

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4174 of 2023

Arising Out of PS. Case No.-167 Year-2018 Thana- MANIYARI District- Muzaffarpur

Md. Farookh S/O Md. Nisar R/O Chhapki, P.S- Maniyari, Distt.- Muzaffarpur

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Santosh Kumar, Adv.
	:	Mr. Anand Kumar Tiwari, Adv.
For the State	:	Mr. A.M.P. Mehta, APP
For the Informant	:	Mr. Mirtunjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 26-11-2024

1. Heard the parties.

2. The Present appeal preferred by appellant/convict, namely, Md. Farookh against judgment of conviction dated 31.07.2023 and order of sentence dated 05.08.2023 passed by learned Additional District and Session Judge, VIIth cum Special Judge, POCSO Act, Muzaffarpur in connection with G.R. No. 90 of 2018 (arising out of Maniyari P.S. Case No. 167 of 2018), whereby and where under appellant/convict has been convicted for the offence punishable under Section 376 of IPC and has directed the appellant to undergo imprisonment for 10 years and fine of



Rs. 20,000/- and in default of payment of fine he was directed further to undergo imprisonment for six months.

3. Case of prosecution in brief is that on 11.06.2018 at 23.30 hours in the night (intervening night of 11.06.2018 and 12.06.2018), accused entered the house of the informant (PW-2) after opening the door and asked the informant-victim to talk on his phone to her brother. In the house of informant-victim, no one was present. In the meantime the accused tied the mouth of the victim with *gamchha*, took her to another room and raped her. When the victim tried to raise the alarm then the accused had shown her knife and said that he would kill the informant and her brother. After hearing the noise, Sahnaj Khatoon, the aunty of the victim came and then the accused fled away but left his sleepers(*chappal*) and *gamchha* in the house of the victim/informant.

4. On the basis of aforesaid written information, Maniyari P.S. Case No. 167 of 2018 was lodged under Section 448, 341, 376 and 506 of the IPC and under Sections 4, 6, 7, 8 of POCSO Act against the appellant.



5. To substantiate its case, the prosecution has examined altogether seven witnesses. They are:-

Prosecution Witnesses No(s).	Names
P.W. 1	Md. Akil
P.W. 2	Victim/informant
P.W. 3	Suveda Khatoon
P.W. 4	Md. Mustaq
P.W. 5	Uma Shankar Manjhi
P.W. 6	Dr. Mukul Kumar
P.W.7	Dr. Reeta Renu Chaudhary

6. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-P/1	Signature of PW-1 on Seizure list
Exhibit-P/2	Attestation on written report by the SHO
Exhibit-P/3	Formal FIR
Exhibit-P/4	The medical examination report by a medical board of the victim
Exhibit-P/5	Medical examination of the victim for injury
Exhibit-P/6	Report of vaginal swab for presence of spermatozoa



Exhibit-P/7	Report of pathological department
Exhibit-P/8	Statement of the victim recorded u/s 164 Cr.P.C.

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all incriminate evidences as surfaced against him during trial and claimed his complete innocence and false implication.

8. To established his innocence before the learned trial court, appellant altogether examined total of three witnesses.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict and passed order of sentence, as stated herein above.

10. Being aggrieved with aforesaid judgment of conviction and order of sentence, the appellant/convict preferred the present appeal.

11. Hence the present appeal.

Argument on behalf of the appellant/convict:



12. It is submitted by learned counsel arguing on behalf of the appellant/convict, that the learned trial court completely overlooked the fact that the prosecutrix/victim/PW-2 could not be said 'sterling witness' for the reasons that there are major contradictions surfaced during the trial out of her testimony as she deposed before the Court. It is submitted that in view of her submission as recorded under Section 164 Cr.P.C and also the testimony of his brother PW-4 and the medical reports as available through PW-6 and PW-7, where no any sign of rape was noticed, though victim was examined within 24 hours of the occurrence, judgment of convictions as recorded on sole testimony of victim appears questionable. In support of his submissions learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750.***

13. It is also pointed out by learned counsel that the learned trial court during trial, disbelieved the theory of threat as advanced by appellant on point of knife while



committing rape and therefore as no knife was recovered during the course of investigation as per testimony of PW-5, who is the Investigating Officer of the case, appellant was acquitted from the offence punishable under Section 506 and 448 of the Indian Penal Code. It is submitted that if the allegations of threat and confinement was not believed by the trial court, therefore the entire prosecution case appears bound to fail and as such the convictions recorded by learned trial court completely appears perverse on this score.

