

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 103 of 2011

**Anjan Kumar Bose
-Vs-
The State of West Bengal**

For the Appellant	: Mr. Sekhar Kr. Basu Ms. Saryati Datta
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 05.10.2023, 17.10.2023, 08.01.2024
Judgment on	: 13.03.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 31.01.2011 passed by the Learned Additional Sessions Judge, 7th Court at Alipore, South 24 Parganas in Sessions Trial No. 1(2) of 2005 corresponding to Sessions Case No. 4(1) of 2004 arising out of Sonarpur Police Station Case No. 147 of 2002 dated 23.05.2002 convicting thereby the appellant for commission of offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs. 10,000/- in default to suffer rigorous imprisonment for 1

year for the commission of the offence punishable under Section 376 of the Indian Penal Code.

2. The aforesaid trial was the consequential result of the investigation, carried out by Sonarpur Police Station Case No. 147 of 2002 dated 23.05.2002 under Section 376/34 of the Indian Penal Code, which was registered on the basis of a written complaint under Section 156(3) of the Code of Criminal Procedure lodged by one Smt. Archana Mallick wife of Late Rangalal Mallick of Jagaddal Ukil Para, Narendrapur, Police Station – Sonarpur, District – South 24 Parganas, to the court of the Learned Chief Judicial Magistrate, Alipore. In the said complaint it was alleged that on 05.11.2001 when the complainant was in her house alone and her daughters were at school, then at about 01:30 p.m. the accused entered the house and took off her wearing cloth and forcibly lay her on the floor and ravished her against her will and as a result the complainant lost her sense. After a long time the daughter of the complainant came to the house at about 04:00 p.m. subsequently other witnesses came there after hearing her cries. It was further alleged that the complainant had been to the local police station and lodged complaint which was entered into the G.D. Entry Book and no F.I.R. was lodged and as such the complainant filed the petition of complaint before the Court of the Learned Chief Judicial Magistrate, Alipore.
3. On the basis of the aforesaid order of the Learned Chief Judicial Magistrate, Alipore, 24 Parganas (South), received by the Sonarpur Police Station on 23.05.2002, Sonarpur Police Station Case No. 143 dated 23.05.2002 under

Sections 376/34 of the Indian Penal Code was registered for investigation against the appellant.

4. Upon completion of the investigation, Charge-Sheet being Charge-Sheet No. 81 dated 15.04.2003 was submitted by the investigation agency under Section 376 of the Indian Penal Code against the appellant before the Court of the Learned Sub-Divisional Judicial Magistrate on 15.04.2003.
5. Upon receipt of the aforesaid Charge-Sheet the Learned Sub-Divisional Judicial Magistrate, Alipore, was pleased to take cognizance of the same against the present appellant. Thereafter upon completion of formalities the case was committed to the Court of Sessions by order dated 28.09.2003 wherefrom it was transferred to the Court of the Learned Additional Sessions Judge, 7th Court, Alipore, on 02.01.2004, for trial and the case was registered as Sessions Case No. 4(1) of 2004.
6. The Learned Judge upon perusal of the materials so placed before the Learned Court was pleased to frame charge on 15.02.2005 for the commission of offence punishable under Section 376 of the Indian Penal Code against the appellant to which he pleaded not guilty and claimed to be tried. The case was renumbered as Session Trial No. 1(2) of 2005.
7. The prosecution in order to bring home the charge so framed against the appellant examined as many as 7 witnesses and exhibited certain documents.
8. The Learned Advocate for the appellant stated that the alleged incident occurred on 05.11.2001 at 01:30 p.m. The victim in her evidence deposed that she had informed the alleged incident before Sonarpur Police Station on

the date of the incident. But the prosecution did not take any initiative to produce the said General Diary before the Court during the trial and the victim also did not provide the number of the said General Diary at the time of lodging the complaint or adducing evidence before the Learned Trial Court. It was pertinent to mention that in the formal part of the First Information Report there was an interpolation in time of lodging the General Diary.

