

**IN THE HIGH COURT AT CALCUTTA  
CRIMINAL APPELLATE JURISDICTION  
APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.A. 437 of 2002**

**Adhir Mondal**

**-Vs-**

**The State of West Bengal**

For the Appellant : Mr. Arunava Jana

For the State : Mr. Saibal Bapuli  
Mr. Arani Bhattacharyya

Heard on : 08.02.2023, 27.02.2023, 27.04.2023

Judgment on : 08.08.2023

**Ananya Bandyopadhyay, J.:-**

1. The instant criminal appeal is preferred against the judgment and order dated 21.09.2002 passed by Learned Sessions Judge, Malda in Sessions Case No. 45 of 2001 (S.T. No. 33 of 2001) arising out of Kaliachak Police Station Case No. 81 of 1999 (G.R. No. 572 of 1999) dated 15.04.1999 convicting the appellant for offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer imprisonment for seven (7) years rigorous imprisonment with a fine of Rs.500/- in default to suffer rigorous imprisonment for two months.
2. Based on the complaint filed by the grandfather of the victim girl on 15.04.1999 at about 22.5 hrs., the prosecution case was initiated. The victim girl aged about 11 years, attended a local singing festival along with

local people and one Anjali Mondal. On the same night at about 1/1.30 hrs, the victim along with Anjali Mondal left the arena to attend nature's call. Suddenly, the appellant Adhir Mondal grabbed the victim's face by his hand and lifted her dragging her to the nearby field at Sufal Chak and forcibly lay her on the ground removed her underpants and subjected her to penetrative sexual assault. The victim out of fear and pain did not raise alarm. Subsequently, the appellant after ravishing her, took her to his home and lit a lamp in the light of which the victim identified the appellant. Thereafter, the appellant took the victim to the cabbage field tied her hand with handkerchief and her legs with her underpants. He left the place at the pretext of bringing a torch light and did not return.

3. Anjali Mondal somehow escaped and narrated the incident to the villagers including to the grandfather of the victim. Subsequently, Anjali Mondal narrated the incident to the mother of the victim. On search, the victim was found lying on the field with her hands and feet tied up. The victim, thereafter, took her mother, grandfather and other villagers to the house of the appellant who had fled there from as told by his brother, Sukumar Mondal.
4. Thereafter, the complaint being Kaliachak P.S. Case No. 81 of 1999 (G.R. No. 572 of 1999) was lodged at Kaliachak Police Station. Consequently, formal F.I.R. was drawn under Section 376 of the Indian Penal Code against the appellant initiating investigation which culminated in the submission of Charge-Sheet being No. 207/1999 dated 10.09.1999 under Section 376 of the Indian Penal Code. Charges were framed against the appellant and the appellant pleaded not guilty and claimed to be tried.

5. The Learned Advocate for the appellant submitted that the prosecution evidence was based on surmise and conjecture without admissibility. The victim girl was aged about 11-12 years.
6. PW-2 (Victim girl) deposed that she went to “Gambhira Gan” programme along with PW-1, PW-6, PW-3, Dilip, Bhiku and PW-4. Victim girl also deposed that at about 1-1.30 a.m. accompanied by PW-4 (Anjali Mondal) she went to answer nature's call. (This part of the fact is fully corroborated by the deposition of PW-1, PW-4 and PW-6).

PW-2 deposed that after answering her nature's call, she waited for PW-4. Then somebody placing his hand on her mouth forcibly dragged her on to the field, she fell thereon and the panty was removed. Victim girl was penetrated by the appellant, tried to resist, sustained pain and also bled. The appellant took the victim girl to his house and wiped her with a cloth. Victim girl was threatened not to disclose the incident. Then the appellant lit a “pradip” and smoked a “biri”. Thereafter PW-2 was left in the cabbage field and the appellant tied hands with handkerchief and legs with panty and left her. Subsequently PW-1, PW-7, PW-3, Bhiku, Dilip, PW-6, PW-5 and PW-4 came to the field. PW-2, Victim girl narrated all the facts to them. (Corroborated by the depositions of PW-1, PW-2, PW-4, PW-5, PW-6 and PW-7)

On the next morning PW-2 had taken them to the house where she had been taken by the appellant. PW-2 also deposed that the brother of the appellant herein, Adhir Mondal came out and disclosed that the house belonged to the appellant and he saw him to flee after seeing the victim girl and her relatives. The name of the appellant was confirmed at that point of time.