14. It is also pointed out by learned counsel that the appellant was arrested immediately after the occurrence i.e. on the very next date of lodging the FIR but he was not examined medically in view of Section 53(A) of Cr.P.C and therefore the present convictions also appears doubtful.

15. While concluding arguments it is submitted that in view of aforesaid, the balance of appeal appears in favour of appellant and therefore the impugned judgment of convictions as recorded by learned trial court is fit to be set aside/quashed. In support of his submissions learned counsel relied upon legal report as available through **Md. Ajmot Ali**



& vs. The State of Assam (2022) SCC Online 1440

48. It is noted that great weight has been attached to the testimonies of the witnesses in the instant case. Having regard to the aforesaid fact that this Court has examined the credibility of the witnesses to rule out any tainted evidence given in the court of Law. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witnesses were related to each other. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the witnesses are related/interested, their testimonies have to be scrutinized with greater care and circumspection. In the case of **Gangadhar Behera and Ors. v State of Orissa (2002) 8 SCC 381**, this Court held that the testimony of such related witnesses should be analysed with caution for its credibility.

50. Further delving on the same issue, it is noted that in the case of **Ganapathi and Anr v. State of Tamil Nadu (2018) 5 SCC 549**, this Court held that in several cases when only family members are present at the time of the incident and the case of the prosecution is based only on their evidence, Courts have to be cautious and meticulously evaluate the evidence in the process of trial.

16. Learned counsel further relied upon-



Upendra Pradhan Vs. State of Orissa 2015 (11) SCC 124

10. Taking the First question for consideration, we are of the view that in case there are two views which can be culled out from the perusal of evidence and application of law, the view which favours the accused should be taken. It has been recognized as a human right by this Court. In *Narendra Singh and Another v State of M P.*, (2004) 10 SCC 699, this Court has recognized presumption of innocence as a human right and has gone on to say that:

"30. It is now well settled that benefit of doubt belonged to the accused. It is further trite that suspicion, however grave may be, cannot take place of a proof. It is equally well settled that there is a long distance between 'may be' and 'must be'.

31. It is also well known that even in a case where a plea of alibi is raised, the burden of proof remains on the prosecution.

Presumption of innocence is a human right. Such presumption gets stronger when a judgment of acquittal is passed. This Court in a number of decisions has set out the legal principle for reversing the judgment of acquittal by a Higher Court (see *Dhanna v. State of M.P.*, *Mahabir Singh v. State of Haryana* and *Shailendra Pratap v. State of U.P.*) which had not been adhered to by the High Court.

33. We, thus, having regard to the post-mortem report, are of the opinion that the cause of death of Bimla Bai although is shrouded in mystery but



benefit thereof must go to the appellants as in the event of there being two possible views, the one supporting the accused should be upheld" (Emphasis Supplied)

17. Reliance was also made upon-

Mohd. Ali alias Guddu Vs. State of Uttar Pradesh (2015) 7 SCC 272

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment¹, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated



with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and the High Court has fallen into error, without reappreciating the material on record, by giving the stamp of approval to the same.

Argument on behalf of State:

18. Learned APP duly assisted by learned counsel for the informant while opposing the appeal submitted that the impugned judgment of convictions not required to be interfered for the reasons that the learned trial court correctly overlook the minor contradictions of the victim in view of the fact that she was rustic villager and having rural background.



It is submitted that minor discrepancies is of no bearing on the merit of this case. In support of his submission learned counsel appearing for informant relied upon legal report as available through ***Bharwada Bhoginbhai Hirjibhai Vs.***

State of Gujarat (1983) 3 SCC 217

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, dis belief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opiated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be



identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

(1) The female may be a 'good digger' and may well have an economic motive- to extract money by holding out the gun of prosecution or public exposure.

