

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 327 of 2018

Arising Out of PS. Case No.-173 Year-2014 Thana- NAUHATTA District- Saharsa

1. Chhedan Yadav @ Khedan Yadav and Anr S/o Nago Yadav,
2. Rajo Sah S/o Ramfu Sah @ Ramfal Sah, Both are R/o Village- Murli, P.S.-
Nauhatta O.P.Darhar District- Saharsa.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 365 of 2018

Arising Out of PS. Case No.-173 Year-2014 Thana- NAUHATTA District- Saharsa

Bijali Yadav @ Kamlesh Yadav Resident of Village - Murli, P.S. - Nauhatta,
District - Saharsa.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 327 of 2018)

For the Appellant/s : Mr. Suraj Kumar, Advocate

Mr.Pramod Mishra, Advocate

Mr. Ujjwal Shandilya, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Advocate

(In CRIMINAL APPEAL (DB) No. 365 of 2018)



For the Appellant/s : Mr. Suraj Kumar, Advocate
Mr. Pramod Mishra, Advocate
Mr. Ujjwal Shandilya, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 12-12-2025

1. The appellants along with four other accused persons faced trial in POCSO Case No. 23 of 2014, arising out of Nohatta P. S. Case No. 173 of 2014 and the learned Additional Sessions Judge, 1st Court-cum-Special Judge, POCSO at Saharsa held the appellant and two other accused persons guilty for committing offence under Sections 341, 323, 307/34 and 376(g)/34 of the Indian Penal Code and Section 6 of the POCSO Act. The appellants and the other accused persons were convicted and sentenced to suffer imprisonment for a term of one year with fine of Rs. 1,000/-, in default further imprisonment for one month, for committing offence under Section 323 of the IPC; simple imprisonment for one month for committing offence under 341 of the I.P.C.; rigorous imprisonment for 10 years with fine of Rs. 5,000/-, in default further imprisonment for three months for the offence



under Section 307/34 of the I.P.C.; and imprisonment for life with fine of Rs. 50,000/- each, in default further imprisonment for one and a half years, for the offence under Section 6 of the POCSO Act.

2. The appellant, namely, Bijali Yadav @ Kamlesh Yadav has preferred Cr. Appeal No. 365 of 2018, assailing the judgement of conviction and the order of sentence, as narrated above.

3. Convicts, Chhedan Yadav @ Khedan Yadav and Rajo Sah also preferred a separate appeal being Cr. Appeal No. 327 of 2018 against the same judgement and order of conviction passed in the above-mentioned case.

4. As both the appeals were filed, assailing the same judgement of conviction and order of sentence, this Court took up both the appeals together for hearing and proceeds to dispose of the appeals by the following common judgement.

5. Brief facts of the case: -

A minor girl, aged about 16 years of village – Murali, under Darhara outpost, within Police Station- Nouhatta, district – Saharsa made a statement before the Sub-Inspector of Police, Panch Lal Yadav of Darhara outpost on 15th of September, 2014 at about 11.30 a.m., stating, inter



alia, that on 14th of September, 2014 (Sunday), at about 11.00 p.m., she was feeding milk to a baby goat (kid). Her younger sister aged about 7 years was sleeping on a cot in front of the entrance gate of their house. While, she was feeding milk to the goat, she lay on the cot where her sister was lying. Eventually, she fell asleep. After some time, at about 11.30 p.m., she suddenly fell down from the cot and woke up. She had a torch in her possession. She lit the torch and found accused Bijali Yadav, Chhedan Yadav and Rajo Sah of the same village caught hold of her and started to pull her to get her to an open field (Badhar) by the side of their house. The victim raised hue and cry and her younger sister woke up. In the meantime, the accused persons took her to an open field outside the village (Bahiyar). The victim was crying for help but the accused persons started assaulting her on her face. Thereafter, Chhedan Yadav and Rajo Yadav caught hold of the hands of the victim and taking advantage, Bijali Yadav committed indecent act with her (mere sath bura karne laga). The victim told them that she identified all of them. On this, the accused persons climb on the chest of the victim and was conversing amongst themselves that since the victim identified them, she would be killed. The victim was crying



relentlessly out of fear, which attracted Ramu Mandal, Pradip Mandal and Anil Mandal to the place of occurrence. Seeing them, the accused persons left her and fled away. While fleeing away, they left one black coloured full pant; one red and black mobile phone of Carbon Company; and one muddy coloured Lungi on the spot. The persons, who saved the victim girl, brought her to Nouhatta Police Station along with articles left by the accused persons. The victim stated in her statement that Bijali Yadav committed rape upon her. On the basis of the said statement, Nouhatta P. S. Case No. 173 of 2014, dated 15th of September, 2014, was registered under Sections 341, 323, 506 and 376/34 of the Indian Penal Code against the above-named three accused persons. Sub-Inspector, Panch Lal Yadav was directed to investigate into the case.