PW-2 (victim girl) identified the appellant in the court.

7. PW-4 (Anjali Mondal) deposed that at about 1-1.30 a.m. when she accompanied by PW-2 (victim girl) went to answer the nature's call, near away from the place of singing, she saw the appellant to come and suddenly lift the victim girl and drag her. (This part of the fact is corroborated by the deposition of PW-2.)

Thereafter PW- 4 took shelter in a house of an old man out of fear and then told the old man that somebody lifted her sister and also requested him to take her to the place where singing was performed. Following the direction of the old man (who was not examined) PW-4 reached the place and informed PW-1 and PW- 7 (corroborated by the deposition of PW-1, PW-6 & PW-7) that the appellant/Adhir Mondal lifted and dragged away the victim girl (PW-2) grasping the mouth of the victim girl.

Then PW-4 went to the house of the PW-5 (Sanaka Mondal), mother of the victim girl and told Adhir, the appellant lifted victim girl. PW-4 accompanied by PW-5 went to the field, where they saw PW-1, PW-7, Bhiku, Dilip, PW-6, PW-3 to be present. Victim girl told them that the appellant after taking her away, tied her hands and legs. (Corroborated by PW-5, PW-1, PW-6, PW-7, PW-6)

PW-4 identified the appellant in Court.

PW-4 in her cross-examination deposed that she did not talk to police. She deposed the fact first time before the Court. She could not recollect the exact statement what she stated to police.

PW-4 deposed that she saw victim girl and found injury mark in her back and elbow.

8. PW-5 (Sanaka Mondal) mother of victim girl, deposed that PW-2 (victim girl) informed her that the appellant had raped victim girl. PW-5 also deposed that victim girl told them that after committing rape, the appellant had taken the victim girl to his house, lit "pradip" and her daughter could identify him in the light. Victim girl also had been threatened to keep the incident secret and had been taken to the cabbage field and been left in tied condition.

PW-5 identified the appellant in Court.

PW-5 in her cross-examination deposed that she made statement before police on the next day of occurrence. She confirmed the fact that PW-4 informed the incident to her. She deposed that she found injury marks as well as mark of semen in the body of the victim girl and the apparels.

PW-5 deposed that victim girl told her the appellant raped her for entire night and victim girl was found senseless, which fact was not corroborative as per prosecution story of facts.

9. PW-1 (Suren Mondal) grandfather of PW-2(victim girl), who was the de-facto complainant, PW-6 (Sachin Mondal) and PW-7 (Bhakti Mondal) were the neighbours. The depositions of above said witnesses in examination-in-chief corroborated to the deposition of PW-2 (victim girl). They all deposed in examination-in-chief that they were examined by the police prior to the deposition before the court, but in cross examination PW-6 differed.

10. PW-13 recorded the statements under Section 164 of Cr.P.C. of the PW-2/victim girl on 16.04.1999 and which were marked as Exbt-8. PW-13 identified the xerox copy of the statement of victim girl and deposed that the PW-2 gave statement voluntarily.

PW-13 deposed in his cross-examination that victim girl never stated before him that she was went to nature's call, she was lifted, she could identify the appellant in "pradip's" light, she sustained bleeding injury, she was tied by the appellant in the field, where PWs came. PW-13 also deposed that victim girl did not state she told the facts to her relative (PWs) who reached there, but stated she was lifted by 5 persons. Victim girl did not state before PW-13 that victim girl along with others went to listen "pala gan".

11. PW-14 (Dr. Ashoke Nandi) deposed that Dr. N. M. Basak (who was not been examined) who did the medical examination of victim girl on 16.04.1999 and also has identified the signature of Dr. N. M. Basak which was marked as Exbt-5/1.

PW-14 in his cross-examination stated he was not present at the time of examination of victim girl. Report was not been made in presence of the PW-14.

12. PW-15 (S.I., Mihir Kr. Ganguly), Investigation Officer deposed that on 15.04.1999, he had visited the alleged field, examined witnesses, recorded statements and prepared a sketch map. He could not find out any semen or blood stained earth from the field.

