



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 309 OF 2002

01. Vilas s/o Vaijnath Munde
Age : 20 years, Occu : Labour
and Agri., R/o : Dadahariwadgaon,
Taluka Parali-Vaijnath,
District : Beed.

02. Balaji s/o Bhagwan Munde
Age : 20 years, Occu :
R/o : As above.

... Appellants
[Orig. Accused No. 2 & 3]

Versus

The State of Maharashtra

... Respondent

.....

Mr. S. V. Mundhe, Advocate for the Appellants.
Mr. S. M. Ganachari, APP for the Respondent-State.

.....

**WITH
CRIMINAL APPEAL NO. 302 OF 2002**

Sukhdeo s/o Bhimrao Munde
Age : 21 years, Occu : Agri. & Labour,
R/o : Dadahari-Wadgaon,
Taluka Parali-Vaijnath, Dist : Beed.

... Appellant
[Orig. Accused No.1]

Versus

The State of Maharashtra

... respondent

.....

Mr. U. B. Bondar, Advocate for the Appellant.
Mr. S. M. Ganachari, APP for the Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 20.02.2024

Pronounced on : 29.02.2024

JUDGMENT :

1. Vide instant appeals, convicts for offence punishable under Section 376 (2)(g) r/w 34 of the Indian Penal Code [IPC] are hereby assailing the judgment and order dated 20.05.2002 passed by learned I Adhoc Additional Sessions Judge, Ambajogai in Session Case No. 73 of 2001, sentencing them to suffer rigorous imprisonment for 10 years and to pay fine. Convicts Vilas and Balaji have preferred Criminal Appeal No. 309 of 2002, whereas convict Sukhdeo has filed distinct appeal bearing Criminal Appeal No. 302 of 2002.

Since both appeals are arising out the same judgment, they are dealt together.

FACTS IN BRIEF LEADING TO TRIAL

2. Parali Rural Police Station registered crime on report lodged by prosecutrix, alleging that she and her husband had shifted to Dadahari Wadgaon, Taluka Parali four months prior to the incident. On 10.07.2001, she had been to visit her sister at Peth Mohalla, Parali Vajinath and had spent night there. Next day around 9.00 a.m. she left her sister's place to return back to her house i.e. on 11.07.2001. While she was walking over road leading to Loni, she came in the

vicinity of a small stream. There, three persons intercepted her. She was forcibly dragged and taken towards the stream and on knife point, one after the other, all three accused raped her. Seeing a boy approaching, on hearing her shouts, these three persons left. She interacted with the boy who arrived there and she sought details of those three persons who had fled seeing him and he gave their names, i.e. of appellants, and also told about them to be residents of Dadahari Wadgaon. She directly went to the field where her husband was rendering labour work, reported him the incident and then she, her husband and land owner approached police where she lodged report, on the strength of which crime was registered.

3. PW10 SDPO Baburao Umap, who was entrusted with the investigation, arrested accused, drew spot panchanama, referred victim to medical examination, collected reports, seized clothes of both, victim as well as accused, so also caused seizure of knife at the instance of accused Sukhdeo by virtue of memorandum. After gathering sufficient evidence, they came to be chargesheeted and finally tried before learned I Adhoc Additional Sessions Judge, Ambajogai, who on conducting trial, held the charges proved and convicted appellants who are now questioning their said conviction by filing instant appeals.

SUBMISSIONS

On behalf of the appellants:

4. Learned counsel for the appellants in both appeals would submit that apparently implication is false. According to them, it is impossible to commit gang rape in broad day light. They would take this Court through the evidence of victim and would submit that her evidence, more particularly answers given in cross, show that her testimony is full of material omissions and contradictions. Further, according to them, there is no corroboration as the very boy who allegedly saw accused has not supported prosecution.

5. Both learned counsel further pointed out that, even medical evidence does not suggest any forceful sexual intercourse. They laid stress on the aspect that when there are allegations of rape by three persons, there has to be injuries both, on internal and external body, but the same is missing thereby falsifying the very case of rape.

6. Both learned counsel pointed out that, it is pertinent to note that accused persons were strangers and victim has not given description of accused persons. That, no test identification parade was conducted. It is alleged that information was received from the boy

PW7 Sakharam, but he has not supported prosecution. Learned counsel would strenuously submit that prosecutrix has not named accused, rather complaint is given by one Raju Pande and prosecutrix has merely appended thumb impression. That, as there is no test identification parade, apparently evidence of prosecution was weak in nature.