6. The Investigating Officer submitted charge-sheet against the above-named accused persons and also Dularchand Paswan and Chhatish Paswan under Sections 341/34, 323/34, 307/34 and 376(g)/34 of the Indian Penal Code and Section 6 of the POCSO Act. All the accused persons faced trial before the learned Special Judge under POCSO Act and on conclusion of trial, the appellants were



convicted and sentenced to suffer imprisonment, as narrated hereinabove.

7. The present appeals challenged the judgement and order of conviction and sentence.

Proceedings before the Trial Court.

8. After submission of charge-sheet, Nouhatta P.S. Case No. 173 of 2014 was transferred to the Court of the learned Special Judge under the POCSO Act, Saharsa and the case was renumbered as POCSO Case No. 23 of 2014. The learned Special Judge framed charge against the present appellants, who have filed Criminal Appeal (DB) No. 327 of 2018 and Criminal Appeal (DB) No. 365 of 2018 and also Dularchand Paswan and Chhatish Paswan under Sections 376(g)/34 of the I.P.C., 341/34 of the IPC and 323/34 of the IPC and Section 6 of the POCSO Act.

9. In order to establish the charge against the appellants and other two accused persons, prosecution examined seven witnesses, amongst them P.W.-1 is the victim and informant of the case; PW-2, Jaymala Devi, who is younger sister of the informant; PW-3, Ramu Mandal and PW-4, Ram Kumar Mandal are the local villagers and neighbours of the victim; PW-5, Panchlal Yadav is a Police



Officer, who recorded the statement of the informant and registered Nouhatta P.S. Case No.173 of 2014 and also took up the investigation of the case; PW-6, Dr. Kumari Bharti who is a Medical Officer, who examined the informant medically; and PW-7, Suman Kumar, who is the Second Investigating Officer of Nouhatta P.S. Case No.173 of 2014.

10. Some documents were marked exhibits, which we proposed to refer subsequently in course of our discussion.

Evidence on behalf of the Prosecution

11. It is already mentioned that the victim deposed before the Trial Court as PW-1. In her evidence, she stated that about one year ago from the date of her examination at about 11:00 P.M./12:00 at night, she was feeding milk to a goat cub (kid) sitting in front of the entrance door of her house. Her younger sister was sleeping on a cot, laying by the side of the entrance door. While feeding milk to the kid, the informant was laying on the cot. After feeding milk to the kid, the informant told her sister to come inside the room but her sister told that she was feeling hot inside the room and she wanted to sleep on the cot laying on the open Baramdah by the side of the entrance door. Then, the victim also laid down on the cot in front of the entrance door of their house. After



sometimes, the victim found that she was being dragged by someone, as a result of which, she fell down from the cot. Immediately, she lit the torch and saw that accused-Bijali Yadav, Chhedan Yadav and Rajo Sah were dragging her. They forcibly brought her to a paddy field. Chhedan Yadav was holding her hand and Bijali Yadav and Rajo Sah disrobed her. The victim tried to resist them but she was threatened by appellant-Bijali Yadav. Thereafter, he forcibly committed rape on her. Accused-Chhedan Yadav and Rajo Sah also committed rape upon her one after another. When she disclosed to them that she identified them and she would tell their names to the villagers that they had committed indecent act with her, the accused persons started assaulting her by fists and blows on her chest and abdomen. They also twisted the neck of the victim. In the meantime, her younger sister and other neighbours reached the place of occurrence. When her younger sister lit the torch, the accused persons fled away, leaving the victim. While fleeing away, accused Bijali Yadav left his pant, Chhedan Yadav left his Lungi and Rajo Sah left his mobile phone at the place of occurrence. The neighbouring people brought the victim to her house. The victim became senseless. Therefore, she could not go to the police station on



the very night of the occurrence. On the following day at about 11:00 A.M. she went to the police station. Police recorded her *fard beyan* and sent her to Nouhatta Hospital for medical examination. The victim was then referred to District Hospital at Saharsa, a lady doctor medically examined her. She also made a statement under Section 164 of the Cr.P.C. before the learned Magistrate. Police seized the wearing apparels of the victim. From her cross-examination, it is ascertained that the Investigating Officer did not seize the torch light with the help of which the victim and her sister identified the accused persons.

