

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.22 of 2023

Arising Out of PS. Case No.-37 Year-2020 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Sheru Ansari @ Ali Hasan Ansari S/O Faizul Ansari Resident of Village- Shivrampur, P.S.- Chand, District- Kaimur (Bhabhua).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 946 of 2022

Arising Out of PS. Case No.-37 Year-2020 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Naushad Ansari Son of Masuk Ansari R/V- Amaon, P.S- Sahabganj, Dist- Chandauli (U.P)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 22 of 2023) & (In CRIMINAL APPEAL (DB) No. 946 of 2022)

For the Appellant/s	:	Mr. Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate Mr. Sarveshwar Tiwary, Advocate Mr. Chandra Mohan Jha, Advocate
For the Respondent/s	:	Ms. Usha Kumari 1, Spl. PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)

Date : 18-08-2025

Heard Mr. Subodh Kumar Jha, learned counsel for the appellant and Ms. Usha Kumari, learned Spl. PP for the State.

2. The informant/victim was earlier informed by learned Special P.P. for the State and thereafter she has entered appearance



through an Advocate whose name is printed in the cause list but no one has appeared on behalf of the informant to oppose the appeal.

3. The present appeals arise out of the judgment of conviction dated 29.09.2022 (hereinafter referred to as the 'impugned judgment') and the order of sentence dated 30.09.2022 (in short referred to as the 'impugned order') passed by the learned Sessions Judge-I-cum-Special Judge SC/ST (POA) Act, Kaimur at Bhabhua (hereinafter called the 'learned trial court') in SC/ST Case Reg. No. 72 of 2020, arising out of Bhabhua Mahila P.S. Case No. 37 of 2020.

4. By the impugned judgment the appellants have been awarded sentence of 20 years with a fine of Rs. 5000/- and in default of payment of fine to further suffer imprisonment of 6 months for the offence under Section 376(D) of the IPC; R.I. of six months with a fine of Rs. 2000/- and in default of payment of fine to further suffer imprisonment of 15 days for the offence under Section 342 of the IPC; R.I. of six months and a fine the convict shall undergo a further imprisonment of 15 days for the offence under Section 323 of the IPC; R.I. of one year with a fine of Rs. 1000/- and in default of payment of fine to further suffer imprisonment of 15 days for the offence under Section 451 of the IPC; R.I. of 3 years with a fine of Rs. 5000/- and in default of



payment of fine to further suffer imprisonment of six months for the offences under Sections 3(i)(w)(i) SC/ST (Prevention of Atrocities Act) and R.I. of six months with a fine of Rs. 5000/- and in default of payment of fine to further suffer imprisonment of 15 days.

Prosecution Case:

5. The prosecution case is based on the written application given by the informant/victim (P.W. 5). In her written report she has stated that she was sleeping in her home after closing the door. The accused persons entered into the room at around 01:00 P.M. (daytime) by jumping the boundary wall. The accused persons tied her hands and legs and put clothes in her mouth and abused her in the name of her caste and threatened her to either keep quite or they would kill her. It is further alleged that the accused persons raped her one after another. She further disclosed the names of the accused persons being Sheru Ansari and his driver Naushad Ansari. She has stated that Sheru Ansari is her co-villager whereas Nausahd Ansari hails from another village. She further alleged that the accused persons snatched her Mangal Sutra, Ear Tops and Necklace and fled away.

6. On the basis of this written application, Bhabhua Mahila P.S. Case No. 37 of 2020 dated 22.06.2020 was registered



for the offences punishable under Sections 342, 323, 451, 376(D), 379, 504 and 506 read with Section 34 of the IPC and under Sections 3(1)(w), 3(2)(va) of the SC/ST (Prevention of Atrocities) Act.

7. After completion of investigation of the case, the Investigating Officer (the I.O.) submitted a final form bearing No. 47 of 2020 dated 28.08.2020 mentioning lack of evidence upon which the learned Trial Court issued notice to the informant and after hearing both sides differed with the police report took cognizance vide order dated 06.02.2021 for the offences under Sections 342, 323, 451, 376(D), 379, 504 and 34 IPC and Section 3(1)(w), 3(2) (va) of SC/ST Act.

8. Charges were read over and explained to the appellants in Hindi to which they pleaded not guilty and claimed to be tried. Accordingly, *vide* order dated 10.06.2021, charges were framed under Sections 342, 323, 379, 451, 376(D) and 504/34 of the IPC and Sections 3(1)(w) and 3(2)(va) of the SC/ST (Prevention of Atrocities) Act.

