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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.7 OF 2021

Bhagu Kokre,
s/o. Janu Kokre,
major in age, (42 years)
r/o Badegiri, Post Gurgati,
Tal Mangod, Karwar District,
Karnataka, presently in custody
at Central Jail, Colvale, Goa.

... Appellant.

Versus

The State of Goa,
Through the Police Inspector,
Pernem, Police Station,
Pernem, Goa.

... Respondent

Mr. Nigel Fernandes, Advocate under Legal Aid Scheme for the
Appellant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the Respondent.

CORAM: R.N. LADDHA, J.
RESERVED ON: 18th August, 2022
PRONOUNCED ON: 29th August, 2022

JUDGEMENT:

Challenge in this appeal is to a judgment of conviction and order of sentence passed by the President, Children's Court for the State of Goa at Panaji, in Special Case No.68 of 2014 whereby and whereunder the appellant-accused came to be convicted for the offences punishable under Section 363 of Indian Penal Code and under Section 376 (2)(i) of Indian Penal Code r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 8(2) of the Goa

Children's Act, 2003 and sentenced to suffer simple imprisonment for one year and fine of ₹1,000/- and rigorous imprisonment for ten years and fine of ₹2,00,000/-, with default stipulations on the respective counts.

2. The facts which are essential to be exposted for the disposal of this appeal are that the complainant is the brother of the victim girl. He had rented a room in Agarwada, Pernem. He brought the victim girl, his younger sister, from their home in the State of Karnataka to live with him in Agarwada, Pernem in April, 2014, barely 15 days before the incident, to prepare meals for him.

3. As usual, the first informant reported for work on 22 April 2014. The accused came to the room rented by the first informant and requested the victim for some water to drink. The victim was alone in the room and was washing her clothes. After drinking the water, the accused held her hand, led her to a cashew plantation and raped her there. Accused then made her to go with him to his uncle's place.

4. As the prosecution story proceeds, upon enquiries conducted by the first informant, he came to know that on 22 April 2014, his sister-victim was seen with the accused at Mandrem. Therefore, he reported the matter to the police. The crime came to be registered vide Cr. No.80 of 2014 for the offences punishable under Sections 363 of IPC and under Section 8 of the Goa Children's Act, 2003.

5. During investigation, the accused and the victim girl were apprehended at BCP Naibag. They were brought to the Police Station. The statement of the victim girl was recorded. The accused was interrogated. Their medical examination was carried out. The clothes

which the victim girl and the accused wore at the time of occurrence came to be seized. The investigating officer visited the scene of occurrences and drew panchanamas. The accused came to be arrested. The witnesses were interrogated, and their statements were recorded. The blood samples and other articles, obtained consequent to medical examination, and the seized clothes were sent to the forensic science laboratory for analysis. Medical examination certificates were obtained. After finding the complicity of the accused, a charge sheet was filed for the offences punishable under Sections 363, 376 of IPC, Section 8(2) of Goa Children's Act, 2003 and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

6. Charge came to be framed against the accused for the offences punishable under Sections 363, 376(2)(i) IPC r/w. Section 8(2) of Goa Children's Act, 2003 and Section 4 of the Protection of Children from Sexual Offences Act, 2012. The accused abjured his guilt and claimed trial.

7. At the trial, to substantiate the indictment against the accused, the learned trial Court recorded the evidence of witnesses, namely the first informant/brother of the victim girl (PW1)(name withheld), victim girl (PW2) (name withheld), Dr Girish Kamat (PW3), PC-Sunil Bhagat (PW4), Babu Pandarmise (PW5), PC-Satyawan Malewadkar (PW6), Umesh Kokre (PW7), Dondu Kokre (PW8), Vilas Kokre (PW9), Umesh Naik (PW10)-Public witness to the attachment panchanama dated 24.04.2014 (Exh.42) and to the scene of offence panchanama (Exh.41) dated 26.04.2014 (PW10), Appu Gaude (PW11), LPC-Monali Sawant (PW12), Anant Kandolkar (PW13)-Public witness to the attachment panchanama (Exh.C-42) dated 24/04/2014, PI-Uday

Gaude- investigating officer (PW14) and K.B. Malappanar(PW15)-Head Master of Government Lower Primary School.

8. The statement of the accused under Section 313 of the Code of Criminal Procedure came to be thereafter recorded, consisting of denial and false implication. The accused had examined none in his defence.