(2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.

(3) She may want to wreak vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.

(4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.

(5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-importance in the context of her inferiority complex.

(6) She may do so on account of jealousy

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.

10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large



true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself (7) The fear of being taunted by others will always haunt her (8) She would feel extremely embarrassed in relating the incident to being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The



reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self-inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye-witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the western world (obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found



in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities factor' is found to be out of tune.

19. It is also submitted by learned counsel that the non-finding of corroborative evidence out of medical examination of the victim is of no bearing for the simple reasons that as per established principles of law, the rape is a legal finding not a medical one and therefore non-finding of any injury does not lead to conclusion *ipso facto* that rape was not committed upon the victim. It is further submitted that the non-examination of appellant under Section 53(A) of Cr.P.C is also not fatal for prosecution for the simple reason that same is only of corroborative value and not a substantial piece of evidence.

20. It is submitted that the testimony of victim appears throughout consistent i.e. from FIR, which was authored by victim herself, her statement as recorded under Section 164 of Cr.P.C and also her testimony as recorded during the trial as PW-2 and therefore in view of consistency, she can be said to qualify the test of 'sterling witness' and



therefore the conviction as recorded by learned trial court without any further corroborations is not bad in eyes of law. In support of his submissions learned counsel relied upon the legal report of ***M/s Om Prakash Vs. State of Uttar Pradesh*** reported as **2006 3 PLJR SC 248**. In this context, it is further submitted that the facts and circumstances of the case nowhere suggest strong motive for false implications and as such there is no reason apparently to disbelieve the testimony of prosecutrix.

21. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

22. As to re-appreciate the evidences, while disposing the present appeal, it would be apposite to discuss the evidences available on record, which are as under:-

23. PW-1 is Md. Akil who is the brother of the victim. He appears to be the hearsay witness and deposed qua occurrence almost in same manner as it was deposed by victim. He appears one of the witness of seizure list where he



put his signature which he identified during the trial which upon his identification exhibited as **Exhibit No.1**. Upon cross examination it was stated by him that the victim is her neighbour and on the date of occurrence he was at Patna. It was stated that he came to know about the occurrence through his mobile phone. He disclosed his mobile phone no. but failed to disclose the number from where the call was made. He could not disclose the exact time of conversation over mobile phone. He came to village on 12.06.2018. It was stated that upon medical examination the age of his sister was found between 18-19 years. It was stated by him that he came to know from doctor that rape was committed upon her sister but he could not disclose the name of said doctor and even failed to disclose the date.

24. PW-2-is the most important witness of the present occurrence, who herself the victim of this case and also the informant. It appears out of her examination-in-chief that her date of birth is 01.01.2003. It was deposed that occurrence was of 11.06.2018 which took place about 11:30 P.M while she was sleeping in a room of her house alongwith



her younger brother, when appellant came to her and told to talk with her brother. She asked mobile from the gap of window but appellant asked for opening the gate, whereafter he entered into the room and thereafter dragged victim to next room and closed the door of the room from outside where her brother was sleeping. He asked to undress which was objected by the victim and thereafter threat was advanced by the appellant by showing the knife and also to kill her brother, whereafter appellant forcibly torn her cloth and when she tried to raise her voice, her mouth was pressed by the appellant and rape was committed upon her. It appears from her examination-in-chief that the noise which developed during the occurrence was heard by her aunt and thereafter she came but after seeing her, appellant switched off the light of the room and hide himself under the bed thereafter he fled away after leaving his *chappal* (sandal) and *gamchha*. It was deposed that she put her thumb impression on her written information. It was also deposed that seizure list qua *chappal* and *gamchha* was prepared during investigation. He identified appellant before the court.