9. In course of trial, the prosecution has examined altogether six witnesses and exhibited some documentary evidences. The description of prosecution witnesses and the exhibits are given hereunder in tabular form:-



List of Prosecution Witnesses :

PW-1	Satendra Ram
PW-2	Aarti Devi
PW-3	Dr. Jitendra Nath Singh
PW-4	Dr. Avinash Bahadur
PW-5	Rekha Devi
PW-6	Sushila Kumari

List of Exhibits on behalf of the Prosecution:

Ext. 1	Report of Medical Board
Ext. 2	Report of Investigation of “X” (age determination report)
Ext. 3	Signature of Avinash Bahadur on Medical Report
Ext. 3/1	Signature of Dr. J.N. Singh on Medical Report
Ext. 4	Signature of the Prosecutrix on written report
Ext. 5	Signature of the Prosecutrix on statement U/s 164 Cr.P.C.
Ext. 6	Signature of I.O. on FIR but it appears that the signature of I.O. of FIR is left to be marked inadvertently.
Ext. 7	Signature of the I.O. on chargesheet

10. Thereafter, the statement of the appellants were recorded under Section 313 of the CrPC. The appellants denied all the allegations and took a plea that they are innocent and have falsely been implicated.

11. On behalf of defence six witnesses have been examined and they are as follows:

List of Defence Witnesses :

DW-1	Khusbun
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DW-2	Salman Ansari
DW-3	Yadunath Singh @ Yadunath Chauhan
DW-4	Muhammad Javed
DW-5	Dinesh Sahu
DW-6	Faizul

12. The defence has also proved following documents:

Ext. A	C.D. produced with the case diary
Ext. B	Pen drive produced with the case diary
Ext. C	Signature of Fazul Hasan on the unregistered kewala dated 06.06.2020

Findings of the Learned Trial Court:

13. Learned trial court after examining all the evidences available on the record found that the defence of plea of alibi is a very weak kind of evidence especially in the era of mobile phones and networking. The learned trial court opined that testimonies of each and every defence witness exonerating the accused persons appeared to be tutored. It has been observed by the learned Trial Court that the FIR was registered instantly within few hours of the incident which has been corroborated by the testimonies of P.W. 1 and P.W. 2 who are most natural witnesses. The learned trial court on the case of the defence that it has also taken the plea of land dispute, held it to be not sustainable in the eyes of law as it is proved that there was no such proximity between the parties to prompt the informant/victim to file a false case of rape. The Court observed that the negative findings of the doctor about the mark of injury on the



person of the prosecutrix is not sufficient to infer that the accusation of gagging her mouth and tying her hands and legs is false. It has been held that no injury relating to alleged rape as found by the Doctor has no corroboration to the statement of the prosecutrix.

Submission on behalf of the appellants:

14. Learned counsel for the appellants submit that all the prosecution witnesses are interested witnesses and no external injury was found on the body of the victim. It is further submitted that there is no eye-witness to the occurrence and P.W. 1, who is the husband, and P.W. 2, who is the mother-in-law of the prosecutrix, are merely hearsay witnesses and thus, their statements could not be relied upon. Learned counsel next submits that from perusal of the deposition of the witnesses, there are contradictions in such statements of the prosecution witnesses including the prosecutrix, who was examined as P.W. 5, who has contradicted herself. Learned counsel refers to her statement wherein P.W. 5 has stated that when she opened her eyes she found two unknown persons standing there and further that she had identified only one of the two persons. It has been pointed out that the prosecutrix in her deposition has stated that she had become unconscious and could not know what happened. In fact, the prosecutrix has not even taken the names of anyone, neither has she stated that Sheru Ansari and Naushad Ansari



came into the house after jumping over the boundary wall, and therefore, even the prosecutrix cannot be said to be a sterling witness in order to believe the prosecution story.

15. Learned counsel for the appellants further submits that the brother-in-law of the prosecutrix who was alleged to have been shouting standing at the doors of the house was not even produced as a witness by the prosecution. It has further been submitted that the I.O. during the inspection of the place of occurrence did not find any broken tiles which could have fallen down from the boundary wall. Learned counsel has drawn the attention of this Court towards the fact that the boundary wall was found to be very high i.e., of almost 9 feet from inside and it was almost impossible for a person, especially the accused persons, to cross over and jump inside the house, a fact which was completely ignored and not considered by the learned trial court. Learned counsel for the appellants has also pointed out that the medical report rules out the statements made by the victim (P.W. 5) and her deposition is in stark contrast to the statement given under Section 164 Cr.P.C. Learned counsel for the appellants further submitted that the prosecutrix had not stated about the incident of rape in her statement recorded under Section 161 Cr.P.C. and even the I.O. of the case, P.W. 6 in her statement in



Paragraph '11' has stated that the prosecutrix had not named the accused persons in her restatement recorded in the case diary.

16. Learned counsel for the appellants submit that the defence taken by the accused persons with regard to alibi was not processed by the learned trial court as from perusal of the testimony of P.W. 6 and CD-R in compact disk (Ext. A) and pen drive (Ext. B), it would be evident that at the time of alleged occurrence, the accused persons were at another place. It has lastly been submitted by the learned counsel for the appellants that since the father of Fazul Hassan was about to buy some piece of land from another villager namely Shyamlal Ram and Bihari Ram but the son of the Shyamlal Ram namely Balukdhari Ram did not want the said land to be sold to Faizul Hassan and therefore, he had got this case falsely instituted by the prosecutrix. Thus, learned counsel for the appellants submit that in view of such contradictory and inconsistent statements of the prosecution witnesses, the impugned judgment and order is fit to be set aside.