9. After hearing the learned Counsel for the parties, the learned trial Court held that the victim girl had completed 14 years three months of age on the date of incident and was therefore, a “child” within the meaning of the provisions of the Goa Children's Act, 2003 and the Protection of Children from Sexual Offences Act, 2012. The learned trial Court also held that the accused had kidnapped the victim girl from the lawful custody of her brother and raped her and that she was made to accompany the accused to his uncle's place without her consent. Ultimately, the trial Court rendered the above judgement and order of conviction. On the question of sentence, the learned trial Court held that no lenient view was required to be taken as the victim was a girl of the tender age of only 14 years.

10. Being aggrieved by and dissatisfied with the impugned judgement of conviction and order of sentence, the accused-appellant has preferred this appeal.

11. I have heard Mr Nigel Fernandes, learned Counsel for the appellant under Legal Aid Scheme and Mr Pravin Faldessai, learned Additional Government Advocate for the State.

12. Perused the impugned judgment, grounds in appeal memo,

evidence of the prosecution witnesses and the entire material on record.

13. Mr Nigel Fernandes, the learned Counsel for the appellant, submitted that the learned trial Court committed a manifest error in returning a finding of guilt sans any legal evidence. In his view, the trial Court had grossly erred in holding that the alleged victim girl was a minor on the date of the alleged incident. He complained that the trial Court had misread the prosecution evidence and was influenced by several assumptions which cannot be sustained on the basis of the material on record, and this has resulted in a grave miscarriage of justice. He further submitted that the allegations of prosecution about the kidnapping from lawful guardianship and the rape committed by the accused are a far cry in wilderness. According to him, the learned trial Court did not evaluate the evidence from a proper perspective. No specific place of occurrence can be ascertained from the evidence of the victim girl, nor is her evidence consistent with the spot panchanama. The allegations of the victim girl that the accused kidnapped and raped her is improbable and marks out the falsehood of her claim. The testimony of the victim girl is contradictory in various material aspects from the evidence given by the other prosecution witnesses. It is submitted that the prosecution could not take the support of Appu Gawde(PW11) to claim that the victim girl was seen with the accused since he did not support the case of the prosecution.

14. Relying on the decision of the Hon'ble Supreme Court in ***Ganesan vs The State represented by its Inspector of Police***¹, the learned Counsel submitted that the solitary evidence of the victim girl is sufficient but only when it inspires confidence and appears to be

¹ (2020) 10 SCC 573

trustworthy, unblemished and is of a sterling quality. According to him, in the present case, the evidence of the victim girl is inconsistent with the case of prosecution. Similarly, in ***Subhash Dhondiba Pandit vs The State of Maharashtra***², it was held that the Court could convict the accused on the testimony of a solitary witness. Still, the same is only permissible if the victim is a truthful witness. Further, relying on the decision of the Hon'ble Supreme Court in ***Ashish Bathan vs State of M.P.***³, he submitted that the alleged act of the accused was that he kidnapped the victim girl from her house without attracting the attention of anyone nearby seriously improbabilises the prosecution version. The learned Counsel for the appellant further relied upon the decision of this Court in ***Anthony Fernandes vs Police Inspector & Anr.***⁴, to submit that suspicion, however grave, can never be a substitute for legal proof and that Courts recognize only legally admissible evidence. Referring to the decision of this Court in ***Deepak Nanku Singh vs State of Goa***⁵, Mr Nigel Fernandes submitted that in the present case, no specific place of occurrence can be ascertained from the evidence of the victim girl and to convict the accused for the offence punishable under Section 8(2) of the Goa Children's Act, 2003, the crime must have been committed within the territorial jurisdiction of Goa.

15. Mr Pravin Faldessai, learned Additional Public Prosecutor appearing for the respondent-State supported the line of the reasoning adopted by the trial Court to record the findings that it did to hold the appellant guilty on the various charges levelled against him and has

2 1996 SCC OnLine Bom 325

3 (2002) 7 SCC 317

4 2020 SCC OnLine Bom 189

5 2012 SCC OnLine Bom 2311

made various submissions countering the arguments put forth on behalf of the appellant. He submitted that the school certificate was issued on the basis of records of the school, and its contents were duly proved through its author. The school record demonstrates that on the day of offence, the age of the victim girl was 14 years and three months only. According to Mr Faldessai, when there is documentary evidence regarding victim's age, no further evidence is required to be produced. He canvassed that minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case should not be made a ground on which the evidence can be rejected in its entirety. The evidence of the victim girl on the aspect of kidnapping and committing forcible sexual intercourse by the accused was not shaken in any way. He submitted that the victim girl had given a detailed account of the incidents, which is amply corroborated by the medical evidence. His main contention is that the testimony of the victim girl, wherein she has expressly stated the act of forcible intercourse by the accused, is clinching evidence and cannot be brushed aside.

