IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.4109,4232 of 2013 & 230 of 2015

Reserved on : 12.5.2016

Date of Decision : May 23, 2016.

1.Cr.A No.4109/2013

Gurmukh Singh ...Appellant.

Versus

State of H.P. ...Respondent.

2.Cr.A No.4232/2013

State of H.P. ...Appellant.

Versus

Gurmukh Singh ...Respondent.

3.Cr.A No.230/2015

Gurmukh Singh ...Appellant.

Versus

State of H.P. ...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

The Hon'ble Mr. Justice P.S. Rana, Judge.

Whether approved for reporting? Yes.

For the Appellant/ Accused : Mr. N.S. Chandel, Advocate.

For the State : Mr. V.S. Chauhan, Additional Advocate General, and Mr. Vikram Thakur, Deputy Advocate General.

Whether reporters of the local papers may be allowed to see the judgment?

Sanjay Karol, Judge

In relation to FIR No.60, dated 15.3.2013, for commission of offence, under the provisions of Section 376 of the Indian Penal Code, registered at Police Station Sadar, Una, Himachal Pradesh, accused Gurmukh Singh, hereinafter referred to as the accused, was charged to face trial for having committed offence punishable under the provisions of Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 376 of the Indian Penal Code.

2. On the strength of the evidence led by the prosecution, vide judgment dated 6.8.2013, passed by Special Judge, Una, Himachal Pradesh, in Case No.3-VII/2013, titled as *State of Himachal Pradesh v. Gurmukh Singh*, accused was stands convicted of the offence punishable under the provisions of Section 4 of the Protection of Children from Sexual Offences Act, 2012, and sentenced to undergo rigorous imprisonment for a period of seven years and pay fine of ₹5,000/- and in default of payment thereof, to further undergo simple imprisonment for a further period of three months.

3. Hence, the said judgment came to be assailed by the accused by filing Criminal Appeal No.4109

of 2013 and by the State in Criminal Appeal No.4232 of 2013.

4. When these appeals came up for hearing, it came to the notice that the trial Court had not dealt with the charge of offence, punishable under the provisions of Section 376 of the Indian Penal Code. As such, for a limited purpose, the matter was remitted to the trial Court for retuning findings thereupon.

5. In terms of separate judgment dated 30.4.2015, passed by Special Judge, Una, Himachal Pradesh in Sessions Case No.3-VII/2013, titled as *State of Himachal Pradesh v. Gurmukh Singh*, so assailed by the accused by way of Criminal Appeal No.230 of 2015, trial Court found the accused guilty of also having committed an offence, punishable under the provisions of Section 376 of the Indian Penal Code. However, since the accused already stood sentenced for having committed offence, punishable under the provisions of Section 4 of the POCSO Act, no separate sentence was imposed for the offence punishable under the provisions of Section 376 of the Indian Penal Code.

6. Since all these appeal arise out of the very same FIR; incident and evidence led by the parties, they

were heard together and are being disposed of by a common judgment.

7. It is the case of prosecution that prosecutrix, born on 11.6.1997, was residing with her mother, in village Barnoh, Tehsil & District Una, Himachal Pradesh. In the year 2013, she was studying in Class 10 and in the month of March was undertaking her annual examination. On 14.3.2013 at about 4.30 p.m., when she went to the Forest (Choa) to answer the call of nature, accused came there and after gagging her mouth, sexually assaulted her against her consent and will. Hearing her cries, her aunt Baksho Devi (PW-2) reached the spot and witnessed the crime. Soon the accused ran away from the spot and the incident was brought to the notice of Soma Devi (PW-5) and Sat Pal (PW-4), paternal aunt and uncle of the prosecutrix. Apparently, Usha Devi (PW-3), mother of the prosecutrix, was not in the village at that time. Information of crime was furnished to the police, vide complaint (Ex. PW-1/A) and statement of the prosecutrix, under the provisions of Section 154 of the Code of Criminal Procedure, recorded, on the basis of which FIR No.60, dated 15.3.2013 (Ex. PW-14/A), under the provisions of Section 376 of the Indian Penal Code,