PW-15 deposed in his cross-examination that PW-2 did not state to him about bleeding injury, did not state that she was tied inside the cabbage field where PWs came to rescue her. Victim girl only stated that she narrated all the incident to the persons who rescued her (which part of the deposition is corroborated by the PW-1, PW-4, PW-5, PW-6 and PW-7).

PW-15 also deposed that PW-4 did not state that she knew the appellant prior to the incident, but deposed that PW-4 stated to PW-5 that appellant lifted the victim girl.

13. Defence failed to establish a major discrepancy or reasonable doubts in the testimony of informant, victim girl and other witnesses. From the examination of appellant under Section 313 of Cr.P.C. no motive or reason or prior enmity also comes to disbelieve the allegation of minor victim girl against the appellant.

14. The prosecution had examined 15 witnesses to prove its case.

15. PW-1, Suren Mondal, grandfather of victim girl who lodged the complaint went to search for victim girl along with others and recovered the victim girl from Gayeshari Math in tied condition. Victim described to him regarding rape. PW-1 stated in his cross-examination stated that *"Anjali and Kajal were sitting 5 to 7 cubits away where I was sitting. They went towards eastern side from the place of and signing to answer nature's call. They went 50 to 60 cubit away from the place of signing. The place is visible from the place where signing was performed. The people are constantly going by the road."*

16. PW-1 further stated in his cross-examination that *"I did not see any blood stain on her person. I did not notice whether any semen mark is available on her thigh or around her pelvis."* PW-1 again stated in cross-examination that *"on the seized article no level was pasted by police in my presence. My signature was not taken on the seized garments"*. PW-1 further stated in cross-examination that *"the contents of the FIR was not read over and explained to me after writing"*. P.W. 1 stated in cross-examination that *"the*

*handkerchief was in good condition when deposited in Thana. The handkerchief which is now seen before the court is in torn condition".*

17. PW-2, victim girl stated in her cross-examination, that *"About two hundred to three hundred persons assembled to hear singing. I went towards southern side to answer nature's call. The place where I went to answer nature's call is 40 to 50 cubits from the place where singing was going on. The people were standing about 20 to 25 cubits away from the place where I was answering nature's call."*
18. At this stage it is natural that a girl will try her best to make sound whatever loud may she sound. Moreover, the people who were standing only at a distance of 20 to 25 cubits. They will hear the sound why Anjali did not call the nearest man standing at a distance 20 cubits. Moreover, PW-2/victim girl stated in cross-examination that *"I disclosed the name of the accused to the Doctor"*. How she come to know the name of the accused?
19. PW- 3, Paresh Mondal, uncle of victim girl, went to police station with PW-1 and PW- 2 and is a seizure witness.
20. PW-4, Anjali Mondal went to listen "Gambhira Gan" along with victim girl, Suren, and others. PW-4 stated in her deposition that *"at about 1 to 1.30 a.m. myself and Kajol went to answer nature's call from the place of singing. At that time accd. Adhir came and suddenly lifted PW-2 and took her away. I took shelter in the house of old person out of fear"*. PW-4 stated in her cross-examination that *"Adhir used to visit our place. I stated to police Adhir was known to me from before"*. This part of evidence of PW- 4 cast a shadow of doubt if there was a conspiracy among Adhir and Anjali.

21. PW-5, Sanaka Mondal, mother of the victim girl stated in her cross-examination that *"Anjali came to me at about 1 a.m. I informed paramen about the occurrence hearing from Anjali"*. PW-5 stated about all the sign and marks of rape upon her victim daughter.
22. PW-6, Sachin Mondal stated in his cross-examination that *"The village Ujirpur Mahalla is less than 1 mile from Balutola. We did not call any person of Ujirpur Mahalla. We did not call Anchal Pradhan of the Mahalla. No person of Ujirpur Mahalla accompanied us. Except Sukumar non else of Ujirpur Mahalla saw us. We did not go to Anchal Pradhan. The brother's wife of accd is a member of Anchal. We did not complaint to her"*. PW-6 further stated in his cros-examination that *"I did not state to police that Kajol told me that she was taken to Ujirpur Mahalla by Adhir"*. From the above statement it may be presumed that accused was very much known to victim girl and Anjali.
23. PW-7, Bhakti Mondal went to listen "Gambhira gan" along with Suren, Sachin, Bhiku, Paresh, victim girl and Anjali. PW-7 stated in his cross-examination that *"I found Kajol in sitting position at Gayeshari field and hands were tied and kept on her front side. Her face was uncovered. I did not see blood mark on the earth where Kajol was sitting. I did not see blood mark in the private parts of Kajol. It was clean. There was no blood mark on her thigh. I did not find any injury or scratch marked on the face or other parts of her body. I did not examine the private parts or any other parts of her body"*.
24. PW-8, Hirendranath Mondal, scribe of the complaint, in his cross-examination stated that *"F.I.R. was written at a tea stall. Pw-1 was not known to me on that date. I was present at the tea stall and taking tea. Where I was approached by Suren Mondal. The content of F.I.R. was read over and*