7. They also questioned the judgment of learned trial court by submitting that law on rape has not been completely and carefully appreciated. Mere evidence of victim has been taken into account but the major lacuna which are fatal, have not been considered by the trial Judge and guilt has been recorded. Therefore, according to them, apart from non-appreciation of evidence in correct perspective, law has also not been taken into account and so they prayed to allow the appeals.

On behalf of the State :

8. Per contra, learned APP would point out that victim had recently shifted with her husband in the said village. Therefore she was not knowing accused persons. Further, according to him, though PW7 Sakharam, who had reached immediately hearing shouts, did

not support prosecution, he had given names of all three accused as well as in his testimony he has admitted accused to be not only of his village but are also his relatives. Therefore it is clear attempt to cover up and save them.

9. Learned APP pointed out that here, there is statement of prosecutrix which inspires confidence. Learned Magistrate before whom immediately statement under Section 164 of Cr.P.C. was recorded, has also stepped into the witness box and he has deposed about PW7 Sakharam giving statement regarding occurrence. Therefore, learned APP submitted that mere turning hostile to save relatives, entire testimony of PW7 cannot be discarded outright.

10. According to learned APP, medical expert though has not noticed any injuries, that by itself would not negate the case of rape, more particularly when prosecutrix has deposed about she being raped by keeping knife on her neck. Therefore, there is reason for non-resistance and resultantly no injuries must have been caused. However, according to him, the testimony of victim, when was inspiring confidence, has been rightly relied by the learned trial Judge.

11. Learned APP further pointed out that there is seizure of clothes of victim as well as accused immediately after the occurrence and semen stains are found on clothes of victim as well as accused. This aspect further corroborates the occurrence. Therefore, while summing up, he submits that there is trustworthy and reliable testimony of prosecutrix. Her testimony has remained intact regarding the occurrence. She has identified accused persons in the court. Therefore, he prays to not to disturb the findings and conclusion reached at by learned trial Judge.

EVIDENCE BEFORE TRIAL COURT

12. Here, to prove its case, prosecution has examined the following witnesses:

PW1 is the victim.

PW2 Dattu is pancha to seizure of clothes of victim.

PW3 Vishnu is the spot pancha and pancha to seizure of clothes of accused.

PW4 Maroti is pancha to memorandum of disclosure and seizure of knife vide Exhibits 41 and 42.

PW5 is sister of prosecutrix.

PW6 is husband of prosecutrix.

PW7 Sakharam, who reached immediately at the scene of occurrence.

PW8 Dr. Shaikh, who medically examined accused.

PW9 Dr. Sirsat, who examined victim and issued certificate Exhibit 57.

PW10 S.D.P.O. Baburao Umap is the Investigating Officer.

PW11 Learned JMFC who recorded statement of PW7 Sakharam under Section 164 of Cr.P.C.

PW12 P.S.I. Dhakne who carried out initial investigation.

13. Prosecution story in brief is that PW1 prosecutrix, after spending night with her sister at Parali, was returning to her village by walk in the morning of 11.07.2001. While she was near a small stream, accused forcibly took her on knife point and turn by turn, all three had raped her.

14. Considering such story of prosecution, in the considered opinion of this court, the crucial evidence is of PW1 prosecutrix followed by evidence of PW7 Sakharam who allegedly and

incidentally reached at the scene of occurrence and on query by prosecutrix, he supplied names of accused and thereafter she, accompanied by her husband, lodged report. Apart from these two witnesses, evidence of Doctor who examined victim is also crucial. Therefore, at the threshold such evidence is required to be re-examined and re-appreciated.

ANALYSIS

15. Sum and substance of the testimony of **PW1** victim prosecutrix is that she was residing with her husband in the land of one Deviprasad Pande (also known as Raju) at village Dadahari Wadgaon. She deposed that they were residing there since four months prior to the incident and her husband was serving with Deviprasad. According to her, on 10.07.2001, she had been to meet her sister at Parali and after staying there and spending night, next day morning at 9.00 a.m. she left her sister's place to return to her house. She alighted from the auto at Wadgaon fata and started proceeding towards Loni by walk. She took cart track. There was a small stream situated towards east side. According to her, three persons came from the small stream. They showed her knife. All three accused took her towards the stream by dragging her for a distance of 50 to 60 feet. They made her fall

