rape or non-consensual physical assault ought to be accepted as true and unblemished, it would still be subject to judicial scrutiny lest a casual, routine and automatic acceptance thereof results in unwarranted conviction of the person charged.

After going through the factual scenario in the aforesaid three cases relied upon by the learned counsel for the appellants, I am of the humble view that the case in hand is completely different and as held by the Hon'ble Supreme Court in the case of **Raghubir Singh** (supra) that every case has to be approached with realistic diversity basing on peculiar facts and circumstances of that case. In my humble view, the evidence of the victim (P.W.5) is of sterling quality and it is clear, cogent, trustworthy, reliable and above board and it gets corroboration from the evidence of P.W.6 and also the medical evidence to some extent. The delay in lodging the first information report has been explained and therefore, I am of the humble view that there is no infirmity or illegality in the impugned judgment and the learned trial Court has rightly found the appellants guilty under sections 376-D and 506 of the Indian Penal Code. The sentences passed under both the offences are also justified, however, in my humble view since the offences were committed in a single transaction, in the interest of justice, it would be proper and legitimate to direct that both the sentences awarded to the appellants under sections 376-D and 506 of the Indian Penal Code to run concurrently instead of consecutively as held by the learned trial Court.

Subject to modification in the sentence, the Criminal Appeals stand dismissed.

Before parting with the case, I would like to put on record my deep appreciation to Mr. Sahasransu Sourav, learned counsel who is very young but acted like an astute lawyer fulfilling the expectation of the Bench from the Bar and has prepared the case thoroughly with written notes of submission and citations and for lending valuable assistance to this Court in adjudicating the case.

The trial Court records with a copy of this judgment be sent down to the learned trial Court forthwith for information.

Orissa High Court, Cuttack
The 16th August, 2022/PKSahoo/RKM

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S.K. Sahoo, J.

