

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1152 of 2018**

Arising Out of PS. Case No.-95 Year-2017 Thana- NIMCHAKBATHANI District- Gaya

1. Sanjeet Yadav, Son of Sri Arvind Yadav,
2. Hawa @ Santosh Yadav @ Hawa Yadav, Son of Sri Ratan Yadav,
3. Vikash Yadav, Son of Sri Satyendra Yadav, All are resident of
Village-Chandachak, P.S.- Neemchak Bathani, District- Gaya
... .. Appellants

Versus

The State of Bihar Respondent/s

Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishvavi Singh, Advocate
Ms. Kiran Kumari, Advocate
For the Respondent-State: Mr. Sujit Kumar Singh, APP
For the Informant : Mr. Vishwa Ranjan Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 12-09-2023

Heard learned counsel Mr. Ajay Kumar Thakur appearing on behalf of the appellants, learned counsel Mr. Vishwa Ranjan Choudhary appearing on behalf of the informant and learned Additional Public Prosecutor Mr. Sujit Kumar Singh appearing on behalf of the State.

(2) Present appeal preferred U/s 374(2) of the Criminal Procedure Code (Cr.P.C.) challenging the impugned



judgment of conviction dated 23.08.2018 and order of sentence dated 28.08.2018 passed by the learned Exclusive Special Judge, SC/ST, Gaya in S.C./S.T. Trial No. 43/2018 arising out of Neemchak Bathani P.S. Case No. 95/2017, where the appellants/accused have been convicted and sentenced as under:-

IN CRIMINAL APPEAL (DB) NO. 1152 of 2018				
Appellant's Name	Conviction under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sanjeet Yadav	376-D of the Indian Penal Code	20 years	20,000/-	Rigorous Imprisonment of 3 months
Hawa@Santosh Yadav@Hawa Yadav	376-D of the Indian Penal Code	20 years	20,000/-	Rigorous Imprisonment of 3 months
Vikash Yadav	376-D of the Indian Penal Code	20 years	20,000/-	Rigorous Imprisonment of 3 months

(3) Brief Case of prosecution as springs from written information of informant/victim/**PW-1**, who is a member of the SC/ST community that on 12.07.2017 while she was returning from her parental house situated at Vill.-Bakthar, P.S.- Khizersarai, Dist.- Gaya, to her matrimonial village Nawdah, having Rs. 10,000/- (Rupees Ten Thousand only) and mobile and so about 6:30 P.M., when she was half kilometer away from her village, three persons namely, Sanjeet Yadav



(appellant/convict), Hawa Yadav (appellant/convict) and Vikash Yadav (appellant/convict) came there. First of all, Sanjeet Yadav knocked the informant/**PW-1** down in the lentil field, snatched Rs. 10,000/- (Rupees Ten Thousand only) and mobile and committed rape upon her. After that, Hawa Yadav (appellant/convict) and Vikash Yadav (appellant/convict) also committed rape upon her. When the informant/**PW-1** raised alarm, she was assaulted with slaps. After the occurrence, the accused persons fled away towards their village. The informant/**PW-1** came to her house and told her family members about the occurrence, but due to heavy rains, she could not go to police station on the night of 12.07.2017.

(4) On the basis of above self-statement of informant/victim (**PW- 1**) Neemchak Bathani P.S. Case No. 95 of 2017 dated 13.07.2017 under Sections 376(D), 323, 379, 504/34 of the Indian Penal Code (in short 'I.P.C.') and under Sections 3(i)(r) w(i)(ii)2(v) of the SC/ST Act was registered, where after investigation the charge-sheet was submitted under Sections 376(D), 323, 379, 504/34 of the Indian Penal Code & under Section 3(i)(r)(s) w(i)(ii)2(v) of the SC/ST Act against appellants/convicts. After taking cognizance by learned concerned Exclusive Special Judge, SC/ST, Gaya and



considering the materials available on records, in totality the charges were framed against appellants/convicts on 25.01.2018 under Sections 376(D), 323, 379, 504/34 of the Indian Penal Code & under Section 3(i)(r)(s) w(i)(ii)2(v) of the SC/ST Act, which they plead “not guilty” and claimed trial.