down on her back. Out of three accused, two put knife on her neck and one pulled her sari and undergarments (*parkar*) up to waist and raped her. Thereafter, remaining two accused also committed rape on her. She deposed that while accused no.3 was committing rape, one boy named Sakharam came there and therefore all these three persons ran towards eastern side of the stream. She started weeping. Then she deposed that she asked Sakharam from where were those persons and he told her that they are from village Dadahari Wadgaon and **he also told that they were residing in hutment area**. She claims to have asked their names and he told her their names as Sukhdeo, Vilas and Balaji. Thereafter she approached her husband and narrated about the incident of rape on knife point and giving threats and thereafter her husband, land owner Shailesh and she herself came to Rural Police Station where she lodged report which she identified to be at Exhibit 26. Then she deposed about her clothes being seized by police and she being referred to S.R.T.R. Hospital, Ambajogai for medical examination on the same day. She categorically deposed that accused raped her against her will and consent and she identified them to be present in the court.

16. In her cross at the hands of learned defence counsel, she admitted to be married four years back and it to be her second

marriage. Then she is asked whether there was any dispute between Pande and neighbouring land owners, to which she answered to be unaware of. Then she is again questioned about her husband, his native. She flatly denied that when the alleged incident took place, that time her husband was not on yearly servant basis with Pande. She is asked about the actual agricultural holdings of Pande, whether other servants residing there and whether she can give names of neighbours. She is also asked about her previous work at police station. She is questioned about the distance from Parali to Dadahari Wadgaon. During cross, she answered that Sakharam told her that the said stream is in the land of Jadhav and distance between stream and land of Pande to be 1 to 1½ kms. During cross, she stated that near the stream there is a umbar tree. She stated that she had seen said three persons for the first time at the alleged incident and thereafter directly in the court. She is unable to give their full names. She answered that Sakharam told her only names of the boys and did not give names of their fathers. She spoke about giving complaint at 2.00 to 2.30 p.m. She answered about showing spot to the police. She is asked about the location of land of Pande but she is unable to give names of other neighbours. She answered that distance between spot of incident and land of Sakharam is 500 feet. She answered that incident took place beneath the shadow of umbar tree. In para 13,

questions are asked whether semen fell on her cloths and on which part of her cloths, complexion of accused, complexion of Sakharam, colour of his clothes. She is unable to state if there was dispute between Pande and father of accused. Rest is all denial. Omissions are brought in para 15 which are as follows:

1. There was cart road.
2. Ground at the spot to be smooth and dusk.
3. Accused nos. 2 and 3 threatening by keeping knife on her neck and accused no.1 pulling her clothes up to waist.
4. At first, accused no.1 and then accused nos. 2 and 3 committing rape on her.
5. That, she started weeping.

17. Now, evidence of **PW7** Sakharam, who allegedly reached the scene of occurrence, needs to be re-appreciated. His evidence is at Exhibit 49 wherein he deposed that, his land is adjacent to the land of Shri Pande at village Dadahari Wadgaon. But in chief itself, he stated that he does not know about the alleged incident. He was not knowing husband of prosecutrix or prosecutrix herself. But he stated that he was knowing all three accused sitting before the court and

that they are from his village. He denied going on the road from Dadahari Wadgaon to Loni on 11.07.2001. However, he stated that accused were taken away to the police station that day but he did not inquire as to why they were taken to Police Station. He denied seeing accused raping complainant by holding knife in hand and about informing names of accused or about accused running after seeing him come. Resultantly, this witness has resiled and has not supported prosecution.

18. However, while under cross at the hands of learned APP, he is unable to state why portion marked “A” is appearing in his statement. He again admitted that accused are his kinsmen. On confronting application dated 12.07.2001, he admitted it to be under his signature but denied its contents as true. He again deposed about going to police station on 11.07.2001 but denied going on 12.07.2001. Then he admitted that on that day, police had taken him in the court where there was a Magistrate, but denied any questioning by Magistrate or Magistrate recording his statement as per his say. Rest is all denial.

19. Now let us visit the medical evidence. On taking survey of the evidence, it seems that PW9 Dr. Sirsat had occasion to subject victim to medical examination on 12.07.2001 at 12.00 midnight. This lady medical officer at Exhibit 56 gave the following observations:

“She told me history of pain chest pain, and pain in private part since morning, 11.00 a.m. **She also told history of intercourse by two to three persons against her will.** History of four months annoerra i.e. absence of menstrual course. There was no history of leaking or per vagina bleeding.

There was no urinary and bowel complaints. There was no difficulty for walking. No history of fever. No history of changing the clothes. No history of taking bath. No history of quickening.”