registered at Police Station Sadar, Una, Himachal Pradesh. Tirlok Chand (PW-17), who took charge of the investigation, got the prosecutrix medically examined from Dr. Seema (PW-10), who issued MLC (Ex. PW-10/A), opining the act of sexual intercourse not to be ruled out. Accused was also got medically examined. Documents with regard to the age of the prosecutrix were taken on record and statements of relevant witnesses recorded. With the completion of investigation, which revealed complicity of the accused in the alleged crime, challan was presented in the Court for trial.

8. Accused was charged for having committed an offence punishable under the provisions of Section 4 of the Protection of Children from Sexual Offences Act, 2012 and Section 376 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

9. In order to establish its case, prosecution examined as many as 18 witnesses and statement of the accused under the provisions of Section 313 of the Code of Criminal Procedure was also recorded, in which he took the following defence:

> "We have land dispute with Su/Smt. Baksho, Sonia evi, Usha Devi, Soma Devi and as such I have been impleaded in a false case

> and PWs have deposed falsely. The victim was after me badly and stated to me that if you did not respond, I shall not allow to be of any body else."

Though initially, he expressed his desire of leading evidence in defence, but eventually chose not to do so.

10. Based on the testimonies of witnesses and the material on record, trial Court convicted the accused of the charged offences, vide separate judgments and sentenced as aforesaid.

11. Hence, Criminal Appeals No.4109 of 2013 and Criminal Appeal No.230 of 2015 stand filed by the accused and in Criminal Appeal No.4232 of 2013, State is seeking enhancement of sentence.

12. We have heard Mr. V.S. Chauhan, learned Additional Advocate General, on behalf of the State as also Mr. N.S. Chandel, Advocate, on behalf of the accused. We have also minutely examined the testimonies of the witnesses and other documentary evidence so placed on record by the prosecution. Having done so, we are of the considered view that no case for interference is made out at all. We find that the judgment rendered by the trial Court and based on complete, correct and proper appreciation of evidence

(documentary and ocular) so placed on record. There is neither any illegality/infirmity nor any perversity with the same, resulting into miscarriage of justice. The fact that there was delay in lodging the FIR was taken into account and dealt with by the trial Court, while convicting the accused. Also, given facts do not warrant enhancement of sentence of imprisonment.

13. In *Indian Woman Says Gang-Raped on Orders of Village Court Published in Business and Financial News Dated 230102014, In Re,* (2014) 4 SCC 786, the Apex Court has highlighted the need for having an effective State police machinery for curbing the menace of rape, for such crime is not only in contravention of the domestic laws, but is also in direct breach of obligations under International Law, treaties whereof stand ratified by the State, which is under an obligation to protect its women from any kind of discrimination.

14. The Apex Court has highlighted the need for prompt disposal of cases of crime against women and children. (*Rajkumar v. State of Madhya Pradesh,* (2014) 5 SCC 353).

15. In *Shyam Narain v. State (NCT of Delhi)*, (2013) 7 SCC 77, the Apex Court held as under:

> "27. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court."

16. In *Narender Kumar v. State (NCT of Delhi)*, (2012) 7 SCC 171, the apex Court has cautioned the Court to adopt the following approach:

> "The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of the witnesses which are not of a substantial character."

17. The Apex Court in *Munna v. State of Madhya Pradesh,* (2014) 10 SCC 254, has reiterated the principle that testimony of prosecutrix is almost at par with an immediate witness and can be acted upon without corroboration.