(5) To substantiate its case prosecution altogether examined six (06) witnesses, namely, **PW- 1**, Soni Devi (informant/victim) D/o of Naresh Choudhary, **PW- 2**, Manju Devi (mother of victim), **PW -3**, Umesh Choudhary, **PW- 4**, Meera Kumari (first Investigating Officer), **PW- 5**, Dr. Tejaswani Nardima (Doctor) and **PW- 6**, Nirmala Devi, (second Investigating Officer of this case);

(6) Further prosecution relied upon the following exhibits/documents which are as:-

Ext.- 1- Formal F.I.R.

Ext. -2- Medical Report

Ext.- 3- Charge-sheet

(7) Appellants/convicts were examined by learned Trial Court U/s 313 of the Criminal Procedure Code (Cr. P.C.), where complete innocence was shown by denying the incriminating circumstances/evidences as appears against appellants/convicts during trial.



(8) After conclusion of trial, all three above named appellants/accused were convicted for the offence under Sections 376(D) of the Indian Penal Code (I.P.C.), where sentence was awarded for 20 years of rigorous imprisonment alongwith fine and were acquitted from the rest of charges including charges framed under provisions of SC/ST (POA) Act.

(9) Hence, the present appeal;

**ARGUMENT ON BEHALF OF THE LEARNED COUNSEL
APPEARING FOR THE APPELLANTS/CONVICTS**

(10) Learned counsel, Mr. Ajay Kumar Thakur appearing on behalf of the appellants/accused while opening the argument submitted that conviction of appellants/accused in present case recorded solely on the basis of sole witness of prosecutrix/rape victim (PW-1). It is submitted as there is no embargo to record conviction on the sole witness of rape victim as per settled law of land, but same must appears trustworthy and inspire confidence. It is submitted that there are so many reasons on the basis of which it can be safely gathered that appellants/accused were implicated with present case out of previous enmities and local caste group differences. While travelling over the argument, learned counsel pointed out that



after the occurrence, the rape victim came to her in-laws house, changed her dress and slept quietly throughout night without narrating the occurrence of alleged gang rape to any family members. This conduct of prosecutrix cannot be said as a normal human behaviour. It is further submitted that victim deposed during course of trial that her hand became swollen while protesting the occurrence but no such injury was noticed upon her medical examination by doctor (PW-5), which was conducted on very next day of the occurrence. It also appears from the deposition of victim that after coming to home victim changed her clothes after taking bath, where said clothes were not shown/supplied to Investigation Officer of this case, suggesting that she herself destroyed the important piece of evidences. Learned counsel further submitted that Investigating Officer of this case visited immediately place of occurrence after receiving the information, but did not find anything in support of allegation, including drams/containers. It is also submitted that the finding of doctor, as there was no sign of recent sexual intercourse, also creates a doubt on the version of prosecutrix which was conducted on very next day. It is also submitted that the manner of rape, as disclosed by the prosecutrix also creating doubt regarding trustworthiness of her



deposition. It is also pointed out that no DNA/biological samples of prosecutrix were collected in terms of Section 164-A of the Criminal Procedure Code and also the non-examination of appellants/accused in terms of Section 53-A of the Criminal Procedure Code as to collect medical evidence, appears fatal to the case of prosecution. While concluding the argument, Mr. Thakur submitted that prosecutrix failed to pass test of “sterling witness” and as such the impugned judgment, recording conviction of appellants/accused by learned Trial Court, is bad in eyes of law and same be set aside. Learned counsel in given set of facts and circumstances relied upon the report of Hon’ble Apex Court as reported in matter of :

(i) Ramdas and Ors. v. State of Maharashtra reported as (2007) 2 SCC 170.