24.1 Upon cross-examination it was stated by her that she is not literate. It was stated that in other parts of the same house, her aunty was also living. The appellant was also staying as front door neighbour. She was acquainted with appellant and usually visited each other house before the occurrence. Appellant never teased victim before the occurrence. She stated that the door was knocked in night by appellant to wake her. It was stated that she was dragged to next room forcibly, she was crying but her mouth was pressed. Her brother was remain sleeping there. She tried her best to save herself. It was stated that her brother was not woke up even after hearing her cry. It was also stated by her that she made same statement before police during investigation and also while recording her statement under Section 164 Cr.P.C that the room light was switched off by appellant and he hide himself under the bed. She also said to police during investigation that the threat to life was advanced by appellant. It was stated that the wrong work continued for 15-20 minutes and appellant left her only after completing the rape. She stated that she did not receive any scratch mark



during the occurrence, she was examined medically, she denied the suggestion as advanced by learned counsel that she implicated falsely appellant as to create pressure for solemnizing marriage with him.

24.2 This statement appears contrary to his deposition as made through examination-in chief-that he came to know about the occurrence from his sister/victim/PW-2. It was stated that his younger brother and sister were available at home on the date of occurrence. He denied that seized material not belongs to appellant. He approved the fact that he is not the eye witness of the occurrence and deposed before the Court as he was told by his sister/victim about occurrence. He denied false implications of appellant.

25. PW-3 is Suveda Khatoon who appears to be the mother of victim. It appears from her examination-in-chief that she was not available in her house on the date of occurrence as she went to visit house of her sister. It was deposed that on the date of occurrence her daughter and son namely Mustaq was present at home. She deposed about the



occurrence as she gathered about it from the mouth of the victim whereas she was also informed over phone in night itself about the occurrence. It appears from her examination-in-chief that rape was committed on the point of knife by taking victim into western room of the house. It was deposed by her that from the place of occurrence one *chappal* having blue sole which was of appellant, one mehroon colour half sleeve top in torn condition and one blue colour *gamchha* was seized where she put her thumb impression and identified appellant during the trial. She denied suggestion that appellant was implicated out of false implications.

26. Comparing the testimony of PW-1 and PW-3 qua seizure list, it appears that their statements are different qua recovered items. Both these witnesses are seizure list witness, where PW-1 deposed during trial that only two materials i.e. *chappal* and *gamchha* of appellant was recovered, where as PW-3 stated that beside *chappal* and *gamchha*, one maroon colour half sleeve top in torn condition made up of nylon was also recovered. This contradictory statement of witnesses qua recovery who are none but



seizure list witnesses makes the seizures doubtful on its face.

27. PW-4 is Md. Mustaq who is younger brother of the victim and was sleeping alongwith her on fateful night when the present occurrence took place. It appears from his examination in chief that he woke up due to cry/alarm raised by her sister. It was deposed specifically that her victim sister was raising saving alarm as (बचाओ बचाओ). He deposed that he came to know from his victim-sister that appellant advanced threat to her by showing knife and also said her to kill her brother (witness himself). It was deposed that he also came to know from the mouth of victim that she was dragged to next room by pressing her mouth and thereafter rape was committed upon her and her cloth was also torn.

27.1 Upon cross- examination it was stated that he was not eye witness of the rape and he came to know about the occurrence from the mouth of his victim sister. He heard saving alarm (बचाओ बचाओ) from western room of his house. He did not heard any alarm like this earlier to the occurrence. He also made same statement before police. He did not raised



alarm after hearing saving alarm raised by victim. It was stated by him that Shahnaz Khatoon is his aunt and she told him about the occurrence. It was categorically stated that he came to know only when it was told him by Shahnaz khatoon that appellant after entering into house committed rape upon his sister on point of knife. It was stated that appellant is front door neighbour.

27.2 Upon analysing the deposition of this witness, it appears that source of knowledge qua occurrence i.e. whether he came to know about this occurrence from the mouth of his sister or from the mouth of his aunt namely Shahnaz Khatoon, appears doubtful. If his statement as to gather information about the occurrence from aunty Shahnaz khatoon be believed in that case his entire testimony qua occurrence as deposed through examination-in-chief appears doubtful where he tried to project himself an eye witness of the occurrence and also that he heard the saving alarm as raised by his victim sister during the course of occurrence.