12. It is also ascertained from her cross-examination that the father of the victim used to work at the relevant point of time at Punjab. On the date of occurrence, her mother went to see her maternal grandmother with her youngest brother. The victim has two sisters and two brothers. Another sister of the victim was sleeping inside of the room. Her elder brother went to the house of one Ramu Mandal to impart private tuition to his children. He did not come back to the house and stayed in the house of Ramu Mandal on the fateful night as it was raining. It is also ascertained from the evidence of the victim that the house of Ramu Mandal is situated at a distance



of 7-8 katthas of land away. In between the house of the victim and the house of Ramu Mandal, there was no other house at the relevant point of time. It is also ascertained from the cross-examination of the victim that around the place of occurrence or in the vicinity thereof, there was no residential house. On all four sides of the place of occurrence there are agricultural field of one Nathuni Mandal, Raj Kumar Mandal, Bindeshwari Mandal and Jagdish Mandal.

13. While cross-examining PW-1, the defence took the assertion of her statement relating to the incident of disrobing her by Bijali Yadav.

14. PW-2, is the younger sister of the victim, who was sleeping on the cot by her side. She was aged about 08 years on the date of her evidence. The learned Trial Judge tested her capacity to depose, as provided under Section 118 of the Evidence Act. In her evidence, she corroborated the evidence of the victim, deposing, *inter alia*, that the appellants forcibly dragged her elder sister from the cot and when she started to cry, PW-2 woke up. She immediately could not resist the accused persons but when her elder sister was taken away by the accused persons, she rushed to the house of Ramu Mandal and informed the incident. Ramu Mandal and



other neighbours conducted a search for her elder sister in the vicinity. They found the victim and the accused persons on the paddy field. The victim was disrobed and Bijali Yadav, Chhedan Yadav and Rajo Sah were present there. Seeing the local people, they fled away, leaving their full pant, lungi and mobile phone. The victim was taken to her home. She narrated the incident to her neighbours. The local people brought the Full Pant, Lungi and Mobile phone to the house of the victim. Subsequently, police seized the said articles. She also corroborated that on the date of occurrence, sometimes before the incident, it was raining. PW-3, Ramu Mandal corroborated the evidence of PW-2 that he was informed during night of the occurrence that the accused persons had taken away her elder sister. He and others immediately conducted a search for the victim girl and found her inside a paddy field in naked condition. He also saw accused persons standing there. Seeing PW-3 and other villagers, the accused persons fled away, leaving their full pant, lungi and mobile phone. Police seized the belongings of the accused persons. The victim was sent to the hospital for medical treatment.

15. In cross-examination, PW-3 stated that when he asked the victim about the incident she told that Bijali Yadav



committed rape upon her. PW-3 further stated in his cross-examination that when they were bringing the victim from the place of occurrence to her house, they found one black coloured pant and a mobile phone near the place of occurrence and one Lungi near the entrance door of the victim's house. Police seized the said wearing apparels believing it to be of the accused persons. He identified all the accused persons, except Bijali Yadav, because the accused persons were residents of the same village.

16. PW-4, Ram Kumar Mandal corroborated the evidence of PW-3 in his examination-in-chief. He also corroborated that the victim was fully naked when she was recovered and the wife of PW-3 gave a cloth to her to wear. PW-4-Ram Kumar Mandal is a witness to the seizure in respect of the wearing apparels of the victim. His signature on the seizure list was marked as Exhibit-1/2.