Submissions on behalf of the State:

17. Per contra, learned Additional Public Prosecutor for the State has submitted that the prosecution through the witnesses have been able to prove the fact that it was the appellants herein who had committed gang rape of a woman of scheduled caste by



assaulting and threatening her. It has been submitted that in the evidence of the prosecutrix, P.W.-5 it has been categorically stated that the appellant- Naushad Ansari had caught her hand while Sheru Ansari assaulted her with slaps (thappad). She has further stated that they had put clothes into her mouth while Sheru committed rape upon her, and thereafter Naushad had committed rape, and thereafter she fell unconscious. It has been stated that with this kind of specific averment by the prosecutrix, there is no scope or iota of doubt over the prosecution story, and minor deviations and contradictions have to be over-looked in such cases where the prosecutrix has undergone mental trauma on account of such heinous crime committed upon her. It has next been submitted that the FIR was instituted within a few hours of the incident, and therefore, there was no possibility of deliberation and interpolation, and the prosecutrix has named the accused persons in the written report upon which the present FIR was lodged, and subsequently the same stands corroborated by her testimony in the court. Learned A.P.P. for the State has submitted that the testimony of the prosecutrix is further supported by the testimonies of P.W.1 and P.W. 2, who are the natural witnesses.

18. Learned A.P.P. for the State submits that in view of the aforesaid submissions, there is no illegality in the impugned



judgment and the subsequent order of punishment and the appeals are fit to be dismissed.

Consideration:

19. Having heard the learned counsel for the parties, we shall now dwell upon the facts and circumstances of the case as appearing from the evidence adduced on behalf of the prosecution.

20. P.W. 1 (Satyendra Ram) is the husband of the prosecutrix, and he has stated that at 1 o'clock he had come to his house for having a meal when he had seen the appellants Sheru Ansari and Naushad Ansari going on the road. His younger brother Rahul was shouting, and as the door did not open, he went inside after jumping the boundary wall and found the legs and hands of his wife tied and there was cloth in her mouth and she was unconscious. P.W.1 further deposed that when his wife gained consciousness, she disclosed the names of two accused persons and told that they had assaulted her and thereafter raped her and had also abused her by taking the caste name. This P.W.1 has also stated that his wife disclosed that the accused persons had snatched away her ear tops and necklace. P.W.1 had taken his wife to Sadar hospital, Bhabua where she was treated for the injuries and her statement was subsequently recorded in the Court. This witness has identified the two appellants who were present in the court.



21. During the cross-examination, P.W.1 testified that the police recorded his statement just after the incident. He further states that he shouted his wife's name to open the door, but it could not be opened and hence, he jumped the boundary wall and then found his wife with her hands and legs tied and in an unconscious position. This P.W.1 admitted that he had not stated to the police that he had seen both the accused persons on the road when he was coming back to his house for having a meal. P.W.1 during his cross-examination has also stated that he had taken his wife to the Sadar hospital for treatment of the injuries she had sustained on her head and back while her face was swollen though blood was not coming out. He has stated that both the accused are drivers and his house is situated in the middle of the village and though his wife had told him that she cried and shouted while she was struggling, but none from the village came there. He never told anyone in the village about the incident. This prosecution witness has denied the statement that his wife has stated under Section 164 Cr.P.C. that she did not recognize the accused persons.

22. P.W. 2 Aarti Devi is the mother-in-law of the prosecutrix. In her examination-in-chief, she has stated that she reached the home around 1:30 P.M. and found that Satyendra Ram was trying to get the doors open and her younger son asked him to



jump the boundary wall as the door was locked and thereafter Satyendra Ram, P.W.1 jumped the boundary wall and opened the door from inside and when he entered the house he found that the hands and legs of his daughter-in-law were tied and cloth was put in her mouth and on regaining consciousness, the prosecutrix disclosed that Sheru and Naushad had raped her and had even threatened her of dire consequences, if she would reveal about the incident. This witness deposed that the prosecutrix was taken to Mahila Thana, Bhabua and her statement was recorded thereafter. This witness has stated that she knew the appellants Sheru Ansari and Naushad Ansari from before and also identified the two appellants present there.

23. In her cross-examination, this witness has admitted that Naushad was a resident of village- Amao and Sheru and Naushad Ansari had never visited her house, neither they were in talking terms with them. This P.W. 2 in her cross-examination has stated that her daughter-in-law was pregnant at the time of occurrence and she gave birth to a child after 5-6 months of the incident, though she denied the suggestions that a girl child was born after two months of the incident. This witness has further stated that her son was standing outside the boundary wall and when the door of the house did not open, he jumped inside and when he



shouted after seeing her daughter-in-law, many neighbours came but she could not tell name of anyone. She has further stated that the neighbours also came inside the room when the door was opened and her daughter was found lying on the bed, she wore a beige colour saree and a petticoat. It is further stated that she did not notice any blood and the prosecutrix had not received any injury, only her hands and legs were tied with rope. She deposed that her daughter-in-law was made to sit on the car with the help of co-villagers. P.W. 2 further claimed to know her co-villager, Shyam Lal and Farzul, who is father of Sheru Ansari. P.W. 2 has also stated that statement of her daughter-in-law was recorded in the police station and thereafter they were told to go for medical treatment. She has denied the suggestion that at the time of occurrence, Sheru was not there in the village and Naushad was in the village Amao.