9. The present case had been initiated on the basis of a complaint lodged under Section 156(3) of the Code of Criminal Procedure before the Court of Learned Chief Judicial Magistrate, Alipore. Pursuant to the direction of the Learned Magistrate Sonarpur Police Station Case No. 143 dated 23.05.2002 under Sections 376/34 of the Indian Penal Code was registered against the appellant. It was pertinent to mention that the alleged incident occurred on 05.11.2001. So admittedly there was a delay of six months and eighteen days in lodging the First Information Report and such delay has not been explained by the victim in the petition of complaint or at the time of adducing evidence before the Learned Trial Court during the course of trial.
10. At the time of framing of charges Learned Judge mentioned the time of the alleged offence was 08:55 hours at the time of raising accusation against the appellant. But in the written complaint and the victim in course of her deposition as PW-1 before the Trial Court categorically deposed that time of alleged incident was 01:30 p.m. Even the Learned Trial Judge also pleased to observe in his judgment that "... the formal charge framed by Ld. Predecessor in office about the time of occurrence is incorrect." So such

contradiction was completely overlooked by the Learned Trial Judge at the time of recording the order of conviction against the appellant.

11. PW-5, the Doctor who examined the victim lady on 14.06.2002 that was near about 8 months of the alleged incident. The victim was a widow and the Doctor found during the examination of the victim that there was evidence of sexual intercourse. Such finding creates doubt regarding the alleged incident and the veracity of the evidence of the victim.
12. PW-1, the victim lady deposed in her cross-examination that she knew the appellant since 1993 and the appellant had visiting terms with her. She also deposed that the appellant visited her house many times and that too very frequently. PW-2 (daughter of the victim) also deposed that the appellant arranged to purchase the Land where the victim and her daughters are staying and said Land was purchased after the death of the husband of the victim whereas said fact was completely denied by PW-1 at the time of giving her deposition before the Learned Trial Court. So from the above discussion it was evidence that the victim developed a relationship with the appellant since long and after the demise of her husband said relationship became mature.
13. The appellant stated that Learned Judge has failed to appreciate that the deposition of PW-2 and PW-4 (both are the daughters of the victim) clearly indicates that they are tutored witnesses. But their evidence was contradictory to each other and therefore no reliance can be place upon such contradictory and embellish evidence.

14. The appellant stated that no neighbouring person was examined by the prosecution as witness though PW-1 and her daughters claimed that there are several houses are situated surrounding the alleged place of occurrence and they also shouted for help. But curiously prosecution did not cite any person from the neighbourhood as evidence and such vital aspect was completely overlooked by the Learned Trial Judge for some oblique reason.
15. The Learned Advocate for the State submitted that both the daughters had witnessed the appellant to flee.
16. A circumspection of prosecution witnesses revealed as follows:
 - i. P.W 1, the defacto complainant stated that occurrence took place on 5.11.201 at 1:30pm at her house at Rajpur, Jagaddal, Ukilpara under P.S Sonarpur. After the death of her husband who passed away on 04.01.93, she lived with her two daughters who are twelve and fourteen years old. At the time of the incident, she was at her residence when the accused undressed her and raped her against her will and consent. She had also asserted that the accused bit her and she was injured after the incident. She had stated that after the incident she fell down unconscious and that she was a patient of epilepsy. At about 4pm, her daughters had returned home from their school. She was in a semi conscious state and when the accused saw her daughters he absconded from the place of occurrence. She had then narrated everything to her daughters and lodged a complaint as P.S Sonarpur. She asserts that the police had not start a case against the accused so she filed a

petition of complaint in court. She was medically examined and her statement was recorded by the magistrate.

- ii. She has known the accused since 1993 and was acquainted with him after the death of her husband. He would frequently visit P.W 1. Out of that she knew Kamal Das, Tapan Gayeh and Sibani Mondal. She denies that she was closely intimate with the accused. Her dwelling house consisted of two rooms with two varandas. She had never visited the house of the accused but his address was known to her. She states the accused had come to her house at about 1:30 pm when she was doing house work. She had not spoken to the accused prior to the occurrence. The door was open. All of a sudden the accused came and jumped upon her. She had not raised an alarm to call the neighbors. She had been suffering from epilepsy before her marriage and it could have been triggered any time. She had not lost her senses when she was unaged by the accused. She had become tensed immediately when the accused entered her room.
- iii. To the court she deposed that she had lost her senses after she was raped, and she had lost her senses 15/20 minutes after she had been unaged. She had not regained her senses until her daughters returned home. She had been raped many times that day. Her wearing apparels had been stained. Those were not given to the I.O. She had been first raped on the cot and thereafter on

the floor. She could not say how many times she had been raped that day.