*explained to Suren Mondal. Suren Mondal was accompanied by rape victim Kajol. I hear the occurrence from Suren as well as from Kajol and then wrote the F.I.R."*

25. PW-8 further stated that *"I wrote F.I.R. as per the dictation of Suren Mondal but not as per dictation of I.O."*. He stated that *"Yes it is correct I wrote the F.I.R. as per dictation of PW-1. No. I did not write the F.I.R. as per dictation of I.O."*

26. PW-9, Dr. M. L. Das, Superintendent of Malda Hospital, examined the accused for sexual potency. Result was positive.

27. PW-10, Dr. M. Chakraborty, Radiologist at Malda District Hospital, did the ossification test of victim girl and opined that the age of victim was 12 years plus minus 2 years. He submitted report on 13.05.99.

28. PW-11, Lalit Ch. Roy, Constable No. 719 took Kajal (V.G) for medical and ossification test to doctor at Malda Sadar Hospital and identified the victim girl before the doctor for ossification test. PW-11 on his cross-examination stated that *"I did not know the victim girl Kajol Mondal. On the date of medical examination and examination by the Magistrate victim girl came in the morning on getting information. I have no knowledge how the victim girl came to P.S. On the date of recording her confessional statement I took the girl with her father. Not a fact that I and father of victim tutored the victim to dispose before the Magistrate"*.

29. PW-12, Bikash Rai, S.I. of police in his deposition stated on 15.4.99 he was posted at Kaliachak P.S. PW-12 stated in his deposition that *"The O.C. Mihir Ganguly sent a written complaint through H.G. 758 for taking cognizance. ... The endorsement is marked Ext. 1/2. I filled up formal FIR with my signature."*

*On receiving the written complaint I started Kaliachak P.S. case No 81/99 dated 15.4.99 u/s 376 I.P.C. against Adhir Mondal. Mihir Kr. Ganguly took the investigation. I endorsed Mihir Ganguly for taking investigation”.*

30. In his cross-examination PW-12 stated that *"On that time Swapan Dasgupta was the O.C., Kaliachak P.S. At present I have no paper to show that I was in-charge of O.C.”.*

31. PW-13 held statement under Section 164 Cr.P.C. of victim girl. PW-13 stated in his deposition that *“After completion of statement I followed the provision under Section 164 of Cr.P.C. by mentioned statement made before me by the victim girl”.*

PW-13 stated in his cross-examination that *“I did not put any question from where she came. ... She did not utter before me that she had gone to nature’s call”.* The victim girl did not disclose to PW-13 that at the time of rape she sustained bleeding injury. The victim girl disclosed to PW-13 that she was lifted by 5 persons.

Therefore, from the statement of the victim girl recorded under Section 164 of Cr.P.C. it is highly doubtful if the incident of rape committed by the accused as per F.I.R.

32. PW-15, Mihir Kumar Ganguly, the Investigating Officer of the case, stated in his deposition that *“On 15.04.99 I was posted at Gopalganj I.C. I received a written F.I.R. from one Suren Mondal. On receiving the complaint I put any endorsement.... I sent the said complaint through H.G. No. 758 Naba Kr. Das. On receiving the complaint O.C. Kaliachak P.S. started the case no. 81/99 dated 15.4.99 u/s 376 I.P.C. against Adhir Mondal. ... O.C. endorsed me for the investigation of the case. On 16.4.99 I sent Kajol Mondal before S.D.J.M*