24. P.W. 3 is Dr. Jitendra Nath Singh, who in his examination-in-chief has stated that he was posted as Medical Officer, Sadar Hospital, Bhabua and a medical board was constituted for determining age and physical examination of Rekha Devi (victim) and on her physical examination a scar on ventral aspect of left fore arm and old scar on ventral aspect of left wrist was found. He has stated that the patient (P.W. 5) did not submit herself for X-ray examination required for age determination. The



medical board had opined the age of the person examined to be between 18-21 years and he had identified the report which was written by him and signed by him and two other members of the medical board namely Dr. Avinash Bahadur and Dr. Sushma Kumari, lady Medical Officer, Sadar Hospital, Bhabua.

25. P.W. 4 is Dr. Avinash Bahadur, who in his examination-in-chief had stated that on 23.06.2020, he was posted as medical officer at Sadar hospital, Bhabua wherein a medical board was constituted for determination of age and examination of the prosecutrix and he has only identified his signature on the medical report which was written by Dr. J. N. Singh and the same was marked exhibit-3 and 4.

26. P.W. 5 is the prosecutrix herself and has deposed that the incident was of 22.06.2020 and at that time, she was sleeping in her house when Sheru and Naushad Ansari entered the house by jumping and crossing the boundary wall. She further deposed that the said persons caught her legs upon which she woke up and got scared finding two unknown persons standing there. She further deposed that the appellant Naushad caught her hand while Sheru assaulted her with slaps. When she shouted, the accused abused her by her caste name and asked her to keep quite and inserted cloth into her mouth. She stated that Sheru committed rape upon her after



removing her saree, thereafter Naushad came and raped her and thereafter she went unconscious and she did not know what happened thereafter. She has further deposed that when she regained consciousness, she observed that she has received injuries on her forehead and on her hand and she was brought to consciousness by putting water on her face by her husband. She has admitted that she was two months pregnant at the date of occurrence and her husband, mother-in-law and brother-in-law took her to the police station and thereafter they took her to the hospital. The prosecutrix has identified her signature on the written report of the police station which was marked as Exhibit-4. She deposed that her statement recorded under Section 164 Cr.P.C. was also recorded in the court and she has identified her signature on the statement which was marked as Exhibit-5 and she had identified the accused Sheru and Naushad present in the dock. The prosecutrix (P.W.5) in her cross-examination stated that she had a two and a half year old male child and she had an eight months girl child who was born after the incident. She further stated that she remained in the house for 5-6 months after the marriage. This P.W.-5 further stated that prior to the incident neither she had visited the home of the accused persons nor did they visit her home. She has also denied that her husband had any friendship with the accused persons. P.W.-5 has admitted that



accused persons were involved in a business of buying and selling of cattle. She further states that her statement was recorded by the police at Mahila Police Station. P.W.-5 has admitted that at the time of occurrence, her mother-in-law and husband were out of the house and out of two persons who had jumped inside the house, one was recognized by her and they tied her mouth, hands and legs and she struggled with them due to which she received injuries.

27. The prosecutrix denied the suggestion that she had stated to the police that she had gone unconscious when she was slapped, rather she had stated that she got unconscious after the rape was committed. She has also denied the suggestion that she had not named any of the accused to the police. The prosecutrix has also stated that she had cried and shouted when the accused entered the house however nobody came there and she further states that the accused persons did not open the door from inside. P.W. 5 has further stated that she had struggled with the accused persons on the bed before they tied her legs and even assaulted her. She has stated that she received injury on her forehead and on shoulders. She has stated that she had gone to the police wearing the same sari which she was wearing at the time of occurrence. She had gone to the Police Station first and then to the Hospital. She further states that she came back from the Hospital back to the Mahila Thana and



stayed there for the whole night and on the subsequent date she had gone to the Court. P.W. 5 has categorically denied that she had given the statement in the Court under any pressure. The prosecutrix has denied that she had made a statement before the Court that she fell unconscious after she was assaulted rather she fell unconscious when she was raped.

28. P.W. 5 has further stated that Naushad Ansari is a resident of village Amaw, which she came to know before the incident. She has further stated that she had told about the occurrence to her family members but had not told it to the outsiders. P.W. 5 has lastly denied the suggestion that no such occurrence of rape was committed on her.

29. P.W. 6 Sushila Kumari (ASI), who is the Investigating Officer of the case, in her examination-in-chief has stated that she received the charge of investigation of Mahila Bhabhua P.S. Case No. 37 of 2020 on 22.06.2020 and the FIR was instituted on the basis of written application of the prosecutrix. The witness has identified the signature of the SHO, Shabrendu Kumar on the formal FIR drawn by him.