18. From the testimony of Dr. Seema (PW-10), who proved medical record (Ex. PW-10/A), it is apparent that at the time of medical examination, there was scratch mark on the left arm of the prosecutrix; hymen was ruptured; and one finger could be admitted inside the vagina. Though there was no evidence of recent sexual assault, but the doctor did not rule it out. In fact, in Court, this doctor has categorically deposed that penetration of vagina could not be ruled out and the words "recent sexual activity", so recorded by her, would mean that no such act was performed within "five-six hours". However, to the advantage of the accused, she has also opined that if forcible sexual intercourse, on a thorny surface takes place, victim is supposed to have

injuries on her back. But then, it is also a settled position of law that absence of injuries would, in no manner render the version of the prosecutrix to be false or genesis of the prosecution story to be doubtful. There are injuries on the other parts of the body of the prosecutrix.

19. Even in the absence of categorical opinion about rape, opinion of the doctor about such act not being totally ruled out is relevant. Mere absence of spermatozoa would not cast doubt on correctness of the prosecution case. (See: *Datta v. State of Maharashtra,* (2013) 14 SCC 588; and *Prithi Chand v. State of H.P.,* (1989) 1 SCC 432).

20. The Apex Court had the occasion to deal with the case where there was a conflict between medical evidence and ocular evidence of the prosecution. There the Court held as under:

> "23. In any case, to establish a conflict between the medical and the ocular evidence, the law is no more res integra and stands squarely answered by the recent judgment of this Court in the case of *Dayal Singh v State of Uttaranchal*, (2012) 8 SCC 263 (SCC p.283, paras 35036)
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> > "35. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out.

But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh v. State of Punjab*, (2003) 12 SCC 155, the Court, while dealing with discrepancies between ocular and medical evidence, held: (SCC p. 159, para 8)

> '8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

> '34. ....The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by examining the terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the

> expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but that of the Court.'

21. The Apex Court in *Madan Gopal Makkad v. Naval Dubey and another,* (1992) 3 SCC 204, has held as under:

> "34. A medical witness called in as an expert to assist the court is not a witness of fact and the evidence given by the medical officer is really of an advisory character given on the basis of the symptoms found on examination. The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by explaining the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion because once the expert's opinion is accepted, it is not the opinion of the medical officer but of the court.
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> 35. Nariman, J. in *Queen v. Ahmed Ally,* (1989) 11 Sutherland WR Cr 25, while expressing his view a on medical evidence has observed as follows:
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> > "THE evidence of a medical man or other skilled witnesses, however, eminent, as to what he thinks may or may not have taken place under particular combination of circumstances, however, confidently, he may speak, is ordinarily a matter of mere opinion."
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> 36. Fazal Ali, J. in *Pratap Misra v. State of Orissa*, (1977 3 SCC 41, has stated thus:
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> > "... [I]t is well settled that the medical jurisprudence is not an exact science and it is indeed difficult for any Doctor to say with precision and exactitude as to when a particular injury was caused ... as to the

exact time when the appellants may have had sexual intercourse with the prosecutrix."

37. We feel that it would be quite appropriate, in this context, to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty-first Edition) at page 369 which reads thus:

"THUS to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one. "

38. In Parikh 's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

"SEXUAL intercourse. In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any

injury to the genitals or leaving any seminal stains."

39. In Encyclopedia of Crime and Justice (Vol. 4 at page 1356, it is stated:

"... [E]ven slight penetration is sufficient and emission is unnecessary."

40. In Halsbury's Statutes of England and Wales, (Fourth Edition), Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse within the meaning of S. 44 of the Sexual Offences Act, 1956. Vide (1) *R. v. Hughes*, (1841) 9 C&P 752, (2) *R. v. Lines and R. v. Nicholls*, (1844) 1 Car & Kir 393.

41. See also Harris's Criminal Law, (Twenty-second Edition) at page 465.

42. In American Jurisprudence, it is stated that slight penetration is sufficient to complete the crime of rape. Code 263 of Penal Code of Califomia reads thus:

"RAPE; essentials Penetration sufficient. The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime."

43. The First Explanation to S. 375 of Indian Penal Code which defines 'Rape' reads thus:

"EXPLANATION.PENETRATION is sufficient to constitute the sexual intercourse necessary to the offence of rape."