- iv. She had informed the police of the occurrence on the same day. The police had visited her house but she could not say after how many days. It was not a fact that the accused had not visited her house at all. She had injuries on her private parts that bled and her wearing apparels were stained with blood. She had not been treated by a physician. It was not a fact that she had not informed her daughters of any such occurrence, and it was not a fact that there was no occurrence of rape by the accused.
- v. She denied that the accused helped her purchasing her dwelling house and that he rendered financial help for acquiring the property. She had purchased the dwelling house after the death of her husband, and she denied that the accused had been falsely implicated in the case.
- vi. She states that she had purchased the property from one Shila Chakraborty and the accused introduced her to Shila Chakraborty.
- vii. PW. 2 is the daughter of P.W 1. She knew the accused. He used to visit their home. The occurrence had taken place on 5.11.2001 at about 4pm in their house. At the relevant time, she had returned home with her sister and had found her mother sitting inside her room weeping. Their mother was in an almost undressed condition. She had also seen the accused fleeing away from the room through the backdoor. They had been minors at that time

and their mother had not disclosed the reason for her weeping. P.W. 2 stated that she had called some neighborhood ladies to their house and with their assistance their mother, being P.W 1 had come back to her normal state.

- viii. In their cross examination, P.W 2 deposed that she addressed the accused as 'Kaku' by village courtesy. She had never visited his house. Her mother being P.W 1 might have visited his house only once on the occasion of the death of the mother of the accused. She had taken admission at S.D. Girls School at Baruipur through the accused. She had been admitted in a hostel at Baruipur through the accused. Her sister had been admitted at Kanak Basu School at Rajpur. At the time of occurrence, P.W 2 had been attending Kanak Basu Girls School near Rajpur. Subsequently had taken admission at S.D. Girls School, Baruipur by the accused. It was not a fact that at the relevant time she had not been a student at Kanak Basu School. She had papers of that school and could produce the same in court. Kanak Basu School was half an hour walk from their residence. They would set out from their house at 10:30 am.
- ix. She had stated to the I.O that the neighboring ladies had come that day. There was a lane in front of their house leading to the main road. The neighboring people had used the lane. There was a factory near their house. Many men used to work there.

- x. Their father used to set out in the mornings in order to join his duty and would come back in the evening.
- xi. The accused had arranged for the purchase of the land where they were living. The land had been purchased after the death of their father.
- xii. It was not a fact that the accused had rendered financial assistance to my mother for construction of their house. It was not a fact that there had been a dispute between their mother being P.W 1 and the accused. Prior to the occurrence, there had been quarrels between their mother and the accused.
- xiii. It was not a fact that she was deposing falsely. It was not a fact that she was deposing falsely that she had seen the accused flee away from their house. It was not a fact that she did not make any statements to the police that on the relevant day, she had seen her mother being P.W 1 weeping in an almost undressed state or that the accused had at all been to their house on that day.
- xiv. P.W 3 was the M.O (Radiologist) posted at Imambara Sadar Hospital, Chinsurah, Hooghly on 12.9.2002. He has been posted as M.R. Bangur Hospital in the same capacity.
- xv. He had held the Ossification test of P.W 1. He had given his report. In his opinion, she was above 20 years on the date of examination. The report along with two x-ray plates (marked ext-2) had been prepared and signed by him.

- xvi. P.W. 4 is the daughter of P.W 1. She was a student of Class-IX. The occurrence had taken place about four and a half years ago. She was able to identify the accused. The accused had been a friend of her father and he used to visit their home. One day at about 4 pm when she was with her elder sister, she had returned from home and found the accused lying on the body of her mother being P.W 1. They raised an alarm and the accused fled away. Her mother was weeping. Her mother was in an undressed condition. P.W 1 had told her that the accused had tortured her. P.W 4 could not recollect anything more. The court noted the demeanor of P.W 1 appeared to be that of embarrassment.
- xvii. She was now 15 years old. She could not recollect the date of her fathers death. She could not recollect if her mother being P.W 1 and elder sister would visit the house of the accused. The accused had affection for them. She along with her elder sister had studied at the same school. They would go to school individually. Her mother was lying on a cot. They had entered through the door and the door was open. She had not stated to the I.O that her mother was lying on the cot undressed. She had not felt an embarrassment to depose.
- xviii. The neighbors had come when they had raised an alarm. Her mother had told them everything when they asked. She had asked her mother to get dressed and they had gotten her dressed.