30. P.W. 6 has stated that after taking charge of the investigation she recorded the statement of the prosecutrix and took her to Bhabhua Sadar Hospital for medical examination and



thereafter her statement under Section 164 Cr.P.C. was recorded by the Court which finds attached with the case diary and thereafter she recorded the statement of the witnesses namely Satyendra Ram and Arti Devi. This witness has described the height of the boundary wall as being 7fts from outside and 9fts from inside and the same was covered by tiles and coconut straw from the above. She has stated that there was no broken tile and coconut straw on the ground there. She has deposed that she has received CDR of the mobile phone and had recorded the statement of the witnesses namely Golu Kumar @ Chhotu, Yadunath Chauhan, Dinesh Gupta, Md. Jawed, Salman Ansari and Khushboo Nisha and thereafter she had submitted the final form and she identified the handwriting and signature on it which was marked as Ext. 7.

31. In her cross-examination P.W. 6 stated that she had recorded the re-statement of the prosecutrix in paragraph-6 of the case diary where she had not named the accused persons and that she did not say to her that Sheru Ansari @ Ali Hasan Ansari and Naushad Ansari (appellants) entered into the house after crossing the boundary wall and caught her legs. She further stated that the prosecutrix also did not say that Naushad caught her hands and Sheru slapped her and she had also not stated that they had put



clothes in her mouth on her shouting and Naushad was pressing her breast and Sheru raped her after removing her Sari.

32. P.W. 6 has further stated that Arti Devi stated to her that when her daughter-in-law came into consciousness she told her that two persons came into the house after crossing the wall while she was sleeping, they tied her hands and legs and thereafter she went unconscious and that the prosecutrix had also not stated to her that Sheru and Naushad had raped her. P.W. 6 has further stated that the witness Satyendra Ram had also not stated to her that Sheru and Naushad had raped his wife. P.W. 6 has further stated that after getting information on mobile on 23.06.2020 both the accused persons came at the Police Station after the statement of the prosecutrix was recorded in the Court at 02:30 P.M.

33. This witness further stated that CDR of the mobile phone of both the accused persons were received and on inspection it was found that Sheru's location was Mirzapur, U.P. since one day prior to the alleged occurrence and Naushad's location was found in village Amaw. P.W. 6 has further stated that on being asked Sheru told that on 21.06.2020 at about 10:00 P.M., he proceeded from his village who got himself shaved in a saloon and from there he visited Jargo Dam and went to the village Kliriyajangal Muhal situated at Mirzapur, U.P. and there he stayed overnight. On next date i.e.



22.06.2020, he was at his aunty's house since 12:00 to 01:00 P.M. P.W. 6 further disclosed that Sheru has stated that his brother Ezaz Ansari informed on phone that he has been made accused in a rape case and people had gathered there at his house asking to hand over Sheru and therefore he reached his home at around 4 O' Clock in the evening and came to the Police Station and he gave his mobile number and claimed to be verified with regard to his location at time of alleged occurrence and he has stated that he has falsely been implicated in this case on account of a dispute regarding a piece of land situated in the back of the house.

34. P.W. 6 has further stated that she recorded the statement of the prosecutrix and the prosecutrix did not disclose as to which of the accused had raped her. She had only stated that two persons came after crossing the boundary wall at 01:00 O' Clock. The statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein she did not take anyone's name. This witness has further stated that no sign of rape was found in the medical examination of the prosecutrix thereafter this witness proceeded to Maurya Petrol Pump and its Manager Amit Shah informed her that on 22.06.2020 at about 02:21 P.M. he saw two people going towards Chakiya on a Scooty and she also received a certificate from the Manager in this regard.



35. This witness further disclosed that in the light of the direction of the D.S.P., Bhabua she received the paper relating to land and perused it and it was found that on 01.06.2020 documents relating to selling of land by Shyam Lal Ram and Bihari Ram was handed over to Faizul Hasan on stamp paper of Rs. 100/-. This witness finally stated that on the basis of investigation, statements and medical report it was found that the accused persons had no role in the occurrence.

36. In the statement of the accused persons recorded under Section 313 of the Cr.P.C. the accused persons completely denied the prosecution story and had pleaded their innocence in the case.

37. There were five D.Ws. examined on behalf of the defence and we shall discuss the same.

38. D.W. 1, Khusbun has stated that she knows Sheru Ansari and he is her nephew. She has stated that his house is in Khadiya Forest and on 21.06.2020 in the evening Sheru was with her and she had cooked food and fed them and Sheru Ansari was along with Deepu Paswan and Sonu Ansari and they went back after taking meal at around 02:00 O' Clock.

39. D.W. 2, Salman Ansari has stated that he knows Sheru Ansari and Sonu Ansari and they are resident of Khadiya Forest and he was at home in the night along with Sheru Ansari and Deepu



Paswan and he had also seen them in the morning. D.W. 2 has further stated that they had gone to Jargo Dam for taking bath and after taking meal they returned back to their home.

40. D.W. 3, Yadunath Singh @ Yadunath Chauhan has stated that he is *Purva Pradhan* of his village and Naushad Ansari is his co-villager and he had seen him at his doors on 22.06.2020. In his cross-examination, he has stated that Naushad Ansari has three brothers and he does not know the names of the other brothers.