16. The trial Court first dealt with the prosecution case relating to the age of the victim girl. It found that in the school certificate, the victim's date of birth is mentioned as 10 January 2000. The trial Court believed the version of K.B. Malappanar (PW15)- Headmaster of Government Lower Primary School, Donkanala and concluded that on the offence date, the victim girl was 14 years and three months old. He confirmed that the victim was a student of the said school. She had studied there from Standard I to V. He had also produced the extract of school register, which confirms the victim's birth date as reflected in the

school certificate. According to the learned Counsel for the appellant, as per Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007, it is only the matriculation or equivalent certificate or the date of birth certificate from the school first attended or the birth certificate issued by a Corporation or Municipal authority or a Panchayat that can be considered as the valid document of age proof. In the absence of any such document listed under Sub-Rule (3), clause (a), sub-clauses (i), (ii) and (iii) of the said Rule, it is required to seek medical opinion of a duly constituted medical board in respect of the age of the juvenile or child as provided under clause (b) of Sub-Rule (3) of the said Rule.

17. Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007 reads as under:

“12. Procedure to be followed in determination of Age-

(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The Court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in

sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

18. It is seen from the record that the certificate (Exh. C-13 colly.) issued by the school first attended by the victim girl is based on records of the school (Exh. C-60), which stands covered by a sub-clause (ii) of clause (a) of Sub-Rule (3) of Rule 12 of the Juvenile Justice (Care & Protection of Children) Rules, 2007. Therefore, the school certificate is a valid document of age-proof of the victim girl, and its contents are also duly proved through its author K.B. Malappanar (PW15). Nothing has been pointed out on behalf of the appellant to shake the credibility of the school record. In fact there was no challenge to the school record. It is seen that in school certificate (Exh. C-13) as well as in the record of the school (Exh. C-60), where the victim had initial education also confirmed the date of birth of the victim as 10 January 2000. Considering the fact that the offence in question took place on 22 April 2014, it is clear that the victim was just 14 years of age and, therefore, she was a “child” within the meaning of Section 2 (d) of the Goa Children's Act, 2003 and also under Section 2(d) of the Protection of Children from Sexual Offences Act, 2012.

19. Now, to bring the accused within the purview of Section 363 of the IPC, this Court will have to examine whether the accused had taken the victim girl (PW2) away from the lawful guardianship and kept her with him without intimating anybody. The victim girl (PW2)

had categorically stated in her evidence that on the relevant day, in the afternoon, when she was alone in the room as her brother (PW1) had gone for work as usual and was washing clothes, the accused came there, held her hand and took her to a cashew plantation and raped her. Further, she deposed that the accused then took her to his uncle's place, and on the following day, Dhondu (PW8) and two more people from the village came, and they took them to the Police Station.

20. The first informant (PW1), after apprising the trial Court that the victim girl is his sister, affirmed that on 5 April 2014, he had brought the victim from his hometown in the State of Karnataka to live with him at Agarwada, Pernem, where he resides in a rented room, with the intention that she could prepare meals for him. On 22 April 2014, at about 5:00 p.m., one Babu Ramu Pandarmishe (PW5), staying in a close neighbourhood, informed him on the phone that the door of his room was lying open and no one was there in the room. Therefore, he immediately went to his residential room and found that the door of the room was lying open, and his sister-victim was not present in the room. He further claimed that his neighbour, Appu (PW11), informed him that he had seen the victim with the accused at Mandrem. He further claimed to have lodged a report (Exh.C-14) on 23 April 2014, which came to be proved in his evidence. He further stated that on 24 April 2014, the victim was traced.

21. The version as narrated above by the first informant (PW1) was sought to be corroborated by Babu Ramu Pandarmishe (PW5). According to Babu (PW5) on 22/04/2014, at about 6:00 p.m., he returned from work, and at that time, he found that the room of the first informant was open and no one was present in the room. He

further claimed that one Appu (PW11) informed him that the accused had taken away the victim, and he saw them on the Mandrem road. Appu Bhairu Gaude (PW11), however, did not support the case of the prosecution and turned hostile.