17. PW-5, Panchlal Yadav was the Sub-Inspector of Police attached to the Darhara outpost on 15.09.2014. As per the instruction of the S.H.O. Nouhatta Police Station over phone, he went to the police station and recorded the statement of the victim. The statement, so recorded, was read over and explained to the victim and Ramu Mandal. Both of



them put their signatures on the statement recorded by PW-5- Panchlal Yadav admitting the same to be correctly recorded. PW-5 also seized one full pant and one Lungi from the possession of Ramu Mandal. When the said wearing apparels were produced by Ramu Mandal to him stating to be the wearing apparels of the appellants, Ramu Mandal, Ram Kumar Mandal and Ugat Lal Mandal were the witnesses to the said seizure list, marked as Exhibit-3/1.

18. From the cross-examination of PW-5, it is further ascertained that the house of the victim was bounded on three sides by fencing made up of a kind of grass and bamboo. Eastern side of the house was open having entrance door. The first Investigating Officer found a cot laying by the side of the entrance door and some goats with kids in the house of the victim. He identified the said place, as the first place of occurrence. According to the first Investigating Officer, the second place of occurrence is inside a paddy field situated about 200 yards away from the house of the victim. PW-5 recorded the statement of Ugat Lal, Baidyanath Mandal and the minor sister of the victim under Section 161 of the Cr.P.C. He also submitted a prayer for examination of the victim under Section 164 of the Cr.P.C.



19. PW-7 is the second Investigating Officer, who took up further investigation of the case on 14.11.2014. He seized the wearing apparels of the victim and sent them to the Forensic Science Laboratory, Patna for chemical examination. He also received the call detailed records of two mobile phones and thereafter, submitted charge-sheet against the accused persons.

20. PW-6, Dr. Kumari Bharti medically examined the victim on 15.09.2014. During medical examination, she found swelling over both the eyes, bruise over the neck, hymen was ruptured and blood was oozing out. Radiological report relating to advancement of bones was also examined by the Medical Officer and she opined that the victim was aged about 16-17 years at the relevant point of time. According to the Medical Officer, the injuries over both eyes and laceration on the neck of the victim were serious in nature and those injuries might cause even death of the victim. During medical examination of the private part, the victim complained of pain while inserting even one finger per vagina.

21. The victim corroborated her statement in her subsequent statement recorded under Section 164 of the Cr.P.C. In her statement under Section 164 of the Cr.P.C., she



stated that she could identify the appellants from their voice. She also stated that she became unconscious, when she was assaulted by the appellants after she disclosed that she identified them.

22. The appellants and other two accused persons were examined under Section 313 of the Cr.P.C. They denied the evidence consisting of incriminating materials appearing against them and pleaded innocence.

23. The accused persons did not lead any evidence in support of their defence. The Trial Court heard arguments on behalf of the prosecution and defence and held the appellants guilty for committing offence under Sections 376(g)/34 of the I.P.C., 341/34 of the IPC, 323/34 of the IPC and Section 6 of the POCSO Act. The appellants were convicted and sentenced to suffer imprisonment on different counts, which has already been described herein above.

Submissions made by the Appellants

24. Learned Advocate on behalf of the appellants, at the outset, has raised the question of identification of the accused persons by the victim girl and the witnesses.

25. It is submitted by the learned Advocate for the appellants that the alleged incident took place sometimes after



mid night. It was stated by the victim that when she was dragged by some persons, she woke up and lit the torch light and in the torch light, she identified the accused persons. Subsequently, in her statement recorded under Section 164 of the Cr.P.C., she stated that she could identify the accused persons from their voice. The Investigating Officer did not seize any torch light from the possession of the victim or from any other inmate of her house. Therefore, the victim was having a torch light, has not been proved during trial of the case. Therefore, the identification of the accused persons remains in doubt.

26. In view of such circumstances, the Trial Court committed a gross error in holding the accused persons guilty for committing such offence.

27. Secondly, it was submitted by the learned Advocate on behalf of the appellants that the victims are three sisters and two brothers. The prosecution did not take any attempt to examine any other member of the house of the victim. Even one younger brother and another sister, who were sleeping inside the room of the house of the victim were not examined. There is no explanation, if the said two younger brother and sister woke up from their sleep when the victim



was being dragged away by the perpetrators of offence and saw the incident or not, why they have not been examined.