(ii) Narendra Kumar v. State (NCT of Delhi) reported as (2012) 7 SCC 171.

(iii) Manoharlal v. State of Madhya Pradesh reported as (2014) 15 SCC 587.

(iv) Santosh Prasad@Santosh Kumar v. State of Bihar reported as (2020) 3 SCC 443.

ARGUMENT ON BEHALF OF THE LEARNED APP APPEARING FOR THE STATE

(11) Learned APP appearing on behalf of the State submitted that PW-1, prosecutrix, supported the



commission of rape and there is no any apparent reason to disbelieve her version. It is also submitted that rape is a legal finding, not a medical one and for that reason, non-finding of any injury in and around private part or upon the body of victim does not lead to the conclusion, *ipso facto*, that rape was not committed upon her. It is submitted that it was rain on the day and time of occurrence and for that natural reason, nothing found at the place of occurrence as to suggest occurrence thereof. It is submitted that victim is a rustic women, having rural background and as such minor contradictions, if any, surfaced in deposition of prosecutrix, cannot be said fatal for prosecution. In support of this submission, learned APP relied upon the report of Hon'ble Supreme Court in the matter of ***Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra reported as (1973) 2 SCC 793*** and ***Bharwada Bhoginbhai Hirjibhai v. State of Gujarat reported as AIR (1983) SC 753***. Learned APP also submitted that the non-collecting of DNA samples and examination of appellants/accused as per the provisions laid down under Sections 164-A and 53-A of the Criminal Procedure Code (Cr.P.C.), are also not appearing fatal for prosecution in view of the deposition of prosecutrix/rape victim as far facts of present case, are



concerned. In support of the submission as made above, while concluding the argument learned APP relied upon the report of *Md. Ikbāl v. State of Jharkhand* reported as (2013) 14 SCC 481 and *Mukesh v. State of Chhattisgarh* reported as (2014) 10 SCC 327.

(12) We have perused the record and proceedings of the learned Trial Court and also paid our thoughtful consideration to submissions as advanced by learned counsel appearing on behalf of the parties.

(13) No doubt this case rest upon the sole witness of prosecutrix/rape victim i.e., **PW - 1**, where the main issue is whether PW-1/victim can be accepted as “sterling witness” by taking corroborating note of available depositions of other witnesses including doctor and investigating officer of this case, as to established that prosecution proved its case beyond reasonable doubt before the learned Trial Court. It would be apposite to discuss the evidence of the prosecution witnesses for the purpose of cursory examination/re-appreciation of available evidences, while hearing present appeal.

DISCUSSION OF EVIDENCE

(14) **PW-1**, is the informant and victim of this case, who stated before the Court that the present case was



lodged by her which took place on 12.07.2017 at 6:30 P.M., when she was returning to her in-laws village (*sasural*) by taking a route down to road, crossing through fields and as so when she arrived near to diesel pumping set of one Prabhu Choudhary, appellant/accused Sanjeet Yadav came before her and caught her hand. She objected but he pushed her to ground in lentil field and committed rape upon her. It was deposed that after committing rape, her mobile and cash of Rs. 10,000/- (Rupees Ten Thousand only) was taken away by him. Thereafter, appellant/accused Hawa Yadav came, he also pushed her to ground and committed rape. When she shouted, he slapped her. On her cry, appellant/accused Vikash Yadav came, caught hold her hand and again by pushing to ground, committed rape upon her. It appears from her deposition that it was rain by that time and after occurrence she rescued herself any how from appellants/accused, came to her house, took bath, changed her dress and slept. In the morning, she narrated the occurrence to her family members and co-villagers. She arrived her house at 6:30 P.M. On next morning, after narrating the occurrence to co-villagers, she went to police station for lodging report, where she stated the occurrence to SHO, which was recorded in writing by SHO, where she was given her



thumb impression. After recording statement police inspector brought her to Court where her statement was recorded by Judicial Magistrate and that statement also bears her thumb impression. Thereafter, she was taken for medical examination. She identified all three appellants/accused before the learned Trial Court.