41. D.W. 4, Muhammad Javed has stated that he knows Sheru Ansari who is his co-villager and next door neighbour. He has stated that on 21.06.2020 at about 09:00 P.M. he had seen him at his home and he was along with 3 – 4 persons but he do not know their names. He has also stated that on 22.06.2020 in the morning Sheru Ansari went to Jargo Dam along with his friend for bath thereafter they stayed in the village till 01:30 P.M. and upon receiving a phone call they went back.

42. D.W. 5, Dinesh Sahu has stated that he knows Naushad Ansari and had seen him on 22.06.2020 at his home.

43. D.W. 6, Faizul Hasan has stated in his examination-in-chief that he had talked to Shyamlal Ram and Bihari Ram for buying a piece of land and on 06.06.2020 Shyam Lal Ram and Bihari Ram and the witnesses had gone to the Registry Office.



Faizul Hasan gave Rs. 44,000/- to Shyamlal Ram and Bihari Ram as '*Jar Summon*'. This witness has further identified the unregistered Kewala which was allegedly returned in his presence which is marked as Ext. 'C'. In cross-examination by the prosecutrix this witness denies the suggestion that since he did not give the money therefore the said Kewala was not registered. He further denied the suggestion that the prosecutrix had nothing to do with the said Kewala and that she had falsely testified in the Court.

44. This Court, having gone through the evidences led by the prosecution as well as the defence side, finds that the occurrence is said to have taken place on 22.06.2020 in the house of the prosecutrix while she was sleeping during the day time. From perusal of the written report of the prosecutrix, it appears that the prosecutrix has alleged that at around 01:00 P.M. the accused persons (appellants) entered the house by crossing the boundary wall and tied her hands and legs and also inserted clothe in her mouth and abused her by her caste name threatening her to keep quite and thereafter both the persons raped her. She has further alleged that the accused persons took away her Mangal Sutra, Ear Tops and Locket. The written report was marked as Ext. 4 during the course of trial.



45. This Court finds that pursuant to such written report a formal FIR was drawn by the police on 22.06.2020. After investigation police had submitted charge sheet against the named accused persons (appellants) (Ext. 1/7). After lodging of the FIR the statement of the prosecutrix was recorded under Section 164 Cr.P.C. (Ext. 5) on 23.06.2020 wherein the prosecutrix has stated that she was in her house and at around 01:00 P.M., while she was sleeping two persons entered the house after crossing the boundary wall and they tied her hands, legs and mouth and started molesting her when she tried to raise her voice, they slapped her and therefore she got unconscious and thereafter she was raped by the said persons and they fled away threatening her of dire consequences.

46. On going through the written application and the statement under Section 164 Cr. P.C. (Ext. 5), it is evident that the victim had made material deviation in her statement within one day of the occurrence. While in her written report she has stated that the two appellants were Sheru Ansari and Naushad Ansari, however, she has not taken any name in her 164 Cr.P.C. statement.

47. Another major contradiction in the two statements is to the effect that the prosecutrix in her written report has not mentioned about falling unconscious during the course of such



incident while in her 164 Cr.P.C. statement she has stated that she fell unconscious when she was assaulted by the accused persons.

48. Another contradiction which this Court finds is to the effect that she had alleged that her Mangal Sutra, Ear Tops and Locket were taken away by the accused persons while in 164 Cr.P.C. statement no such reference has been made by the prosecutrix.

49. The I.O. (P.W. 6) has stated that the height of the wall was 7fts. from the outside while it was 9fts. from the inside and there were tiles over the same along with coconut leaves. P.W. 6 has categorically stated that there was no tile broken or removed from the said wall when she had inspected. P.W. 6 during her cross-examination has specifically stated that she could not find any sign of any struggle in the house. In paragraph-11 of her deposition the I.O. has stated that the prosecutrix had not told the name of the accused persons in her re-statement. She has stated that the prosecutrix had not stated that Naushad had caught hold of her hands while Sheru had slapped her. She had also not stated that they had inserted clothes in her mouth when she tried to shout. P.W. 6 had very categorically in paragraph-15 stated that the CDRs of the mobile phone of the two accused persons were procured and it was found that the phone of the accused Sheru was located at Mirzapur, U.P. while the phone of the accused Naushad Ansari was located at



his village Amaw. P.W. 6 has also stated that even in her 164 statement, the prosecutrix had not named the accused persons and in her medical examination no evidence of rape could be found.

50. Now, we come to a very important witness *i.e.* the prosecutrix, herself, who was examined as P.W. 5 and who has proved her signature on the written report (Ext. 4) and she has also identified her signature on the 164 Cr. P.C. statement which was also marked as (Ext. 5).

51. In her cross-examination she has stated that prior to the occurrence she had no conversation with the accused persons. She has further stated that the accused persons had never been to her house prior to the occurrence neither she had gone to their house earlier. In her examination-in-chief P.W. 5 has categorically stated that the accused had tied her hands and legs and she was subsequently assaulted resulting in injury and when she shouted the accused kept clothes over her mouth. In paragraph-15 of her deposition P.W. 5 has stated that the accused persons assaulted her however she could not strike back and in such assault she had received injuries on her forehead and shoulders. She has stated that she had gone along with her husband to the police station wearing the same Sari which she was wearing at the time of occurrence and she had gone initially to the police station and thereafter she was



taken to the Hospital and she again came back to the Mahila Thana where she spent the entire night and on the next morning she was taken to the Court where her statement was recorded. P.W. 5 has denied the fact that she had not stated that she got unconscious after being assaulted rather she became unconscious when she was raped. P.W. 5 had stated that she had not disclosed about the incident to any other person apart from her family members.