According to her, on general examination, she did not find any external injury over the body of prosecutrix. On per abdominal examination of uterus, there was found to be 16 weeks and three days pregnancy. She claims to have collected samples i.e. vaginal swab, blood, pubic hair and issued certificate Exhibit 57. In her opinion, **“there may be intercourse but it should be confirmed by vaginal swab examination”**. She further deposed that in her opinion, there was no intercourse with that woman by two to three persons.

In cross she has answered that if two to three persons commit rape on a woman who is pregnant, there are chances of abortion. She admitted that if two to four persons commit rape in such condition, there could be bleeding to the uterus but she denied that without C.A. report, it is possible to state opinion about rape.

20. Referring to the above evidence, learned counsels for the appellants would forcefully submit that, here, there are allegations of gang rape but victim does not know who were the accused. The person from whom she claims to have learnt names, has not supported prosecution and furthermore, there is no test identification parade conducted by investigating machinery. According to them, above all, medical evidence discussed above is of no avail to the prosecution because the same is not suggesting any finding of rape and that Doctor has categorically ruled out rape by two to three persons.

21. No doubt, in cases of such nature, evidence of prosecutrix is of prime importance. Here, on carefully analyzing the evidence of PW1, it is emerging that, as pointed out by learned APP, barely four months prior to the incident, she and her husband had come to stay in the

village. Here evidence about she spending night on 10.07.2001 at her sister's place and returning back home in the morning has virtually remained unchallenged. She is not only a married woman, but also a pregnant lady at that time. She has categorically deposed that when she was in the vicinity of a small stream, three boys approached her and on knife point, she was taken 50 to 60 feet away from the cart road and beneath a umbar tree, when two accused kept knife on her neck, after making her fall, one person raped her first and then she deposed about being raped by second accused as well as third, that is after lifting her clothes. **She has deposed about attempting to shout but in cross, she has answered that she was threatened by use of knife.** It has come in her evidence that a boy of the neighbouring agricultural field, namely, Sakharam (PW7) came there and seeing him, three accused persons fled. She claims to have sought details of three boys and she has also given names as provided by him. Thereafter she has immediately reported the incident to her husband and visited police station.

22. Here, it is emerging that PW7 Sakharam unfortunately has not supported prosecution and has flatly denied going to the spot and seeing complainant being raped. But so much part of testimony, which lends credence to the prosecution version, can definitely be

taken recourse to. On minute scrutiny of his evidence, it is noticed that in examination-in-chief itself, he stated about knowing all three accused sitting in the court to be residents of his village. Though he denied going towards Dadahari Wadgaon fata to Loni road on 11.07.2001, he had admitted that accused persons were taken away by police on that day. He merely answered that he did not inquire why they were taken.

In cross he is unable to explain why portion marked "A" is finding place in his statement. English translation of the above portion marked "A" is as under:

" Today, on 11-7-2001, I left the home for the fields. En-route to the fields, at about 12.00 o' clock, I heard the shouts of Panchfula w/o Shriram Goler from the nalah in the fields of Jadhav in the vicinity of Dadahari Wadgaon and I rushed there and saw that Panchfula was lying in supine position and one Balaji Bhagwan Munde from our village was raping her and Vilas Vaijnath Munde and Sukhdeo Bhimrao Munde were standing aside. Sukhdeo had a knife in his hand. All three left through the nalah after seeing me. Then Panchfula came with me up to the road. She asked me my name and I told my name as above. She informed me that, those three boys pressed her mouth and dragged her to the nalah, made her fall down in supine position and took turns in raping her. When she asked

me names of the three boys, I informed her their names as 1. Sukhdeo Bhimrao Munde, 2. Vilas Vajjnath Munde, 3. Balaji Bhagwan Munde, all residents of Dadahari Wadgaon Camp. Thereafter, I accompanied Panchfula up to the *aakhada* of Pande and went to my fields after leaving her with her husband. The brother of Pande was present on the *aakhada*....”