In cross-examination, she deposed that her village is consisting of 50-60 family, mainly of “Choudhary” and “Yadav” community. She deposed that she went to her paternal village alongwith her nephew but she was returning alone to her in-laws village. She deposed that the way where occurrence took place is in use of public, but on the day and time, as it was raining, nobody was present there. She described the place of occurrence and stated that there was a machine and a hutment where Prabhu Choudhary reside. It is stated by her that as no one was present at the time of occurrence, therefore, she did not told anyone about the occurrence. She, specifically, stated that her hand became swollen due to holding of appellants/accused. The lentil field, where occurrence took place, belongs to one Prabhu Choudhary. She deposed specifically that during occurrence her head was in south direction and leg was in north and while the accused/appellants were raping, at that time they



were holding her by one hand while other hand was on her breast. She specifically deposed that rape was committed upon her about half an hour. As she was slapped only during the course of occurrence, no external visible injury appears but she received internal injury. She also deposed that her clothes were not torn during the course of occurrence but same became dirty. She further, specifically, deposed that there is no eye witness of the occurrence. She stated that she was in pink saree while returning from her maternal house. She stated the name of doctor as Meera Kumari, who conducted examination upon her but later on stated that said Meera Kumari was Sub-Inspector, who taken her for medical examination. It was also deposed that she came to know that her medical examination report was normal. It is also stated by her that she disclosed occurrence to Prabhu Choudhary and other co-villagers and denied the suggestion that no rape was committed upon her. She also deposed that appellants/accused were not equipped with any kinds of weapon and also failed to disclosed the wearing of appellant/accused Hawa Yadav. She also deposed that the mobile, which was snatched from her, was purchased from Madras. She denied the suggestion that she is doing the business of toddy and out of said dispute she falsely implicated



appellants/accused. She also stated that she was examined by police, who visited her village and place of occurrence. She further, specifically, deposed that the clothes, what she was wearing during the occurrence, was not shown to police. It is also deposed by her that she stated before police that at the time of occurrence when she was coming from her parental house, it was raining. She also stated before the police that after arriving home and changing her clothes she slept. It is further deposed that appellants/accused were hide behind container/dram available at place of occurrence. It is also stated by her that appellants/accused were not resident of her village but they were acquainted with her prior to the occurrence and were in talking terms. It is stated that prior to this occurrence this type of similar allegation was also raised against appellants/accused by “Choudhary” community but she had no evidence in support of that. She denied to implicate appellants/accused falsely out of previous enmities.

(15) PW-2, is Manju Devi, who is the mother of informant/victim i.e., PW-1. It appears from her deposition that she came to know about the occurrence on the next day, when she was informed by in-laws of her daughter over phone. It was deposed by her that the Yadav of Chandchak village committed



rape upon her daughter and same was informed by victim herself. She also came to know about snatching of cash of Rs. 10,000/- (Rupees Ten Thousand only) and mobile. The said cash was given to victim/daughter by her. It was deposed by her that there were three Yadav people, who committed rape upon her daughter/victim, but she failed to identify appellants/accused.

On cross-examination, she deposed that she is the step-mother and poor person. She stated that the cash was given by her to her daughter/victim but there is no document in support of that. She also failed to depose the mobile number of her daughter/victim. She also failed to depose about mobile number of victim's father-in-law. She deposed that she is doing the business of toddy, which is her source of income but denied that her son-in-law is doing the business of toddy. It was deposed by her that her son-in-law, working somewhere outside but deposed subsequently that doing the business of toddy. It was deposed by her that police recorded her statement at Buxar. It was deposed by her that she was not given statement to police that information regarding occurrence was given by father-in-law of her daughter/victim. It was also not stated by her to police that she visited in-laws village of her daughter and



enquired about the occurrence. She denied to depose falsely and also that at the time of occurrence her daughter/victim was available at her home. She deposed that cash was given for construction of house.