52. In view of the evidence of the prosecutrix P.W. 5, the only question which remains to be examined is that whether the said witness could be said to be a sterling witness in order to prove the case beyond reasonable doubts against the appellants and therefore her evidence needs to be examined carefully taking into account the other materials available on record.

53. This Court finds that the prosecutrix has stated that the accused persons crossed the boundary wall and had entered the house however at the same time she had stated that she had not seen them crossing the boundary wall as she was asleep. P.W. 5 has improved upon her statement which was made in the written report wherein she has alleged that the two persons namely the appellants entered into the house and tied her hands and legs and by abusing her by her caste name they threatened her to keep quiet and raped her. However, in her examination-in-chief she has stated that the two



accused persons entered the house after crossing the wall and she got scared looking at two unknown persons and in the same breath she takes the names of the accused Naushad and Sheru alleging that Naushad caught hold of her hand while Sheru Slapped her and thereafter they threatened her and she has further improved upon her statement by saying that Naushad started molesting her while Sheru removed her Sari and committed rape. In complete contrast to the written report, P.W. 5 has stated in her examination-in-chief that she fell unconscious after Naushad committed rape upon her and she regained consciousness only when her husband had sprinkled water on her face. She again, contradicting her own statement, has stated that her legs were tied by the accused persons while she was unconscious. The statement of P.W. 5 is in stark contrast to the statement of P.W. 6, who has stated that it was the police who had taken the prosecutrix to the Sadar Hospital for medical examination while P.W. 5 has stated in her examination-in-chief that she was taken to Mahila Thana by her husband and mother-in-law and thereafter she had gone to Hospital along with them. This statement of the prosecutrix is again in contradiction to the statement of P.W. 1, Satyendra Ram who has stated that he had taken his wife to the Hospital where she was treated and thereafter she was taken to the Court where her statement was recorded. While P.W. 1 in his cross-



examination in paragraph-12 has categorically stated that his wife had gone to the Hospital earlier in the morning and came back in the evening and thereafter she had gone to Mahila Thana in the evening at around 6 - 7 P.M.

54. The statement of P.W. 5, prosecutrix is also contradicted by the statement of P.W. 6 (I.O.) who has stated that the prosecutrix had not stated the names of any of the accused who had committed rape upon her in her statement 161 of the Cr.P.C. as also in her statement under 164 Cr.P.C.

55. This Court finds that the husband of the prosecutrix who was examined as P.W. 1 had given a different description of the incident stating about his younger brother standing outside the house and thereafter he entered the house by climbing the wall and opening the doors which was locked from inside. However, the said brother of P.W. 1 was not examined by the prosecution during the course of trial. P.W. 1 had also stated that he had written the contents of the written report in the police station which was described by his wife. However in paragraph -7 of her cross-examination, the prosecutrix has stated that she had given her statement at the Mahila Police Station and has not stated that her statement was written by her husband, P.W. 1. P.W. 5 in her cross-examination in paragraph-17 has stated that during her 164 Cr.P.C. statement, the Court had



asked whether she has to say something whereupon she had stated that she can recognize the accused persons, if she witnesses them.

56. This goes on to show that the prosecutrix had not named the accused persons in her 164 Cr.P.C. statement and thereafter during the course of trial she has improved upon her initial statement given under Section 164 Cr.P.C. and this further establishes the fact that she was not even aware of the contents of the FIR which was admittedly merely signed by her.

57. It is important to note that the ASI (PW-6) had recorded the statement of Golu Kumar @ Chhotu, Yadunath Chauhan, Dinesh Gupta, Mohammad Javed, Salman Ansari and Khusboo Nisha whereafter she had submitted final form in her pen and signature which has been marked Exhibit-7/5 in course of trial. These important independent witnesses whose statement have been recorded by the I.O. have not been examined in course of trial.

58. As to the immediate circumstances present at the place of occurrence, PW-6 has stated that according to prosecution the accused had jumped a wall which was 7 feet height from the outside and 9 feet height from the inside but she had not found either any removed or broken tiles or the coconut straw. On the bed, the bed-sheet was there but she had not found any mark of blood or any kind of stain. She did not get any impression that there was a quarrel in



the house. The house is surrounded by other houses from all the four sides, in the western side there is a *Dhalai* road. The I.O. had not found any mark of blood or stain on the cloth of the victim. It is very important to note that in paragraph '11' of her deposition, the I.O. (PW-6) has stated that during her restatement, the prosecutrix (PW-5) had not said that Naushad was pressing her breast and Sheru had committed rape after lifting her *Saree*. In fact, the I.O. has stated that the victim had not stated before her that the accused Sheru and Naushad had committed rape on her. Regarding her husband (PW-1) also the I.O. has stated that he had not made any statement that Sheru and Naushad had committed rape with his wife. It is, therefore, evident that the prosecutrix has not only herself made highly inconsistent statements in the nature of material contradictions, the evidence of the I.O. (PW-6) would go a long way to show that the prosecutrix would not fall in the category of a sterling witness. It is well settled that the testimony of a sterling witness must be coherent and the witness should withstand rigorous cross-examination of any length without prevarication and consistently provide details that fit the entire narrative without missing any link.