28. It is further submitted by the learned Advocate for the appellants that the prosecution did not offer any explanation, as to why after such barbaric and heinous offence committed upon the victim, her parents were not examined. It might be a fact that the parents of the victim was not present in the house on the date of occurrence, but it is obvious that the parents would come immediately to the house hearing the incident of aggravated penetrative sexual assault upon her minor daughter, but the Trial Court record shows that they did not take any attempt during investigation or trial of the case, so that the real culprits might be booked. Absolute silence of the parents of the victim not only seems to be most uncanny but absolutely improbable under the facts and circumstances of the case.

29. It is also submitted by the learned Advocate on behalf of the appellants that the elder brother of the victim, who was allegedly sleeping in the house of Ramu Mandal on the date of occurrence was also not examined. This is an unnatural circumstance, which casts doubts on the prosecution case. When Ramu Mandal rushed the place of occurrence to



find out the victim, it is absolutely unnatural that the victim's own elder brother did not follow PW-3, Ramu Mandal to find out his sister.

30. The learned Advocate on behalf of the appellants further argues that the prosecution has hopelessly failed during Trial to prove that the black colour pant belonged to appellant-Bijali Yadav, the seized Lungi belonged to Chhedan Yadav and the mobile phone was owned by Rajo Sah.

31. The said wearing apparels were not produced during trial of the case. Those were not marked material exhibits. The wearing apparels were not even confronted with the witnesses during trial of the case. Prosecution failed to produce F.S.L. report of the seized wearing apparels. It has not been proved that appellant-Bijali Yadav was wearing a black colour full pant and Chhedan Yadav was wearing a Lungi, which were seized by the police during investigation. Ownership of the mobile phone was also not proved. Therefore, the involvement of the appellants in the offence has not been established beyond all reasonable doubt.

32. Accordingly, the appellants are entitled to be acquitted of the charge and the Trial Court's judgment is liable



to be set aside.

Submission on behalf of the State

33. The learned Government Pleader, on the other hand, submits that in a case of sexual assault, the evidence of the victim girl is of utmost importance. The victim girl stated in her evidence that she was ravished and physically assaulted by the accused persons. She made her statement on the very next day of occurrence at about 11:00 A.M. before the police officer. In her statement, she stated that she identified the appellants.

34. The learned Advocate on behalf of the State draws my attention on the cross-examination on behalf of the appellant-Bijali Yadav, where it was affirmatively taken up from PW-1 that she could identify the accused persons, as they are the residents of the same village.

35. It is further submitted by the learned Advocate on behalf of the State that after the above cross-examination, the accused persons cannot challenge their identification by PW-1.

36. It is further submitted by the learned Advocate for the State that from the evidence of the Medical Officer, it is ascertained that the victim girl was not only ravished but



also seriously injured on being assaulted by the appellants. Moreover, the appellants did not challenge the age of the victim girl. As per the statement of the victim, she was aged about 16 years and, therefore, a minor.

37. Considering such aspect of the matter, there is no reason to alter the judgment of conviction and order of sentence passed by the Trial Court.

Findings by this Court

38. On independent appreciation of evidence on record, led by the witnesses on behalf of the prosecution, the following factual circumstances are found to be established: -

(i) On the date of occurrence, the victim girl was feeding milk to a kid of goat at about 11.00 p.m. at night, sitting on a cot in front of entrance door of the house;

(ii) Her younger sister was sleeping on the cot;

(iii) After feeding milk, she asked her younger sister to go to the room to sleep, but her sister insisted to sleep on the cot as she was feeling hot;

(iv) The victim girl, therefore, laid by the side of her sister and went on to sleep;

(v) While sleeping, she was dragged by some persons and she woke up;



(vi) She lit the torch and found the appellants;

(vii) The appellants forcibly took her to a paddy field, situated about 200 yards away from her house;

(viii) She was disrobed;

(ix) In the initial statement before the Investigating Officer, the victim girl stated that after taking her to the open field, Chhedan Yadav and Rajo Sah caught hold of her hands and Bijali Yadav committed rape upon her;

(x) In evidences, however, she stated that all the three appellants committed rape upon her one after another;

(xi) When the victim told that she was able to identify the appellants, they started to assault her on her face, chest and abdomen with a view to commit murder of her;

(xii) It is also found from the evidence on record that the younger sister of the victim rushed to the house of Ramu Mandal and informed him about the incident;