22. The record shows that Umesh (PW7), Dondu (PW8) and Vilas (PW9) are independent witnesses who have also stated that they saw the accused with the victim girl in their ward (waddi). When the accused could not answer their queries satisfactorily, they brought them to the Naibagh Police Outpost and handed them over to the police.

23. The roving and in depth cross-examination of these witnesses, has not yielded any benefit to the appellant and the evidence remained unshaken. On the contrary, in the cross-examination of the PW7, it was brought out that he saw the accused and the victim present in his ward (waddi). In the cross-examination of Dondu (PW8) also, it was brought out that he and PWs 7 and 9 left the outpost after handing over the custody of the accused and the victim girl to the police and that his house and the place where the accused was present with a victim girl were close-by.

24. Police Constable Sunil Bhagat (PW4) has informed the trial Court that at the relevant time, he was attached to Pernem Police Station and was deployed for duty at Naibagh Border Check-Post. Umesh (PW7), Dondu (PW8) and Vilas (PW-9), along with the victim girl and accused, came to Naibagh Outpost. Umesh (PW7) told him that the accused had come to his residence with the victim on 23 April 2014 and had stayed in his house. Umesh (PW7) further said to him that when he returned home from work at about 6 P.M., he asked the

accused why he brought the victim to his house and that he could not stay in his house as the victim girl was a minor, and they handed over the custody of the accused and the victim to him. Sunil (PW4) further added that upon asking, the accused disclosed that he brought the victim from Agarwada, Pernem. Sunil (PW4) claimed that on being informed to Pernem Police Station, the police came there and took the accused and the victim with them.

25. LPC-Monali Sawant (PW12) apprised the trial Court that on 23 April 2014 she was on duty at Pernem Police Station, and on receiving information from Sunil Bhagat (PW4), she, along with PC-5119 and PC-4540 went to Naibagh Border Check-Post, where they brought the accused and the victim to Pernem Police Station.

26. The evidence of Umesh (PW7), Dondu (PW8) and Vilas(PW-9) stands, thus corroborated by PC-Sunil Bhagat (PW4) and LPC-Monali Sawant (PW12).

27. According to Uday Gaude (PW14), investigating officer, on the relevant day, the accused and the victim girl were brought from the Naibagh Police Outpost to the Police Station, and on enquiring with the accused, he found that the accused had kidnapped the victim girl from Agarwada.

28. Nothing is elicited in the cross-examination of these witnesses to disbelieve their versions. There is evidence on record to establish that on the date of incident, the victim was just 14years of age. The offence of kidnapping is complete the moment child victim was taken away by the accused from the lawful guardianship. In view of this the offence of kidnapping under Section 363 is clearly made out against the

accused-appellant for which he has been rightly convicted. There is no error in the trial Court's judgment in convicting the appellant under Section 363 of IPC.

29. Then, coming to the conviction of the accused/appellant under Section 376 (2)(i) of the Indian Penal Code, the victim in her substantive evidence, did not disclose the date, time or year of the alleged offence. At the beginning of her evidence, she has clarified that she does not know and understand time and dates. The incident as narrated by the victim (PW2) is that, on the relevant day, in the afternoon when she was alone in the room and was washing clothes, and PW1 had gone for work as usual, the accused came thereat hold her hand and took her to cashew plantation and raped her. Further, she deposed that accused then took her to his uncle's place, and on next day, Dhondu (PW8) and two more people from village came and took them to Police Station.

30. In her cross-examination, it was brought out that there was a shop by the side of house of PW1. The shop remains open in the daytime, except at lunchtime. The shop was closed, being lunchtime. There were no houses surrounding the house of the first informant(PW1). The houses were far away, may be at a distance of around 200-300mts. It was further brought out that at the relevant time the accused did not speak with her, he just caught hold of her hand and took her to the cashew plantation. Surprisingly, it was brought out in the cross-examination that at that time she shouted, but the accused did not leave her, and she could not do anything else. She was dragged to a cashew plantation, which is nearby the house of PW1. The cashew plantation may be at a distance of around 2mts on

the backside, and she never moved in the surrounding areas of house of PW1. It has further come on record that the accused made her lie down on the ground, pushed her on the ground, and she fell by force. Again, it was brought out that the accused and the victim left the cashew plantation in the afternoon, and they reached to the house of the uncle of the accused on the same evening. It was also suggested to the victim (PW2) that she had not shown the scene of offence to the Police at any time and there was mud and hard surface at the spot of offence.