23. PW7 again admitted in cross that accused happen to be his relatives. He has also not denied signature over his application dated 12.07.2001 and he categorically admits accompanying police to the court of Magistrate, but denied any questioning by Magistrate or giving any statement. Therefore, though he is resiling on the point of seeing actual offence, there are other vital admissions as reproduced above. Law is fairly settled that entire testimony of a hostile witness need not be discarded but so much part of the testimony, which supports prosecution, can definitely be taken recourse to and even relied to. Law to that extent has been time and again dealt in various cases and a few could be named as under:

In *Sat Paul v. Delhi Administration* (1976) 1 SCC 727, the Hon'ble Apex Court cautioned that *“even if witness is treated as “hostile” and is cross examined, his evidence cannot be written off altogether but must be considered with due care and circumspection*

and that part of the testimony which is creditworthy must be considered and acted upon. It is for the Judge as a matter of prudence to consider the extent of evidence which is creditworthy for the purpose of proof of the case. In other words, the fact that a witness has been declared hostile, does not result in automatic rejection of his evidence. Even, the evidence of a "hostile witness", if it finds corroboration from the facts of the case, may be taken into account while judging the guilt of the accused. Thus, there is no legal bar to raise a conviction upon "hostile witness testimony" if corroborated by other reliable evidence."

Likewise law to this extent is also reiterated in the case of ***Dhananjoy Chatterjee @ Dhana v. State of West Bengal*** 1994 (2) SCC 320/[1994] 1 S.C.R. 37 and ***Bhajju v. State of M.P.*** (2012) 4 SCC 327.

24. Therefore, considering the testimony of prosecutrix in juxtaposition to that of PW7 Sakharam, on that day this witness PW7 seems to have visited the spot. From the evidence of victim about getting to know names of accused from this witness and aspect of PW7 acknowledging them not only to be residents of his village but to be his relatives, case of prosecution is getting sufficient support. It is

apparent that being relative, PW7 has not supported while he was in the witness box. Further, here prosecution has taken efforts to examine the very learned JMFC, who is examined as PW11 and who, in the witness box, has categorically deposed about PW7 Sakharam appearing in his court, narrating whatever he saw and his statement under Section 164 Cr.P.C. to that extent being noted. In cross, testimony of PW11 Magistrate has remained intact. Therefore, on the strength of testimonies of PW1, PW7 and PW11 Magistrate, case of prosecution definitely gets established.

25. No doubt, as emphasized by learned counsel for the appellants, that medical witness PW9 Dr. Sirsat has not reached to definite finding of rape, but Doctor has equally stated in examination-in-chief itself that there may be possibility of rape. Resultantly she has not completely ruled out possibility of rape. Even otherwise, it is mere opinion evidence. Failure to notice injuries or any signs of rape itself is not sufficient to discard the testimony of prosecution, more particularly when victim is ravished on knife point. There are umpteen judgments on this point and it is desirable and fruitful to reproduce some landmark cases and relevant observations to this extent which are as follows:

In ***Karnel Singh v. State of Madhya Pradesh*** (1995) SCC (5)

18, it has been held that :

“... absence of marks of external injuries on the person of the prosecutrix cannot be adopted as a formula for inferring consent on the part of the prosecutrix and holding that she was a willing party to the act of sexual intercourse. It will all depend on the facts and circumstances of each case. In this case, evidence showed that the victim was laid on minute sand, which was lying on the floor, it was held that there were no marks of injuries because of this and because she may have been incapable of offering resistance.”

In ***State of Rajasthan v. Noore Khan*** 2000 (3) Supreme 70, the Hon'ble Apex Court noted that :

“Absence of injuries on the person of prosecutrix has weighed with the High Court for inferring consent on the part of the prosecutrix. We are not at all convinced. We have already noticed that the delay in medical examination of the prosecutrix was occasioned by the factum of the lodging of the FIR having been delayed. The prosecutrix was in her teens. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfill his lust armed with a knife in his hand and having succeeded in forcefully removing the victim to a secluded place where there was none

around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case.”

In ***State of Tamil Nadu v. Raju @ Nehru*** (2006) 10 SCC 534, the Hon’ble Apex Court ruled that :

“Rape is a crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether rape has occurred or not is a legal conclusion, not a medical one.” That is the reason why, even the opinion of the doctor that there was no evidence of sexual intercourse or rape is at times held to be not sufficient to disbelieve the accusation of rape by victim.

In ***B. C. Deva v. State of Karnataka*** (2007) 12 SCC 122, it was held that :

“The plea that no marks or injuries were found either on the person of the accused or the person of the prosecutrix, does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. Though, the report of the Gynaecologist pertaining to the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, yet even in the absence of any corroboration of medical evidence, the oral testimony of the prosecutrix, which is found to be cogent, reliable, convincing and trustworthy has to be accepted.”