(xiii) The said Ramu Mandal @ Ramu Prasad Das (P.W. 3) and Ram Kumar Mandal (P.W. 4) stated on oath that on being informed by P.W. 8, they conducted search for the victim girl and found her lying in naked condition in a paddy field. They also identified the appellants present at the place of occurrence. Seeing local people, they fled away, leaving



their black coloured full pant; one Lungi; and a mobile phone at the place of occurrence;

(xiv) The victim was brought to her house, while there was no wearing apparel on her body, the wife of Ramu Mandal gave a cloth to her to wear;

(xv) The victim's statement was recorded under Section 164 of the Cr.P.C. In her statement under Section 164 Cr.P.C., she stated that all the three appellants committed rape upon her. There were, in all, five to six (5-6) persons. She identified the appellants, namely, Bijali Yadav, Chhedan Yadav and Rajo Sah, while they were talking by the sound of their voice;

(xvi) The wearing apparels of the appellants and the victim were sent to the Forensic Science Laboratory, Patna, but no semen could be detected in any of the wearing apparels of the appellants or the victim;

(xvii) The victim was medically examined by Dr. Kumari Bharti on 20th of September, 2014. The injury report of the victim was marked as Exhibit-3. On general examination, the Medical Officer found injury around both eyes, causing swelling and hemorrhage on both the eyes; swelling over the face; and aberration mark on the neck. On



examination of the private part of the victim, the Medical Officer found that hymen of the victim was ruptured; and blood was oozing from her private part. Ossification test of the victim was also done. On the basis of the radiological examination, age of the victim was ascertained, approximately 16-17 years at the relevant point of time. The Medical Officer opined that the injuries in her private part and body suggested that she was subjected to aggravated sexual assault.

39. The issue that arises for consideration in the instant case is as to whether the evidence on record and the factual circumstances, narrated above, are sufficient to prove the charge against the appellants beyond any shadow of doubt or there are inherent lacunae in the evidence on record, for which the appellants are entitled to get benefit of doubt.

40. In series of decisions, the Hon'ble Supreme Court was pleased to hold that in an offence of rape or aggravated sexual assault, the victim is not accomplice, but her evidence ought to be considered at par with the evidence of an injured person. On the basis of solitary evidence of the victim, the Court can hold the accused guilty for committing offence under the charge of Section 376 of the Indian Penal Code or Section 4 or 6 of POCSO Act. It is an opt-reiterated



dictum of law that in cases of rape that the testimony of the prosecutrix alone may be sufficient and sole evidence of the victim, when cogent and consistent, could be properly used to arrive at a finding of the guilt. In ***the State of Himachal Pradesh v. Manga Singh***, reported in ***(2019) 16 SCC 759***, the Hon'ble Supreme Court, in terms, stated that conviction can be rest on the testimony of the prosecutrix alone. Paragraph 10 of Manga Singh (supra) is relevant for our purpose and is quoted below: -

“The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.”

41. In ***Deepak Kumar Sahu v. State of***



Chhattisgarh, reported in **2025 SCC online SC 1610**, the

Hon'ble Supreme Court observed hereunder: -

“5.6.1. It was further asserted that corroboration is not an essential requirement for conviction in the cases of rape.

It is well settled by a catena of decisions of the Supreme Court that corroboration is not a sine qua non for conviction in a rape case. 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 medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.”

42. The same principle was laid down by the Hon'ble Apex Court in the **State of Punjab v. Gurmit Singh**, reported in **(1996) 2 SCC 384**.

43. In Manga Singh (supra), the victim was a minor girl aged about 9 years. After being sexually assaulted, she



narrated the incident to her teacher. The High Court gave benefit of doubt to the accused on the ground, inter alia, that the medical evidence of the Doctor was not conclusive to hold that the prosecutrix was subjected to sexual intercourse. The Hon'ble Supreme Court observed that if the evidence of the victim does not suffer from any basic infirmities and the factor of probability does not render it unworthy, the conviction can base solely on the evidence of prosecutrix.

44. At the same time, we are not unmindful to note that in ***Ganesan v. State represented by The Inspector of Police***, reported in ***(2020) 10 SCC 573***, the Hon'ble Supreme Court relied upon paragraph 12 of the decision in the case of ***State of U.P. v. Pappu @ Yunus & Anr.***, reported in ***(2005) 3 SCC 594***, wherein it is observed as hereunder:

“12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological



and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.”