- xix. It was not a fact that she had falsely stated that the accused had been lying on the body of the mother. She had stated to the I.O that her mother had told her that the accused had tortured her. It was not a fact that she had not seen the accused person in their house that day. It was not a fact that she was deposing falsely and was being tutored by her mother. It was not a fact that there had been no such occurrence.
- xx. P.W 5 was a retired M.O of the West Bengal Health Services. On 14.6.02 he was posted as A.C.M.O.H (Medico Legal), South 24 Parganas. On that day he had examined P.W 1 who had been brought and identified by C-1572, Bikash Chandra Sarkar in the presence of one female attendant, Durga Sinthara.
- xxi. The identification marks were one scar mark over the chin measuring 3/4" X 1/4" and one black mole over the left cheek.
- xxii. After the examination he had prepared the report. The report has been marked at ext-3.
- xxiii. In his opinion there is evidence of sexual intercourse.
- xxiv. On 17.6.2002, in connection with the same case, he had examined the accused who had been brought and identified by B.G-3522 Vikash Mondal in the presence of one male attendant, Samir Chakraborty. On examination, he had found that the person was capable of sexual intercourse and the report has been marked at ext-4.

- xxv. The identification marks were one scar mark over the right side of his back- 1/4" X 1/4" and one black mole over root of right wrist on his palm.
- xxvi. He had not seen any mark of injury on the private parts of P.W 1 or any part of the body. No foreign body could be detected. He stated that it was not possible to give an opinion on when sexual intercourse was last made.
- xxvii. P. W 6, is the A.S.I, who was posted at P.S Kasba. On 23.05.2002, he was posted at P.S Sonarpur as A.S.I. he endorsed the petition of complain marked as ext-1/1 and the formal F.I.R marked at ext-1/2) was drawn up and signed by him.
- xxviii. P.W 7 was attached to P.S Golabari as I.C., Dist, Howrah. On 23.05.02 he was posted P.S. Sonarpur as S.I of Police. During his posting at Sonarpur on 23.05.02 he was deputed with the investigation of Sonarpur P.S Case no. 147 dated 23.05.02 under Section 376 of the I.P.C. The order issued by the O.C deputing him with the investigation of the case has been marked at ext 1/3. The F.I.R has been marked as ext 1/2.
- xxix. After he was deputed with the said investigation, he perused the FIR and visited the place of occurrence. He did not prepare any sketch map. He examined the witness and recorded statements under Section 161 of the CrPC. He had also submitted a prayer to examine the victim girl under Section 164 of the CrPC which was allowed where he thereafter examined the victim girl under Section

164 of the Cr.P.C. marked at ext 5. He had also made a prayer for the medical examination of the victim girl and accused. He had also submitted a prayer for medical examination of the victim girl to ascertain her age as well as the offence committed on her under Section 376 of the IPC. Subsequently, he collected the medical reports and ossification test. During the investigation, he arrested the accused and forwarded him to the Learned Court of the ACJM, Alipore. The accused person was in court on the day P.W 7 was deposing. He had also collected the FSL report marked as Ext. 6. After taking permission of his superior, he had submitted charge-sheet under Section 376 of the IPC against the accused vide charge-sheet no. 81 dated 15/04.03.

- xxx. He had not prepared any sketch map in the case. After he had received the court complaint, he examined the complaint and drew up a formal FIR. In the formal FIR, date of occurrence was given as 05/11/01 at 0- 08.05 hrs. The case was started on 23.05.02. The delay for reporting the offence by the complainant had not been explained in the formal FIR.
- xxxi. He had neither examined any neighboring witnesses, nor their names appeared in the charge-sheet as CS witnesses. He stated that he did not succumb to the pressure of political leaders with regards to discharge of his duty. He stated that whenever any complaint of such nature came to the P.S., they would take cognizance of such complaint and recorded the matter. It was

not a fact that the investigation was absolutely perfunctory and charge sheet submitted was not justified.

17. Archana Mallick, the de-facto complainant was examined as PW-1. She stated that the occurrence took place on 05.11. 2001 at 01:30 p.m. in her house at Rajpur, at the relevant time she was alone in her house and all on a sudden the accused, who was present in the house uncaged her and raped against her will and consent. She tried to resist but failed and thereafter she became unconscious. She was a patient of Epilepsy. She sustained injuries on her person, the accused also caused injury by biting. At about 04:00 p.m. her daughter returned from the school and seeing them the accused fled away through backdoor and she narrated everything to her daughter. She lodged intimation to the police station but no case was started, then she filed a petition of complaint. In cross-examination she said that she knew the accused since 1993 and accused had visiting term. She admitted there were many dwelling houses around her residence namely house of Kamal Das, Tapan Gayen and Sibani Mondal. She admitted that she did not raised alarm to the call the neighbours. She further said that she was suffering from Epilepsy and lost her sense. She further stated that she was raped many times on that day and her wearing apparels were stained and she had bleeding injuries on her private parts but she was not treated by any physician.