44. In interpreting the above explanation whether complete penetration is necessary to constitute an offence of rape, various High courts have taken a consistent view that even the slightest penetration is sufficient to make out an offence of rape and the depth of penetration is immaterial. Reference may be made to (1) *Natha v. Emperor,* (1925) 26 CrLJ

> 1185, *(2) Abdul Majid v. Emperor*, AIR 1927 Lah 735(2), *(3) Mst. Jantan v. Emperor,* (1934) 36 Punj LR 35, *(4) Ghanashyam Misra v. State,* 1957 CriLJ 469*, (5) Das Bernard v. State*, 1974 CriLJ 1098. In *re Anthony,* AIR 1960 Mad 308 it has been held that while there must be penetration in the technical sense, the slightest penetration would be sufficient and a complete act of sexual intercourse is not at all necessary. In Gour's The Penal Law of India, 6th Edn. 1955 (Vol. II), page 1678, it is observed, "Even vulval penetration has been held to be sufficient for a conviction of rape." ”

22. Also, it is a settled principle of law that absence of injuries on the external or internal parts of the victim by itself cannot be a reason to disbelieve the testimony of the prosecutrix. (See: *Mukesh v. State of Chhattisgarh,* (2014) 10 SC 327); *State of Haryana v. Basti Ram,* (2013) 4 SCC 200; *O.M. Baby (Dead) by Legal Representative v. State of Keral,* (2012) 11 SCC 362; and *State of U.P. v. Chhotey Lal,* (2011) 2 SCC 550).

23. The Apex Court in *Puran Chand v. State of Himachal Pradesh,* (2014) 5 SCC 689, observed that even non-rupture of hymen itself would be of no consequence and rape could be held to be proved even if there is slight penetration.

24. Mere fact that hymen is intact or that there is no actual wound on the private part of the prosecutrix is not conclusive of the fact that prosecutrix was not

subjected to rape. (*Radhakrishna Nagesh v. State of Andhra Pradesh,* (2013) 11 SCC 688).

25. The accused has taken a defence that prosecutrix was in love with him and only after he got married, complaint, false in nature, came to be filed against him. We do not find it to have been probablized.

26. Significantly prosecutrix, at the time of commission of the offence was less than 16 years of age. She states her date of birth to be 11.6.1997, which fact is not disputed by the accused, as is evident from the cross-examination part of her testimony. That apart, her date of birth stands proved through the testimony of Gurmeet Chand (PW-7), Secretary of Gram Panchayat, Barnoh, who has proved register (Ex. PW-7/A), recording date of birth of the prosecutrix, as also the birth certificate (Ex. PW-7/B), issued under the provisions of Section 12/17 of the Registration of Births and Deaths Act, 1969 and Rule 8 of the Himachal Pradesh Registration of Births and Deaths Rules, 2003. Thus, on record, as on 14.3.2013, the date of commission of crime, prosecutrix was below 16 years of age. There is no challenge with regard to date of birth of the prosecutrix.

27. The Apex Court in *Ranjeet Goswami v. State of Jharkhand and another,* (2014) 1 SCC 588, held as under:

> "8. We are of the view that no cogent reasons have been stated by the High court to discard the school leaving certificate which was issued on 10.04.2004 by the then Principal of the school. The certificate reveals the date of birth of the accused as 10.05.1991. The school leaving certificate was proved by examining the Headmistress of the school. She has recognized the signatures of the Principal who issued the school leaving certificate. The evidence adduced by the Headmistress was not challenged....."