45. In Ganesan (supra), the Hon'ble Apex Court relied on the decisions of Gurmit Singh (supra), ***State of Orissa v. Thakara Besra & Anr.***, reported in ***(2002) 9 SCC 86*** and ***State of Himachal Pradesh v. Raghubir Singh***, reported in ***(1993) 2 SCC 622***.

46. The Hon'ble Supreme Court also refers to the decision of ***Krishan Kumar Malik v. State of Haryana***, reported in ***(2011) 7 SCC 130***, wherein it is observed and held that to hold an accused guilty for commission of offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

47. In Paragraph 22 of ***Rai Sandeep @ Deepu v. State (Nct of Delhi)***, reported in ***(2012) 8 SCC 2021***, the Hon'ble Supreme Court describes the qualities of "Sterling



Witness". The aforesaid paragraph 22 of Rai Sandeep (supra),
is reproduced hereinbelow: -

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence,



the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone 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.”

48. Bearing these principles in mind, let us now consider as to whether solitary evidence of the victim girl is sufficiently trustworthy and inspires confidence of this Court to hold the appellants guilty for committing offence of aggravated penetrative sexual assault.

49. It is needless to say that the victim's evidence appears to this Court as absolutely natural. It is very often found in village life that a goat kid is required to feed cow milk, mixed with water after its birth, because the kid does not have the strength of drinking goat's milk directly. The victim was feeding milk to the goat kid, sitting on a cot, placed by the side of the entrance gate on the courtyard of her house. It is not challenged by the defence that there was no cot by the side of the entrance door of the courtyard of the house of the victim. It is also not denied that victim's younger sister was sleeping on the cot, feeling summer heat on the date of occurrence. After feeding milk, the victim laid down on the cot and went on sleep. Suddenly, she woke up when three persons caught hold of her and was dragging her towards open



field outside the house. She immediately lit the torch light and identified the appellants. The identification of the appellants was vehemently challenged by the learned defence counsel on the ground that the Investigating Officer did not seize the torch light. The identification of the accused persons was not only corroborated by the victim in course of her evidence but while being cross-examined by the learned defence counsel of accused Bijali Yadav, she clearly stated that as the accused persons are the residents of the same village, the victim could identify them. While identification of the appellants is established during cross-examination of the victim, the same cannot be challenged in appeal. The evidence of the victim further shows that she was disrobed by the appellants. In her *fard beyan*, she stated that she was raped by Bijali Yadav. However, in her statement under Section 164 Cr.P.C., she stated before the learned Magistrate that she was raped by all three persons. There is of course discrepancies in the evidence of the victim in her *fard beyan* and her statement under Section 164 Cr.P.C., but it is no longer *res integra* that the principle “*falus in uno, falus in omnibus*” is not applicable in the matter of appreciation of evidence in a criminal case. In criminal trial or, so to say, appeal, it is the duty of the Court to



sift a grain from chaff.

50. Bearing this principle in mind, if we examine the evidence of other witnesses, the Court finds that the other witnesses, namely, P.W. 2, P.W. 3 and P.W. 4, who rescued the victim from the accused persons in same tune stated presence of the accused / appellants at the place of occurrence and they fled away seeing the above-named witnesses. When the accused persons fled away, seeing the witnesses, the victim was found fully naked. The Medical Officer found that her hymen was ruptured and blood was oozing out from her private part. There were marks of injury, swelling and hemorrhage around her eyes and face and aberration and scar mark on the neck. Thus, the oral testimony of the victim regarding the injury she received on her private part as well as different parts of her body is well established by medical evidence. Therefore, her evidence is found to be natural and consistent in all aspects with the case of the prosecution *qua* the accused. There is no room of doubt and no missing link of circumstances in the evidence on record led by the prosecution.

51. Only question that comes up for consideration in the instant case is as to whether the appellants Chhedan Yadav



and Rajo Sah committed penetrative sexual assault upon the victim or not. In *fard beyan*, which was recorded within 10 hours of the incident, the victim clearly stated that she was subjected to penetrative sexual assault by Bijali Yadav. She did not state any involvement of Chhedan Yadav and Rajo Sah in committing the offence of penetrative sexual assault. Subsequently, in her statement recorded under Section 164 Cr.P.C., she implicated appellants Chhedan Yadav and Rajo Sah in committing offence under Section 4/6 of the POCSO Act.