18. Krishna Mallick, daughter of the de-facto complainant was examined as PW-2. She stated that she knew the accused who used to visit their house. The occurrence took place on 05.11.2001 at about 04:00 p.m. in their house

when she returned with her sister Chandra from the school she found her mother was sitting inside the room and weeping and was almost in undressed condition and also found the accused fled away from the room through the back door. Her mother did not disclose the reason of her weeping, she called some neighbouring ladies from their house and with their help her mother became normal. In cross-examination she stated that the accused arranged for purchase the land where they are living. Prior to the occurrence there are occasions of quarrels in between her mother and accused. She denied the suggestions that she deposit falsely at the instance of her mother and did not saw the accused to flew away from their house.

19. Dr. Debasish Bhattachary was examined as PW-3. He stated that on 12.09.2002 he was posted at M.R. Bangur Hospital as Medical Officer, on that day he hold Ossification test of one Archana Mallick and his opinion was that the lady was above 20 years of age on the date of examination.
20. Chandra Mallick was examined as PW-4, another daughter of de-facto complainant. She stated that occurrence took place four and half years ago. She knew the accused as he was the friend of her father and used to visit their house. One day at about 04:00 p.m. when she with her elder sister returned home from her school found the accused lying the body of her mother and her mother was weeping in undressed condition. They raised alarm and the accused escaped. Her mother told them that the accused tortured her. In cross-examination she stated that she could not say the date of death of her father. The accused had affection for them. Her mother was lying on the cot and when they entered through the door which was open.

She admitted that she did not state to the I.O. that her mother was lying on the cot in undressed condition and she did not feel embarrassed to depose. Certain neighbouring people came to the spot.

21. Dr. P.B. Das was examined as PW-5. On 14.06.2002 he was posted as A.C.M.O.H (Medico-Legal), South 24 Parganas and on that day he examined one Smt. Archana Mallick. He found that (a) One scar mark over chin measuring 3/4" X 1/4". (b) One black mole over left cheek. After examination he prepared a report and proved the same as Exhibit-3. In his opinion, there was evidence of sexual intercourse.
22. On 17.06.2002 he also examined one Anjan Kumar Bose and on examination he found that the person was capable of sexual intercourse. In cross-examination he stated that he did not see any mark of injury on the private parts or any part of the body of the lady and no foreign body was detected. He further stated that it was not possible for him to say the date of last sexual intercourse.
23. Mohan Kumar Paladhi, A.S.I. of Police was examined as PW-6. He stated that on 23.05.2002 he was posted at Sonarpur Police Station and he drew up formal F.I.R. and proved his endorsement on the petition of complaint.
24. Debabrata Ojha, Investigation Officer was examined as PW-7. He stated that on 23.05.2002 he was posted at Sonarpur Police Station and S.I. of Police and on that day he was deputed with the investigation of Sonarpur Police Station Case No. 147 dated 23.05.2002 under Section 376 of Indian Penal Code in terms of the Officer-in-Charge of the said police station. He stated that he visited the place of occurrence but did not prepare any sketch

map. He examined the witnesses and recorded their statement under Section 161 Cr.P.C. He collected medical report and ossification test report arrested the accused person and sent him to the court. He collected F.S.L. report and after taking permission from the superior filed Charge-Sheet against the accused on 15.04.2003. In cross-examination he stated that he examined the complainant and drew up formal F.I.R. In the formal F.I.R. the date of occurrence was recorded as 05.11.2001 at 08:05 hours. The delay for reporting the offence by the complainant had not been explained in the formal F.I.R. He did not examine any neighbouring witness. He denied that the investigation was done perfunctorily.

25. The accusation against the appellant had been brought to his notice at the time of framing of charge to the effect that the alleged offence was committed on 05.11.2001 at about 08:55 hours and the appellant was asked to answer the same. On the contrary the prosecution adduced evidence that the alleged incident occurred on 05.11.2001 at 01:30 p.m. and tried to establish the same by way of evidence, which were self-contradictory and unbelievable.