(16) PW-3, is Umesh Choudhary, who is the co-villager, where victim appears wife of his cousin brother-in-law. It was deposed by him that he know victim/prosecutrix and on the date of occurrence he saw in evening that prosecutrix was going to her home in messy clothes with full of mud and soil. It was deposed by him that they crossed each other and proceeded for their home. It was deposed that he visited in morning to the house of prosecutrix where he came to know that accused/appellants SanjeetYadav, Hawa Yadav and Vikash Yadav committed rape upon her. He identified all three accused/appellants in Court.

In cross-examination, it was deposed that he is not the eye witness of the occurrence and came to know about the occurrence from the mouth of prosecutrix/victim herself.

(17) PW-4, is Meera Kumari, who is Sub-Inspector and Investigating Officer of this case deposed that she took investigation of this case i.e., Neemchak Bathani P.S. Case No. 95 of 2017 on 13.07.2017 and enquired about the



occurrence from victim/prosecutrix, who supported the allegation. She visited the place of occurrence with SDO and other police officers and inspect the place of occurrence where she found one diesel machine and field having lentil crops. She described the place of occurrence, which is a field having lentil crops either in name of one Prabhu Choudhary or in name of one Arvind Yadav. She did not find any cogent material at place of occurrence and recorded statement of one Lakhan Choudhary s/o of Munshi Choudhary, father-in-law of the prosecutrix/victim and also other prosecution witnesses during the course of investigation and examined prosecutrix medically and recorded her statement under Section 164 of the Cr.P.C. before Judicial Magistrate. It was deposed by her that accused/appellants surrendered before the Court. She identified the writing of formal F.I.R. which was in hand-writing of one Shashibhushan, which on his identification exhibited as **Ext. No. 1.**

On cross-examination, she deposed that she visited place of occurrence on single occasion i.e., on 13th day of month, where she did not find any sign over soil and crop. She also did not find drams (used for boiling paddy) at place of occurrence. It was deposed by her that she recorded statement



of witnesses on single day during the course of investigation. It was specifically deposed by her that prosecutrix/victim did not show any clothes or saree to her during the course of investigation. It was also deposed that there is no eye witness of this occurrence and did not examined Arvind Yadav and Prabhu Choudhary during investigation.

(18) PW-5, is Tejaswani Nardima, who is the doctor, deposed that she had examined the prosecutrix on 13.07.2017 at about 3:00 P.M. in presence of lady constable Kumari Seema (No. 1786) and found the following findings:

Her mark of identification, black mole under right eyes and black mole on right forearm.

She was dark, her clothes were not original. Last L.M.P. on 08.07.2017.

She did not remember when she attained mensuration. She was married for 11 years, has three kids and undergone ligation operation.

Her secondary sexual characters were well developed. No sign of injury on any body part, breast



were normal, hymen was not present, uterus was normal size, anteverted mobile, her height was 4 feet 10", weight 47 kg. Teeth were 7x8/7x7.

It was deposed by him that he received pathological report of prosecutrix from A.N.M.C.H., Gaya on 14.07.2017 report no. 104 dated 13.07.2017 with following finding:

Vaginal swab smear examination- shows squamous cells, no live or dead spermatozoa seen.

Opinion-age can be determined when X-ray plate will be made available. Accordingly to pathological report, there is no evidence of sexual intercourse recently, however, chances of rape cannot be denied.

The report is in my writing signature, which is marked as

Ext. no.2

On cross-examination, he



deposed that chances of rape is his presumption, age is not mentioned. It is not a fact that victim is more than 55 years of age. It is not a fact that the report is collusive.

(19) PW-6, is Nirmala Devi, who is also the Investigating Officer of this case, who only submitted the charge-sheet after investigation and deposed in her cross-examination specifically that no investigation was carried by her.