*for recording her statement. Also I searched for the accused. Ultimately I arrested the accused on 7.5.99. ... Also I made prayer for Potency Test. Also I made prayer for forensic test of the accused on 10.5.99. I collected medical report of victim girl, ossification test report and potency test report of accused Adhir Mondal”.*

33. PW-15 stated in his cross-examination that *“I could not find any semen or blood stained earth in the field”*. PW-15 further stated in his cross-examination that *“PW-4 Anjali did not state to me that she knew Adhir prior to incident. Anjali stated to Sanaka that Kajal was lifted by Adhir. ... Not a fact that Bhakti stated to me Kajal told him accused took her at his house and lighted a pradip and smoked a Bidi and Kajal could identify Adhir to the help of light of pradip.”*
34. The Learned Advocate for the appellant submitted that PW-1, Suren Mondal, the grandfather of the victim girl, after receiving information from Anjali/PW-4 went to search the victim with others. After finding her in the field he did not see blood stain and semen mark on her thigh and pelvic region.
35. PW-2, the victim girl and PW-4/Anjali went to answer the nature’s call in the place which was 40/50 cubits away from the place of singing. People assembled at about 20/25 cubits away from the place of nature’s call, to hear the singing and it was unbelievable that not a single person noticed the victim girl being taken away by the accused. Moreover, the victim girl practically stated nothing before the PW-13 at the time of recording of statement under Section 164 Cr.P.C. During her statement under Section 164 of Cr.P.C. she did not state at the time of rape she sustained bleeding

injury. The most fatal for the prosecution is that when the victim girl stated before the Learned Magistrate that she was lifted by 5 persons.

36. PW-4/Anjali Mondal who accompanied the victim for nature call stated the appellant used to visit their place and she stated to police that the appellant was known to her from before, therefore, while the victim was lifted by the appellant, PW-4 would shout protesting the act of lifting the victim instead PW-4 took shelter in an old man's house. Is that Anjali had conspiracy with Adhir?
37. It is a vital point that practically there is no eye witness of rape. Anjali saw Adhir to lift the victim and she hid herself in an old man's house out of fear. When Adhir was known to Anjali then she should have protested against lifting of the victim girl but she did not react.
38. As per medical report no injury was found in the inner part of the vagina of the victim girl. The appellant being a married man having children, may not have motive to commit such a heinous crime. There is one uncommon behavior of accused Adhir Mondal who lifted Kajal to his house and told her not to tell about the occurrence to anybody and subsequently lighted a "pradip" and smoked a "biri" and told victim girl that he will take her away. This part of action by an accused of rape is absolutely uncommon as we have seen in majority of rape case the rapist leave the spot leaving the victim alone after satisfaction of lust.
39. In the case of ***Vijay @ Chinee V. State of Madhya Pradesh***<sup>1</sup>, the Hon'ble Supreme Court observed as follows:

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<sup>1</sup> (2010) 8 SCC 191

*“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain<sup>2</sup>, the Hon’ble Supreme Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person’s lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16)*

*“16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base of conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to*

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<sup>2</sup> AIR 1990 SC 658

*falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.”*

**10.** *In State of U.P. v. Pappu*<sup>3</sup>, the Hon’ble Supreme Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

*“12. It is well settled that prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”*

**11.** *In State of Punjab v. Gurmit Singh*<sup>4</sup>, the Hon’ble Supreme Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for

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<sup>3</sup> 2005 3 SCC 594

<sup>4</sup> AIR 1996 SC 1393

*conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp.394-96 & 403, paras 8 & 21)*

*“8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had not control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... 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 are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... 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. ...*

*21. ... The court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of*

*her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”*

*(emphasis in original)*

**12.** *In State of Orissa v. Thakara Besra*<sup>5</sup>, the Hon’ble Supreme Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

**13.** *In State of H.P. v. Raghubir Singh*<sup>6</sup>, the Hon’ble Supreme Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.*<sup>7</sup> placing reliance on an earlier judgment in *Rameshwar v. The State of Rajasthan*<sup>8</sup>.