28. The Apex Court in *Mohd. Imran Khan v. State Government (NCT of Delhi)*, (2011) 10 SCC 192, had the occasion to deal with the case, even though the birth certificate issued under the Registration of Births and Deaths Act, 1969, reveals the age of the child to be below 16 years, but the medical report of the Radiologist reveals the age to be between 16 and 17 years, the Court, relying upon its earlier decisions in *Jaya Mala v. Home Secretary, Government of Jammu & Kashmir and others,* (1982) 2 SCC 538, gave primacy not to the medical report but to the statutory record, holding that the medical report only gives an idea with a margin of 1-2 years on either side. (Also: *Vishnu alias Undrya v. State of*

Maharashtra, (2006) 1 SCC 283; and *Mst. Aqeela and another v. State of U.P.,* (1998) 9 SCC 526).

29. When assessing the presence or absence of consent, the Court is duty bound to satisfy itself, about the parties being ad idem on essential features. (*Vinod Kumar v. State of Kerala,* (2014) 5 SCC 678).

30. The apex Court in *Roop Singh v. State of Madhya Pradesh,* (2013) 7 SCC 89, held that:

> "9. In *State of U.P. v. Chhotey Lal (2011) 2 SCC 550,* the following passage from the judgment of a three-Judge Bench of this Court in State of H.P. v. Mango Ram3 on the meaning of "consent" for the purpose of the offence of rape as defined in Section 375 IPC, is quoted: (*Chhotey Lal (2011) 2 SCC 550*, SCC p. 560, para 20)
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> > "20. ... '13. ... Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.' (*Mango Ram case (2000) 7 SCC 224, SCC 230*-31, para 13)"

31. The Apex Court in *Deepak Gulati v. State of Haryana,* (2013) 7 SCC 675, has further held that "Consent may be express or implied, coerced or misguided, obtained willingly or through deceipt. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a

balance, the good and evil on each side. The Court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence".

32. In *Nagadeo s/o Kerba Maske v. State of Maharashtra and another,* (2013) 14 SCC 637, the Apex Court held as under:

> "17. Keeping the contents of the chemical analysis report, as noted by the Courts below in mind, when we consider the deposition of the prosecutrix PW-3, we find that she had narrated every minute detail as to how the appellant allured her by taking advantage of her contact with him while singing Bhajan songs, how he persuaded her by stating that recording of her Bhajans in audio cassette would enable her to earn tons of money and in that pretext also tempted her to take away the gold ornaments from the house worth Rs. 1 lakh and thus gained her confidence to go along with him and misused his company by keeping her in a place at Karnool where she was not acquainted with the local language of Telugu and ultimately, abused her physically at least for more than for a month and twenty days. The vivid description of the behaviour of the appellant during the period when she was kept in his custody i.e., between 20.09.2005 to 07.11.2005, was clearly demonstrated by the prosecutrix and any amount of cross examination at the instance of the appellant, did not bring about any candid contradiction in her statement in order to disbelieve her deposition. The trial Court has also elaborately dealt with her deposition and found that the version of the prosecutrix was fully supported by the chemical analyst report, as well as. the medical evidence.

18. In such circumstances, the trial Court in our considered opinion rightly found the appellant guilty of the offences charged against him. The conclusion of the trial Court in having found the appellant guilty of offences under Sections 363 and 376IPC was further upheld by the High Court by the impugned judgment. The High Court, however, found that the conviction for the offence under Section 506 IPC was not sufficiently supported by evidence and conviction and sentence for offence under Section 506 IPC was set aside. Having perused the judgment of the High Court, we arc also convinced that the said conclusion is also perfectly justified.

19. This Court in Lillu alias Rajesh and another vs. State of Haryana reported in AIR 2013 SC 1784, where one of us was a party, held in para 11 that:

> "11. In State of Punjab v. Ramdev Singh, AIR 2004 SC 1290, this Court dealt with the issue and held that rape is violativc of victim's fundamental right under Article 21 of the Constitution. So, the Courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman, i.e. her dignity, honour, reputation and chastity. Rape is not only an offence against the person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also voilates the most cherished fundamental right guaranteed under Article 21 of the Constitution." "

33. Sexual intercourse, consensual in nature, becomes absolutely irrelevant in a case where prosecutrix is below 16 years of age. (*Dilip v. State of Madhya Pradesh,* (2013) 14 SCC 331).