59. At this juncture, we are reminded of the judgment rendered by Hon'ble the Supreme Court in the case of ***Rai Sandeep***



@ Deepu vs. State (NCT of Delhi) reported in **(2012) 8 SCC 21**, has clarified that a sterling witness is one whose version is accepted at face value and does not raise any doubt as to the identity of those involved, the facts or the sequence of events.

60. The relevant paragraphs of the aforesaid judgment is referred to herein:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the



scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

61. Dr. Jitendra Nath Singh, who was posted as Medical Officer, Sadar Hospital, Bhabua, has deposed as PW-3. In his deposition, he has stated that a medical board was constituted for determination of age and examination of the victim. The victim did not submit herself for X-ray examination required for age determination. On the finding of the medical status and physical examination, the doctor opined that she was in between 18 to 21 years of age. Dr. Avinas Bahadur (PW-4) has proved the medical



reports which are Exhibit-3 and 4 respectively. The medical examination report discloses as under:- examination of clothes- few small dried whitish patches found over her petticoat (ii) No marks of violence found over external genitalia and its neighbourhood area (iii) No marks of violence found over any part of her body (iv) No white or red patches found over external genitalia and its neighbourhood area (v) public hair not matted with semen or blood either dried or wet (vi) No foreign hair found. On the internal examination, the doctor found as follows:- “No internal injury is found. Hymen is ruptured (old) and healed. There is no any blood stain discharge. Gloves is also not stained or blood stain discharge.” It appears that the doctor had advised microscopical examination of vaginal swab, UPT, USG, Forensic lab diagnosis of clothes, X-ray and dental examination and had reserved his opinion. The report of investigation showed that there was no spermatozoa in the vaginal swab dead or alive. The forensic lab diagnosis of clothes were not present and in the opinion of the doctor the victim was pregnant (8 weeks old). There was no evidence of physical and vaginal assault and recent sexual intercourse could not be ascertained. For mark of identification, the doctor has noted “ A scar on ventral aspect of left forearm and Old scar on ventral aspect of left wrist.



62. On perusal of the entire medical examination report of the victim, this Court is of the considered opinion that these reports are completely ruling out the case of assault upon the victim (PW-5). The medical reports further rules out the case of penetrative sexual act. The definite prosecution case is that the appellants had committed rape in the nature of penetrative sexual act which is completely ruled out.

63. We have already noticed hereinabove that the prosecution has withheld the independent witnesses who were examined by PW-6. At this stage, it is important to place on record that the draft sale deed which has been marked Exhibit-C on behalf of the defence shows that Shyam Lal Ram and Bihari Ram have been shown as vendors in favour of Faizul Hasan of land bearing Plot No.348 in Khata No.89 measuring area $2\frac{2}{3}$ decimal. The vendors wanted to sale the land in favour of Faizul Hasan (DW-6). On the said sale deed Ahmad Ansari had put his signature as a witness but the sale deed could not be registered because Batukdhari Ram, son of Shyam Lal Ram said that he would not allow the registry to take place. DW-6 has clearly stated that the prosecutrix (PW-5) is Bhabhi in relation of Batukdhari.

64. The evidence of DW-6 has not been duly appreciated by the learned trial court.



65. We have noticed that the other factors like the report of the CDR, which pointed out towards the fact that the appellants were not present near the place of occurrence on the said day has very cursorily been dismissed by the learned Trial Court on a flimsy ground observing that it was easy to leave mobile phones at one place and visit another place in a radius of 50-60 kms. within few minutes.

66. When the evidence on record is scrutinized, we find that the testimony of the prosecutrix contains material inconsistencies and contradictions, both within her deposition as well as when the same is compared with the statement of other prosecution witnesses. We are aware that conviction for the offence of sexual assault can be founded on the sole testimony of the victim but the same has to be of sterling quality. These deficiencies cast grave doubt over the veracity of the prosecution case. It would not be safe to sustain the conviction and sentence of the appellants in the kind of evidences available on the record.

67. Thus, in view of the discussions made hereinabove, we are of the considered opinion that the prosecution has not been able to prove the factum of rape beyond all reasonable doubts and the statement of the prosecutrix *i.e.* P.W. 5, in itself, could not withstand the test of a sterling witness and, therefore, in such view



of the matter the conviction and sentence of the appellants cannot be sustained and is, therefore, fit to be set aside.

68. The appellants are in incarceration, they shall be released forthwith if not wanted in any other case.

69. Both the appeals stand allowed.

70. Let a copy of this judgment with the Trial Court records be sent down to the Trial Court.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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