52. If we hold that she was subjected to penetrative sexual assault by three persons, it is aggravated form of penetrative sexual assault punishable under Section 6 of the POCSO Act. However, in her initial statement, she only stated that she was dragged from her house by Bijali Yadav, Chhedan Yadav and Rajo Sah. Then, Bijali Yadav committed rape upon her. Therefore, the victim did not make any allegation of committing penetrative sexual assault against Chhedan Yadav and Rajo Sah in her initial statement. When in the initial statement, the above-named two accused persons are not named, we are not in a position to hold that all the three appellants committed gang penetrative sexual assault on the



victim. Charge of penetrative sexual assault is established beyond any shadow of doubt against the appellant Bijali Yadav.

53. Section 4 of the POCSO Act deals with the punishment for penetrative sexual assault in following words:-

“4. Punishment for penetrative sexual assault.

(1) Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

(3) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”



54. In view of the above discussions, we hold that the charge under Section 4 of the POCSO Act is proved against the appellant Bijali Yadav.

55. Now comes the question of sentence.

56. According to Section 4 of the POCSO Act, the appellant Bijali Yadav shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

57. We are of the view that prosecution did not produce any evidence regarding criminal record of Appellant Bijali Yadav. This is his first offence. The offence of sexual assault is committed by persons, more often than not, due to mental perversity. The appellant is a young man of a remote village. He may not have proper education to build up his mental strength and morality. Therefore, he pounced upon a minor girl and committed penetrative sexual assault.

58. Considering such aspect of the matter, we are of the view that appellant Bijali Yadav deserves minimum sentence of imprisonment under the facts and circumstances of this case.

59. Therefore, we set aside the punishment order of



accused Bijali Yadav for the offence committed under Section 6 of the POCSO Act and we are of the view that the prosecution has been able to establish that the appellant Bijali Yadav ought to be convicted and sentenced for committing offence under Section 4 of the POCSO Act.

60. In view of the discussion made hereinbefore, the appellant Bijali Yadav is sentenced to suffer rigorous imprisonment for 10 years with fine of Rs. 50,000/-, in default further imprisonment for one year.

61. It is also established beyond any shadow of doubt that when the victim girl disclosed to the appellants that she could identify them, they openly told each other that the victim should be killed, lest they would be in trouble. Then they started physically assaulting the victim. The victim corroborated the incident of physical assault committed by all three appellants by fists and blows on her face, chest and abdomen. She also stated that the appellants twisted her neck. The Medical Officer found corroboration while examining the victim medically and found swelling and hemorrhage on both eyes and face of the victim as well as abrasion and scratch mark on her neck. From the statement of the appellants, followed by serious physical assault, intention of all three



appellants in committing murder is proved.

62. Thus, we can safely hold that the respondent was able to prove that the appellants committed offence of attempt to commit murder upon the victim and they were rightly convicted by the Trial Court for committing offence under Section 307/34 of the Indian Penal Code.

63. However, we are not *ad idem* with the order of sentence passed by the Trial Court. We are of the view that since, this is the first offence of the appellants, they are liable to be sentenced with minimum punishment.

64. Accordingly, the order of sentence is reversed. All the three appellants, namely, Bijali Yadav, Chhedan Yadav and Rajo Sah are sentenced to suffer rigorous imprisonment of seven (7) years and also to pay fine of Rs. 25,000/- each, in default all suffer further imprisonment for six months, each, for the offence under Section 307/34 of the Indian Penal Code.

65. In view of punishment under Section 4 of the POCSO Act and Section 307/34 of the Indian Penal Code, inflicted upon the appellants, we are not inclined to pass separate order of punishment for the offences under Sections 376(g), 341 and 323 of the I.P.C.



66. With the above alteration, in respect of sentence, the instant appeal stands disposed of.

67. As a result, the appellants, namely, Chhedan Yadav and Rajo Sah are acquitted of the charge under Section 6 of the POCSO Act. All the accused persons are also acquitted of the charge under Section 376(g) of the I.P.C., as well as Sections 341 and 323/34 of the I.P.C.

68. The appeal is, therefore, allowed in part with modification and alteration of sentence against the above appellants.

(Bibek Chaudhuri, J)

Dr. Anshuman, J : - I agree.

(Dr. Anshuman, J)

skm/-

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