31. According to Mr. Nigel Fernandes, learned counsel for the appellant, there are serious material contradictions regarding the alleged place of incident. He referred to the evidence of the victim (PW2) and the evidence of investigating officer (PW14) and submits that as per the evidence of the victim girl (PW2) accused came to her house, held her hand and took her to cashew plantation and raped her. This spot, according to the victim, is nearby her house and may be 2mts on the backside of the house of the first informant (PW1). In contrast, as per the evidence of the investigating officer (PW14), the alleged incident of rape had taken place in the State of Maharashtra at Bhatwadi, Satarda. In the scene of offence panchanama (Exh. 53) dated 27 April 2014, the incidence is alleged to have occurred at Bhatwadi, Satarda. Therefore, according to learned counsel for the appellant, this material inconsistency between the evidence of the victim, investigating officer, and the scene of offence panchanama (Exh. 53) is fatal to the prosecution case.

32. A scrutiny of the evidence which has been discussed above would show that the scene of offence panchanama (Exh. 53) was not

referred to in the evidence of the victim nor in the evidence of the first informant(PW1) nor any panch witness to the scene of offence panchanama (Exh.53) was examined.

33. Though it was also brought out in the cross-examination of the victim that there was mud and hard surface at the spot of offence, the scene of offence panchanama (Exh.53) does not mention anything about mud and hard surface on the site. The defence has not put any questions concerning the scene of offence panchanama (Exh. 53) to the victim. According to the investigating officer (PW14), the site had been shown by the victim (PW2). It was never put to the victim by the defence that the place of occurrence was not what she had described. Merely because in the cross-examination of the investigating officer (PW14), it has been elicited that the offence of rape was committed at Bhatwadi, Satarda in the State of Maharashtra and not at the spot stated by the victim does not in any way dilute the evidentiary value of the evidence of the victim (PW2) which is otherwise also consistent with her statement made before the Police. Her claim was re-enforced in her cross-examination as described above. In any case, the investigating officer (PW14) was not an eyewitness to the incident.

34. In **State of Karnataka, Appellant v/s. Manjanna, Respondent**⁶, the Hon'ble Supreme Court held, inter alia, as follows :

“12. The second ground for rejecting the evidence of the victim is equally unacceptable. According to the I.O. (PW 18), the site had been identified by Yellabovi (PW 16). It was never put to prosecutrix by the defence that the place of the occurrence was not what she had described. In saying that the victim's screams would have attracted attention, the

6 AIR 2000 SC 2231

High Court ignored the fact that the accused had gagged the victim with his towel while raping her.”

35. Similarly, in the case of ***State of Karnataka, Appellant v/s. K. Yerappa Reddy, Respondent***⁷, it has been held that:

“31. The basic requirement for adducing such contradictory evidence is that the witness, whose impartiality is sought to be contradicted with the help of such evidence, should have been asked about it and he should have denied it. Without adopting such a preliminary recourse it would be meaningless, if not unfair, to bring in a new witness to speak something fresh about a witness already examined. In Vijayan v. State, [1999] 4 SCC 36:(1999AIR SCW 1003: AIR 1999 SC 1311: 1999 Cri LJ 2037) this Court has held that "the rule limiting the right to call evidence to contradict a witness on collateral issues excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute.”

36. There is evidence to show that the victim was dragged to a cashew plantation where the accused had committed rape on her. At that time she shouted but the accused did not leave her, and she could not do anything. The cashew plantation was at a distance of around 2mts on the backside of the house of the victim. There is evidence to show that at the relevant time the shop, which was in front of the house of the victim, was closed being lunchtime. There were no houses surrounding the house of the victim where she was residing. The houses were far away at a distance of around 200-300mts. There is evidence to show that the accused took the victim to his uncle's place.