CONCLUSION

(20) From the aforesaid discussion of evidence it appears that this case rest upon the sole witness of victim/prosecutrix, who is PW-1. No doubt, she is a rustic villagers stating through her deposition that rape was committed upon her by appellants/accused one by one. The scene of rape, as deposed by victim, suggests that during the occurrence the appellants/accused were caught her by one hand whereas the another hand was on her breast, which suggests that her hand was free during the occurrence, contradicting that her hands were caught hold by appellants/accused during the course of occurrence making her deposition non-convincing on its face, *qua*, occurrence of rape. There are so many



contradictions in her deposition, *qua*, written information (**Ext.-1**), which get its further strength, by taking note of depositions of prosecution witnesses, which forced us to look her deposition with tented glass. The reason for so as:

(21) As per deposition of **PW-1**, all three appellants/accused were hide themselves behind the drums/containers which were kept at place of occurrence i.e., lentil field belongs to one Prabhu Choudhary from where, first of all, appellant/ accused SanjeetYadav came out and caught hold **PW-1**, knock her down in lentil field and committed rape upon her. After committing rape upon her, said appellant/accused looted her mobile and cash of Rs. 10,000/- (Rupees Ten Thousand only), whereas in her *fardbeyan* (**Ext.-1**) she categorically stated that at first instance accused/appellant Sanjeet Yadav snatched cash of Rs. 10,000/- (Rupees Ten Thousand only) and mobile and thereafter committed rape upon her. There is nothing in her deposition that during the first occurrence of rape, even a cry was raised by prosecutrix/victim. Secondly, appellant/accused Hawa Yadav came out and also committed rape upon victim/prosecutrix, whereas in her *fardbeyan* (**Ext.-1**) she disclosed while narrating the occurrence that both appellants/accused, namely, Sanjeet Yadav and Hawa



Yadav came out together from behind the drams kept at place of occurrence. This time victim raised alarm and was slapped by said appellant/accused, namely, Hawa Yadav and only on her cry, the third appellant/accused, namely, Vikash Yadav came out, hold hand of prosecutrix/victim and after knocking her down to the ground, committed rape upon her whereas, she stated through her *fardbeyan* (**Ext.-1**) that accused/appellant Vikash Yadav also came together with accused/appellants Sanjeet Yadav and Hawa Yadav by just following them. Thus, in totality, manner of rape as narrated by PW-1/victim through her written information (**Ext.-1**) is completely different, as it was projected through her deposition before learned Trial Court. It is apparent from picture of crime-in-question as projected through her deposition, that when rape was committed by a particular accused/appellant, no over-powering was made by another appellants/accused, though they were present there (place of occurrence) suggesting that at particular time, prosecutrix/victim was over-powered by single appellant/accused, who was not equipped with any weapon. This stereo type manner of rape having deviation from *fardbeyan* (**Ext.-1**), gives a, *prima facie*, impression as to doubt the version of victim/PW-1 regarding occurrence in the



background of caste and professional differences.

(22) Further, PW-1/Victim deposed that she rescued herself anyhow after committing rape by all three appellants/accused one by one but failed to explain that how she managed to rescue herself from the clutches of three appellants/accused, who committed rape upon her, which appears completely an 'U' turn from her earlier statement as being author/informant of this case, **(Ext.-1)** that appellants/accused went away towards their village on their own after committing rape upon her and there was nothing like rescue as claimed by victim/PW-1.

(23) Further, it also appears from deposition of victim/PW-1, that day and time was raining and after arriving home, she changed her dress and slept. She narrated the occurrence in morning to her family members and others before lodging her case with police. She stated specifically that she arrived home at about 6:30 P.M. It appears from her cross-examination that occurrence took place at about half an hour. If her version accepted as correct then, certainly she must arrived at her home any time only after 7:00 P.M. because she arrived at place of occurrence at 6:30 P.M., creating a serious doubt over the entire occurrence.