28. PW-5 is Uma Shankar Manjhi who is, Investigating Officer of this case, who was posted on



12.06.2018 as A.S.I in Maniyari Police Station. On said date he received detailed information of Nafessa Parween/victim qua occurrence, which was endorsed by Incharge SHO, whereafter he lodged the present case. He identified his handwriting and signature during the trial which upon investigation exhibited as exhibit no.2. He also identified the formal FIR which upon examination exhibited as exhibit no.3. He assumed the charge of investigation after lodging the FIR and thereafter he prepared the production cum seizure list whereafter he visited the place of occurrence. During investigation he recorded the statement of Md. Mustaq, Zubeda Parween, who supported the occurrence and also got victim examined medically. He arrested the appellant/accused and also got recorded the statement of victim under Section 164 Cr.P.C before concerned judicial magistrate. He obtained the medical report of the victim. He also recorded the statement of Md. Hamid. Upon cross examination it was deposed by him that the age of victim was found about 18 years.

29. PW-6 is Dr. Mukul Kumar. He deposed that-



1. On 14.06.2018 I was posted at Sadadr Hospital Muzaffarpur as Medical Officer Radiologist. I was one of the member of the Medical Board. Board was constitute for age determination of the Victim. Other Board Members were Dr. Lalita Singh, Dr. D.P. Singh, Dr. J. Shekhar, Dr. Richa Tulsian.

Clinical findings: Height 5'0", Weight 45 kg, Genitalia - Developed, Teeth - 14/14, Pubic / Axillary hairs present, Breast - developed.

M.I-1) Til over left index finger (2) Masa over back on right side.

Advised: (1) X-ray right elbow AP / lateral (2) X-ray right wrist AP/ lateral (3) X-ray pelvis AP view including both hips.

2. Radiological findings: (1) Right elbow - Upper end epiphysis of radius and ulna has fused. (2) Right wrist lower end epiphysis of radius and ulna has fused. (3) Pelvis AP view Iliac crest epiphysis fusion is incomplete on



either side. Ischial tuberosity epiphysis has not fused on either side.

3. Final Opinion - According to the clinical and radiological findings the opinion of the medical board is her age is in between 18 to 19 years.

4. This report is in my pen and bears my signature and also bears signature of other board members and Chairman of the Board. This is marked as Ext 4.

30. PW-7 is Dr. Rita Renu Chaudhary who deposed that

1. On 12.06.2018 I was posted on deputation at Sadar Hospital, Muzaffarpur. On that day I examined the Victim and she was accompanied by her mother. We examined the Victim and found the followings-

MI - (1) mole over the right side of back (2) til on left ring finger

On general examination she was Conscious,



co-operative Not feeling difficulty in walking.

*No injury over or any scratch mark found on
any part of the body*

Secondary sex character well developed

Abdominal examination: nothing relevant.

*Vaginal examination. No external injury over
perinial, Hymen old ruptured, Vagina found
patulous, admitted two fingers easily*

She was on Menstrual period.

*Vaginal swab taken and sent for pathological
examination for the presence of spermatozoa.*

*2. This report is in writing of Dr. Shobha Rani
Singh M.O. Sadar Hospital and bears her
signature and also my signature. It is marked
as Ext. 5*

*3. On the basis of microscopic examination of
Vaginal swab dt 13.06.2018 a report was
given by Dr. R.K Singh, Pathology department
of Sadar Hospital Muzaffarpur this
supplementary report was given and*



according to that spermatozoa was not found.

This supplementary report is also in writing of Dr. Shoba Rani Singh and bears her signature and my signature This supplementary report is marked as Ext. 5/1

4. Report of Pathology Department, Sadar Hospital Muzaffarpur is in writing of Dr. R.K. Singh and bears his signature also. This report is marked as Ext 6.