26. To sum up on medical evidence, from the above rulings it is clear that the Hon'ble Apex Court in number of authorities, has held that in rape cases, crucial piece of evidence is that of victim and that conviction can be based on her sole testimony. Mere absence of physical injuries on the body of victim does not negate the commission of rape. No doubt it is equally held that medical evidence, if available, is of great importance and can be proved to be of clinching nature, however, it is further clarified that it is to be borne in mind that its absence does not always become fatal to the

prosecution. There are several reasons for which medical expert may not come across or notice injuries, more particularly when there are allegations of being forced upon by use of any threat or on weapon point. Here, precisely victim has deposed that on knife point, she was forcibly ravished. Therefore, it is possible that she may have been rendered helpless and might not have resisted out of fear. In cases of such nature, when testimony to such extent remains intact, court is expected to adopt a realistic view rather than finding loopholes.

27. It is also fairly settled that corroborative evidence is not at all an imperative aspect for laying credence in case of rape. It is equally settled position that finding of guilt in rape case can be based also upon uncorroborated evidence of prosecutrix, provided the same inspires confidence and is a believable version.

In ***State of Punjab v. Gurmeet Singh*** (1996) 2 SCC 384, the Hon'ble Apex Court made the following observations :

“The Court must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases

involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not unless the discrepancies are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable.”

In ***Radhu v. State of Madhya Pradesh*** 2007 CRI.L.J. 4704, the Apex Court has not only reiterated the well settled legal position that a finding of guilt in a case of rape can be based on uncorroborated evidence of prosecutrix, but has gone a step ahead and held that the opinion of a doctor that, “There was no evidence of any sexual intercourse or rape”, may not be sufficient to disbelieve the accusation of rape by the victim.

28. Here, both the learned counsel laid much stress on the aspect that investigating machinery has not conducted test identification parade. It is true that on scrutiny of evidence, it does seem that no distinct test identification parade has been got conducted by the Investigating Officer. However, it needs to be borne in mind that few months back, victim had shifted to the village and as such she has very categorically stated in her testimony about asking PW7 Sakharam the details of the three boys and he allegedly gave their names and hence she named them. PW7 allegedly told her that they are from the same village and are residing in the hutment. Arrest panchanama of all three accused shows that they are residents of same village. Moreover PW7 acknowledges them as his kinsman. Even victim has identified them in court.

29. Admittedly, test identification parade has mere corroborative value and it is a process which belongs to investigating machinery. Failure to conduct test identification parade is not always fatal. It may not be necessary in every case. Law has developed to the extent of holding that identification in court is good identification in the eyes of law and it need not always be preceded by test identification parade. Law to this extent has been dealt in various cases like ***Shamlal Ghosh v. State of W.B.*** (2012) 7 SCC 646 ; ***Mulla v. State of U.P.*** (2010) 3

SCC 508 and *Sheo Shankar Singh v. State of Jharkhand* (2011) 3 SCC 654.

Consequently, here, when there is arrest of accused on the same day, regarding which there is no denial, coupled with the testimony of prosecutrix identifying them in the court, the same can definitely be taken into considered and even relied to.

30. Apart from above evidence, here, very husband and sister of prosecutrix are also examined by prosecution as PW6 and PW5 respectively. PW5 sister lends credence to the visit of her sister prosecutrix to her place at Parali on 10.07.2001, she spending night and in the morning leaving for her own village. Husband also deposed about his wife approaching him while he was working in the field along with land owner and narrating about being raped on the knife point. On the same day they have approached police and reported the occurrence. Therefore, there is promptness in lodging FIR also. Same night prosecutrix has been medically examined. Her clothes are also seized on the same day. C.A. findings are about semen stains found on her clothes as well as clothes of accused. Therefore, such evidence also lends credence to the prosecution version.

31. To sum up, here, considering the testimony of prosecutrix victim, part testimony of PW7 Sakharam, testimony of PW11 learned Magistrate and the medical evidence, occurrence has been staunchly established. Hence, offence can definitely be said to be brought home. For all above reasons, it can safely be said that prosecution had established the charge of gang rape.

32. Learned trial Judge has correctly appreciated the evidence. Inference and conclusion drawn is supported by sound reasons. Testimony of prosecutrix has been correctly believed and applied. No perversity or illegality in the manner of appreciation or findings has been brought to the notice so as to interfere. Hence, I proceed to pass the following order:

ORDER

Both appeals are hereby dismissed.

[ABHAY S. WAGHWASE, J.]