(24) Further, non-presence of any person for 'half an hour' despite of deposition of prosecutrix/victim that the route which was selected by her, was also in use of public, makes her statement also doubtful.

(25) Further, it is categorically deposed by PW-1/prosecutrix/victim that her hand became swollen as it was caught hold by appellants/accused during the course of occurrence but nothing, as such, found during her medical examination, which was conducted on very next day, suggesting no swollen injury on her hand as per deposition of PW-5, who is a doctor, examined her medically. PW-5 further stated that no any sign of injury were found on any body part including private parts of the victim and she also not find any sign of recent sexual intercourse. As per deposition of PW-5, victim was mother of three kids and married 11 years prior to this occurrence. This finding of PW-5, doctor, who examined PW-1/victim on very next day of occurrence, falsify the version of victim that her hand became swollen due to holding of appellants/accused during occurrence and also of alleged sexual assault.

(26) Further, PW-1/victim deposed in her cross-examination that she tried her best to save her during the course



of occurrence and in such circumstances chance of injuries on body parts are very high, but it is appearing non-convincing as no injury found upon her and also her clothes and wearing were not shabby.

(27) Further, PW-1/victim, specifically, deposed that the clothes what she wearing at the time of occurrence were not given to police and she slept after arriving home after taking bath and changing her dress without narrating the occurrence to anyone. This conduct of prosecutrix/victim is also appearing against normal human behaviour and moreover, appears in contradiction with her version as raised through written information (Ext.-1) that she narrated the occurrence immediately to family members after coming to home.

(28) Further, it appears that after the occurrence while prosecutrix/victim/PW-1 was coming to her home she firstly confronted on way with PW-3, who is admittedly her relative but she just crossed him without narrating the occurrence. This act also get corroboration from the deposition of PW-3, namely, Umesh Choudhary, who not even bother to ask prosecutrix/victim even after noticing that she was in messy clothes, where her clothes was full of mud and soil. The occurrence gets further doubtful as PW-3 deposed in



examination-in-chief that he came to know on way that appellants/accused, namely, SanjeetYadav, Hawa Yadav and Vikash Yadav committed rape upon **PW-1** but during his cross-examination he deposed that the occurrence was narrated to him by **PW-1** herself.

(29) Further, **PW-4**, who is the Investigation Officer (I.O.) of this case, immediately visited the place of occurrence but did not find anything which may appears noticeable. She did not find even any dram/container at place of occurrence behind which appellants/accused were alleged to be kept hide themselves, as per prosecutrix/victim/**PW-1**. There was no finding of any disturbed soiling pattern. She did not find even any type of hutment at the place of occurrence as deposed by **PW-1**. **PW-4** also confirmed that no clothes or saree were shown to her by victim.

(30) Further, **PW-2**, who is the step-mother of victim, deposed that she gave Rs. 10,000/- (Rupees Ten Thousand only) to her daughter/**PW-1**, while returning from her parental village but failed to produce any documents in support. She even failed to disclose mobile number through which she received telephonic call regarding occurrence. She deposed in her cross-examination that she is doing business of toddy and



the husband of prosecutrix/victim is also doing the same business. From her deposition it can be gathered safely that two different communities of village i.e., “Choudhary” and “Yadav” communities were in enimical terms. It is also important to mention that the Trial Court acquitted appellants/accused from the charges framed under Sections 323, 379, 504/34 of the Indian Penal Code & also under Sections 3(i)(r)(s) w(i)(ii)2(v) of the SC/ST Act.

(31) Further, it also appears that PW-1 denied the suggestion of learned defence counsel that she engaged in business of toddy and out of said dispute, implicated falsely appellants/accused but from the deposition of PW-2, who is her step-mother, it appears that the husband of prosecutrix/victim is doing the business of toddy, suggesting that the denial of prosecutrix/victim doing toddy business is doubtful and thus, by creating a balance in favour of suggestion of defence counsel, *qua*, false implication.