26. It was evident that the de-facto complainant was initially silent after a considerable period lodged a petition of complaint, drafted by certain other person to the effect that she was ravished by the appellant on 05.11.2001 at about 01:30 p.m. in her house and thereafter informed the concerned police station. Curiously enough that the prosecution did not take any initiative to produced the said G.D. Entry before the Court of Law neither the de-facto complainant produce the number of the said G.D. Entry before the Court of

Trial and no reasonable and acceptable reason was forwarded by the prosecution.

27. The statement of the de-facto complainant under Section 164 of the Code of Criminal Procedure recorded on 10.06.2002 was produced by the prosecution and without examining the concerned Magistrate the same was exhibited and in the said purported statement the de-facto complainant mentioned the alleged incident to have taken place at about 03:30/04:00 hours in the afternoon exemplifying contradiction.
28. It was the case of de-facto complainant that she was raped repeatedly and the appellant scratched her by nail but the Medical Officer who examined the victim girl did not find any sort of injuries upon the body and the private parts of the de-facto complainant and no foreign body was found.
29. The deposition of PW-2 and PW-4 was contradictory to each other and clearly indicated that no reliance could be placed upon such confronting and embellished evidence.
30. No neighbouring persons were examined by the prosecution though it was the claim of the de-facto complainant and her daughters that there were several houses surrounding the alleged place of occurrence and they had screamed for help. If any incident occurred according to the claim of the prosecution definitely the neighbours should have been aware of the same or at least they should have heard the clamour of the daughters of the de-facto complainant but the witnesses did not utter the name of any person who appeared thereafter hearing their cries and as such the claim of the prosecution and its witnesses were untrustworthy and unbelievable.

31. The doctor who examined the de-facto complainant deposed after lapse of nearly 8 months of the alleged date of incident and did not specifically indicated that on the date of alleged occurrence the victim was ravished.
32. The wearing apparels of the victim were not seized and sent for chemical examination.
33. The de-facto complainant was injured and suffered bleeding yet she chose not to be treated by any doctor inspite of such injuries and thus it creates a serious doubt about the genuineness and truthfulness of the version of the de-facto complainant.
34. The Supreme Court held the following in **Manak Chand v. State of Haryana**, reported in **2023 SCC OnLine SC 1397**

“7. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in State of Punjab v. Gurmit Singh, (1996) 2 SCC 384:

“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.”

8. *This was reiterated by this Court in Sadashiv Ramrao Hadbe v. State of Maharashtra, (2006) 10 SCC 92:*

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

9. *Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. Relying upon the case of Gurmit Singh (supra) this court in Raju v. State of Madhya Pradesh, (2008) 15 SCC 133 held as under:*

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

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.”

35. **In Mohd. Ali v. State of U.P** reported in **(2015) 7 SCC 272**, the Supreme Court observed the following:-

“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, a 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 judgment [Criminal Appeal No. 602 of 2006, decided on 25-3-2009 (All)] , 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 unimpeachable, 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.”

36. The Supreme Court in **State of Rajasthan v. Babu Meena** reported in **(2013) 4 SCC 206** observed the following:-

“8. Mr Jain assails the acquittal of the respondent under Section 376 of the Penal Code and contends that the trial court ought to have accepted the evidence of Kirti (PW 3). He submits that conviction can be based on the sole testimony of the prosecutrix and the trial court erred in rejecting her evidence and acquitting the respondent. In support of the submission he has placed reliance on the judgment of this Court in Vijay v. State of M.P. [(2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] Relevant para of the judgment reads as under: (SCC p. 198, para 14)

“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.”

9. We do not have the slightest hesitation in accepting the broad submission of Mr Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely, (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable

testimony of a single witness, the court has no option than to acquit the accused.

10. *In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony. In her evidence she had stated that she was subjected to rape at 12.00 noon when her sister Jitendra, the wife of the accused had gone to purchase milk. However, during the course of investigation she alleged that she was subjected to rape at 6.30 a.m. When confronted with the aforesaid contradiction in the cross-examination, she could not explain the aforesaid discrepancy. Her statement that she shouted for help when she was subjected to rape also does not find support from the evidence of Ramchandra Salvi (PW 11), the owner of the house where the incident is alleged to have taken place. DrSmtSushila (PW 12), has also not supported the allegation of rape as also the forensic science laboratory report. In the face of what we have observed above, the evidence of the prosecutrix cannot be said to be wholly reliable.”*

37. In the instant case the evidence of the prosecutrix cannot be relied upon due to inconsistencies and contradictions.

38. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.

39. Accordingly, the criminal appeal being CRA 103 of 2011 stands disposed of.

40. There is no order as to costs.

41. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

42. 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.)