37. Further, the medical evidence has lent complete corroboration to the testimony of the victim girl (PW2). According to Dr Girish Kamat

⁷ AIR 2000 SC 185

(PW3) on 24 April 2014, he examined the victim along with Dr Sushma Surve and found a bruise, reddish in colour, 2 ½ x 2 ½ cms, over the right breast medial to the nipple and areola and that her hymen was fleshy and was showing a reddish tear at 5 o'clock and 7 o'clock position tender to touch and anteriorly labia manorial. There was evidence of genital penetration, which was within two days from her examination. The report (Exh. C-21) was proved in his evidence. The above medical evidence supports the ocular testimony of the victim girl that she was sexually assaulted. There is no inconsistency in the medical evidence and the ocular testimony of the victim to leave any scope to the accused even to claim the benefit of doubt. Dr Kamat, after examining the accused, opined that there is nothing to suggest that the accused was incapable of performing sexual intercourse (Exh. C-26).

38. The victim had no control over the investigating agency and the negligence, if any, of the investigating officer, could not affect the credibility of her evidence. There is, therefore, no reason to disbelieve the evidence of the victim girl (PW2).

39. In the case of ***Zahira Habibullah Sheikh & Anr. Vs State of Gujarat & Ors.***⁸, the principles of evaluation of the evidence were expounded as under:

“37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgement on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out

⁸ (2006) 3 SCC 374

justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny.”

40. Similarly, by a catena of judicial pronouncements, the legal position to the effect is clear that the accused should not be acquitted solely on the ground of defective investigation.

41. In ***State of Karnataka, Appellant v/s. K. Yerappa Reddy, Respondent⁹***, it is held that :

“19. But can the above finding (that the Station House Diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the Court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously. It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well nigh settled that even if the investigation is illegal or even suspicious the rest of evidence must be scrutinized independently of the impact of it. Otherwise criminal trial will plummet to the level of the investigating officer ruling the roost. The Court must have predominance and pre-eminence in criminal trials over the action taken by Investigating Officers. Criminal justice should not be made the casualty for the wrongs committed by the Investigating Officers in the case. In other words, if the Court is convinced that the testimony of a witness to the occurrence is true the Court is free to act on it albeit Investigating Officer's suspicious role in the case”

9 AIR 2000 SC 185

42. Similarly, in *Dhanaj Singh v/s. State of Punjab*¹⁰ it was observed that in the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

43. In *Paras Yadav v/s. State of Bihar*¹¹, it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the Courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

44. On the next count, it has been contended that since it was a day time, it is highly improbable that the accused would have taken the risk of taking away the victim to his uncle's place, which is about 80kms away from Agarwada, Pernem. Since the tenor of the evidence tendered by the victim girl (PW1) inspires confidence in the mind of the Court, it does not make a dent in the prosecution's case.

45. In *State of Punjab v/s. Gurmit Singh and others*¹² the Hon'ble Supreme Court observed that :

“The criticism by the trial court of the evidence of the prosecutrix has to why she did not complain to the lady

10 (2004) 3 SCC 654

11 (1999) 2 SCC 126

12 (1996) 2 SCC 384

teachers or two other girl students when she appeared for the examination at the centre and waited till she went home and narrated the occurrence to her mother is unjustified. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from the reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to anyone, lest the family name and honour is brought into controversy. Therefore her informing her mother only on return to the parental house and no one else at the examination centre prior thereto is in accord with the natural human conduct of a female. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate overlooking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an

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

46. In the instant case, on a close scrutiny of the evidence of the victim girl she appears to me to be a truthful and reliable witness. In view of this, the decisions in the cases above, upon which the learned

Counsel for the appellant relied, do not advance the appellant's case. The way the victim narrated the incident shows that she was an innocent child victim. The first informant at the time of incident was also just 18years old. Contrary to this, the accused was a man of 35years. The victim and her brother (PW1) have poorer economic status. They came here from the State of Karnataka to make their living at the tender age. They are less educated and are not smart enough to manipulate the facts. There was no reason the brother would implicate the accused in the crime. There is no evidence on record showing that the accused had any relation or connection with the victim's family. From the evidence of the victim (PW2), it is clear that on the date of occurrence, she was a minor, and was abducted and forcefully subjected to sexual intercourse. In such circumstances, the trial Court in my considered opinion rightly found the appellant guilty of the offences charged against him.

47. For all the reasons stated above, I find no merit in this appeal. The appeal, therefore, fails and shall stand dismissed accordingly.

48. The State should ensure that the victim can be compensated in terms of the scheme(s) framed by the Government.

R.N. LADDHA, J.

MEENA
VISHAL BHOIR

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