(32) In the matter of *Ramdas and Ors. v. State of Maharashtra* reported as (2007) 2 SCC 170, it has been held by Hon’ble Supreme court in paragraph no. 23 as under:

23. It is no doubt true that the conviction in a case of rape can be



based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

(33) In the matter of ***Santosh Prasad@Santosh Kumar v. State of Bihar*** reported as (2020) 3 SCC 443, it has been held by Hon'ble Supreme court in paragraph nos. 5.4, 5.4.1, 5.4.2 and 5.4.3 as under:

5.4 Before considering the evidence of the prosecutrix, the decisions of this Court in the cases of Raju v. State of M.P., (2008) 15 SCC 133 and Rai Sandeep @ Deepu, v. State (NCT of Delhi), (2012) 8 SCC 21 relied upon by the learned Advocate appearing on



behalf of the appellant-accused, are required to be referred to and considered.

5.4.1 In the case of Raju v. State of M.P., (2008) 15 SCC 133, it is observed and held by this Court in paragraphs 11 and 12 as under:

“11. 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.

12. Reference has been made in State of Punjab v. Gurmit Singh, [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the



prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a 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, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

5.4.2 *In the case of Rai Sandeep @ Deepu, v. State (NCT of Delhi), (2012) 8 SCC 21, this Court had an occasion to consider who can be said to be a*



“sterling witness”. 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 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.”

5.4.3 *In the case of Krishna Kumar Malik v. State of Haryana, (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that*



to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

(34) In the matter of ***Narendra Kumar v. State (NCT of Delhi)*** reported as ***(2012) 7 SCC 171***, it has been held by Hon'ble Supreme court in paragraph no. **22** and **25** as under:

22. Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)

25. In Tameezuddin @ Tammu v. State



*(NCT of Delhi), (2009) 15 SCC 566,
this Court held has under:*

*"It is true that in a case of rape the
evidence of the prosecutrix must be
given predominant consideration, but
to hold that this evidence has to be
accepted even if the story is
improbable and belies logic, would be
doing violence to the very principles
which govern the appreciation of
evidence in a criminal matter."*

(35) In the matter of *Manoharlal v. State of
Madhya Pradesh* reported as **(2014) 15 SCC 587**, it has been
held by Hon'ble Supreme court in paragraph no. **8** as under:

8. *Though as a matter of law the sole
testimony of the prosecutrix can
sufficiently be relied upon to bring
home the case against the accused, in
the instant case we find her version to
be improbable and difficult to accept
on its face value. The law on the point
is very succinctly stated in Narender*



Kumar v. State (NCT of Delhi) reported in (2012) 7 SCC 171, to which one of us (Dipak Misra, J). was a party, in following terms:(SCC p. 178, para 20 and 21):

"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable



prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. 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 finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial which may lend assurance to her testimony....."

(emphasis in original)

(36) In view of above discussion it can be safely said that prosecutrix/victim/**PW-1**, who is the sole witness of this occurrence, cannot be said “**sterling witness**” on the basis of whose exclusive testimony, conviction of appellants/accused can be secured.



(37) Hence, the appeal stands allowed.

(38) Therefore, we allow the appeal and set aside impugned judgment of conviction dated 23.08.2018 and order of sentence dated 28.08.2018 passed by the learned Exclusive Special Judge, SC/ST, Gaya in S.C./S.T. Trial No. 43/2018 arising out of Neemchak Bathani P.S. Case No. 95/2017 where all three above named appellants/accused were convicted under Section 376-D of the Indian Penal Code. The accused/appellants are acquitted of the charges levelled against them. They are directed to be set at liberty forthwith unless their detention are required in any other case.

(39) LCR, if any, be sent back to learned Trial Court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be refunded to them immediately.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Pooja/-

AFR/NAFR	AFR
CAV DATE	NA
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