31. Now the first and foremost issues out of aforesaid evidences, which required to be established is whether the victim can be said “sterling witness” or not, for the reason that if once trustworthiness qua occurrence inspire confidence out of testimony of victim, no further corroboration is required as per established principles of law. In this context, the position of law approved by Hon’ble Supreme Court qua sterling witness through **Rai Sandeep Case (supra)**, would be apposite to quote-

“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 correlation 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.”

32. From aforesaid discussed fact, it appears that the victim herself is the author of FIR. She has stated that appellant himself opened the door and entered into the house and asked victim to talk with her brother. As per FIR the occurrence took place at about 11:30 P.M on 11.06.2018. She stated categorically in her written information that her aunty namely Shahnaz Khatoon after hearing the noise came to her house whereafter appellant fled away leaving the victim. In said course, appellant left his sandal and *gamchha* in the house of victim itself. The FIR was lodged on next date i.e. on 12.06.2018. On same very date i.e. on 12.06.2018, she was examined medically where no external injury over perennial regions in or out was found. Hymen was found old ruptured. There was no spermatozoa. She was also not



feeling any difficulty in walking when she was brought before the doctor for medical examination. On 14.06.2018 she was examined radiologically where his age was assessed between 18-19 years. Her statement under Section 164 Cr.P.C was recorded on 13.06.2018 i.e. on the next date of lodging FIR where victim explaining the occurrence stated that on the fateful night of occurrence she was in her house alongwith her brother, suddenly appellant entered into the house and after pressing her mouth grab her to next room and closed the door from outside in which her brother was sleeping and after torning her cloth committed rape upon her and thereafter fled away.

33. At the first instance, comparing these two statements, i.e. statement of victim as it was recorded through her written information (Ext-2) and thereafter her statement as recorded under Section 164 Cr.P.C (Ext-7), she completely remains silent for any threat on point of knife as also while making statement under Section 164 of the Cr.P.C. She also remained silent that appellant left any *chappal* and *gamchha* while fleeing from the place of occurrence. She also



remains silent that during the occurrence after hearing the noise her aunty namely Shahnaz Khatoon came over there. Certainly these three contradictions cannot not be said minor contradictions in eyes of law.

34. Now in view of aforesaid contradictions, it further apposite to look into the testimony of victim/PW-2. It appears from her testimony that during the occurrence when she was dragged to the next door from the room where she was sleeping alongwith her younger brother, she raised her alarm despite of pressing her mouth by appellant. She tried her best to save herself. Her brother not woke up even on her said alarm when she sought for help. Now, if this part of her testimony be read with the deposition of PW-4, who is the younger brother of the victim, it appears that he woke up when her sister raised alarm for saving. It simply implies either victim falsely testified before the court or PW-4 who is none but the younger brother of the victim and was sleeping together in room made false statement qua occurrence. Having all such contradictions as discussed above out of written information as authored by victim herself, her



statement recorded under Section 164 of Cr.P.C qua her testimony as recorded by Court as PW-2, the victim can not be said as sterling witness. In aforesaid view now the further corroborative evidence required to be looked into.

35. It appears from the deposition of victim that the occurrence of rape was continued for 15-20 minutes. She was dragged from one room to another room by pressing her mouth. Even during occurrence her cloth was torned but surprisingly as per her testimony not even a single scratch mark caused upon her body which appears corroborative also from the testimony of PW-7 who examined her medically being a doctor. There was no external injury over perennial part. PW-7 categorically stated that no injury over or any scratch mark found on any part of the body. This scientific finding further creates a doubt qua testimony of victim.

36. Accordingly, appeal stands allowed.

37. The impugned judgment of conviction dated 31.07.2023 and order of sentence dated 05.08.2023 passed by learned Additional District and Session Judge, VIIth cum Special Judge, POCSO Act, Muzaffarpur in connection with



G.R. No. 90 of 2018 (arising out of Maniyari P.S. Case No. 167 of 2018) is hereby set aside/quashed.

38. Appellant namely, Md. Farookh is in custody in connection with this case, he is directed to be released forthwith, if not required in any other case. Fine, if any paid, by appellant, be returned to appellant immediately.

39. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

Suruchi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.12.2024
Transmission Date	03.12.2024