**14.** *Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”*

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<sup>5</sup> AIR 2002 SC 1963

<sup>6</sup> 1993 2 SCC 622

<sup>7</sup> 2010 2 SCC 9

<sup>8</sup> AIR 1952 SC 54

40. In the case of **Rai Sandeep @ Deepu vs. State of NCT of Delhi**<sup>9</sup>, the Hon'ble Supreme Court observed as follows :

*“15. In our consideration 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 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 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 qualified 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*

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<sup>9</sup> AIR 2012 Supreme Court 3157

*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.”*

41. Evidently the victim girl is a minor of approximately 12 and half years of age. The deposition of the victim girl before the Court is at variance with her statement recorded under Section 164 of the Cr.P.C. The victim during her statement recorded under Section 164 Cr.P.C. stated the presence of 5 persons, at the time she was forcibly grasped at her mouth by a cloth by the appellant while the other 4 persons left the spot. She did not mention about such presence in her testimony before the Court. She did not mention the bleeding injury sustained by her during such penetrative act of the appellant. During the recording of her statement under Section 164 of the Cr.P.C., in contradictions thereto during her cross-examination she stated that *“I tried to raise shout but I was prevented by accd. accd. committed intercourse with his penis for about 20 to 25 minutes. His entire penis was inserted inside me and he continued intercourse for 25 minutes. The entire thing that is from kissing, pressing my breast and intercourse continued for one hour. I bled profusely from my vagina. I sustained injury in my private parts. There was bleeding marks on my thigh and back. I was still bleeding slightly when I went back to my house and when I went to thana. I did not show bleeding mark either to my grand-father or mother or my neighbours. Accd. discharged semen but there was no semen mark on my thigh or pant.*

*The semen discharged was inside me. The semen mark my was person sarrunding my private parts. Accd. carried my panties I was wearing only frock while he was taken to his house. I was lifted by accused to his house. I cannot say the time taken to reach the house of the accd. from the field. Even when we reached the para I was prevented by the accused to shout. As it was dark I did not notice the number of rooms in the house. Accd. himself open the door I made attempt to raise shout but prevented by the accused. No one is present inside the house. I showed bleeding mark to police officer. I was examined by doctor and I showed the bleeding mark to the doctor. I disclosed the name of the accused to the doctor. The name of the accused was recorded by the doctor”.*

42. From the document marked as Exhibit-5/1, i.e., the medical report depicting the examination of the victim, the following was found :

“Identification Point:-

- 1) One scar mark (1/3” & 1/3”) over left papilla.

Findings:-

- 1) No mark or injury seen nowhere on her body including vagina.
- 2) Hymen is intact and easily admits one finger.
- 3) Vaginal swab taken and handed over to Constable No. 719.”

43. The medical report as aforesaid did not reveal any recent injury on the private part of the victim. The victim stated that the ravishing act continued for an hour and she bled profusely from her private parts sustaining injuries with bleeding marks on her thigh and back. She claimed of slight bleeding on her return to her house and also to the Thana. Such statement is not corroborated by the medical report. Moreover, the duration of the aforesaid incriminating and detestable act to continue for an hour is unnatural in the

manner as stated by the victim. It was weird and surprising that PW-4 witnessed PW-2 to be forcibly dragged by the appellant and did not raise any alarm. PW-4 did not claim the presence of 4 other persons to corroborate the statement of the victim recorded under Section 164 of Cr.P.C. PW-4 was not under duress, coercion, threat or resistance to inform the incident to any other person at the congregation of singing function. PW-4 stayed at the house of an old man for a one and half hours and, thereafter, disclosed the incident to him. The prosecution did not examine the old man. No plausible reason was cited by PW-4 to justify her silence before revealing the incident either to the old man or to the family members of the victim.

44. The prosecution did not find out the presence of any other family member of the appellant at his house where victim was taken after the commission of the abhorrent act, the appellant incidentally being a married person.
45. The variations in the statement of the PW-2 and PW-4 raise suspicion with regard to the veracity of the offence committed by the appellant, which has not been supported by the medical evidence. Though, the evidence of the victim in a case of sexual assault being subjected to physical and mental trauma and an indelible scar assumes an un-impeachable status, un-assailable, un-questionable and un-reliable. However, in the instant case, the variations in the deposition of the victim, the suspicious circumstances in which the offence has been claimed to be committed is bereft of being sacrosanct. The deposition of the victim in the instant case cannot be termed to be that of a "sterling witness".

46. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
47. Accordingly, the criminal appeal being CRA 437 of 2002 stands disposed of.
48. Lower Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
49. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**