> (Also: *Kailash alias Tanti Banjara v. State of Madhya Pradesh,* (2013) 14 SCC 340; and *Jarnail Singh v. State of Haryana,* (2013) 7 SCC 263)

34. Reiterating its earlier view in *Mohd. Iqbal v. State of Jharkhand,* (2013) 14 SCC 481; *Narender Kumar v. State (NCT of Delh),* (2012) 7 SCC 171, the Apex Court in *Mukesh v. State of Chhattisgarh,* (2014) 10 SC 327, has held that sole testimony of prosecutrix is sufficient to establish commission of rape, even in the absence of any corroborative evidence.

35. In *Radhakrishna Nagesh v. State of Andhra Pradesh,* (2013) 11 SCC 688, the apex Court held as under:

> “33. It will be useful to refer to the judgment of this Court in the case of O.M. Baby v. State of Kerala, (2012) 11 SCC 362, where the Court held as follows:-
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> > "17. ..... ‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same

> weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

18. We would further like to observe that while appreciating the evidence of the prosecutrix, the court must keep in mind that in the context of the values prevailing in the country, particularly in rural India, it would be unusual for a woman to come up with a false story of being a victim of sexual assault so as to implicate an innocent person. Such a view has been expressed by the judgment of this Court in

the case *of State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384 and has found reiteration in a recent judgment in *Rajinder @ Raju v. State of H.P.*, (2009) 16 SCC 69, para 19 whereof may be usefully extracted:

> '19. In the context of Indian culture, a woman - victim of sexual aggression - would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.' "

36. The question, which still needs to be considered, is as to whether the testimony of the prosecutrix, who is a victim of crime, and not an accomplice, inspires confidence or not. Having minutely examined the same, we are convinced about the veracity of her statement as also her creditworthiness as a witness. Prosecutrix categorically states that on

14.3.2013, when she went to the Forest (Choa) to answer the call of nature, at about 4.30 p.m., accused came and forcibly tried to commit sexual intercourse. When she tried to raise voice, accused gagged her mouth. Thereafter, he opened her *Salwar* and subjected her to sexual intercourse. In the meantime, her aunt Baksho Devi arrived at the spot. Thereafter, accused left the spot. She is categorical that accused had been following her for the last two years. The incident was also brought to the notice of her aunt and uncle and upon return of her mother, who had gone to visit a temple, matter was reported to the police. In our considered view, she has withstood the test of cross-examination. She has clarified that the toilet at home is not put to use and the family members go to the fields to ease out themselves. She lives in a village. At the time of incident, her mother was not home. She has explained that her siblings are younger to her. She explains that after gagging her mouth, accused immediately threw her on the ground and though she did resist his acts, but eventually succumbed to his assault. She knows the accused from before and perhaps did not expect him to commit such an

act of crime. Mere intimacy would not mean willingness to perform an act of crime.

37. We find her version to have been fully corroborated by Baksho Devi (PW-2), who also states that after reaching the place of crime and witnessing the incident, she called two ladies Soma Devi and Tara. Presence of accused on the spot was also observed by Sonia Devi (PW-6).

38. It is argued that the witnesses are close relatives and thus their interested testimonies, uninspiring in confidence, cannot be relied upon to convict the accused. Submission, to say the least, only merits rejection, for the spot witnesses, including the prosecutrix, are clear and consistent in their narration of events, and there are neither any improvements nor any embellishments. Also, there being no material contradiction, their version does not cast any doubt about presence of the accused on the spot or his involvement in the crime. There is no animosity or hostility inter se the parties, prompting them to depose falsely.

39. Contradiction, as pointed out on the question of pants being opened up fully or not, does not shake the cred of the witness at all. On the question of material

fact of sexual assault, there is no discrepancy/variation or contradiction.

40. It is argued that there is delay of one day in lodging the FIR. We do not find the same to be fatal at all. In fact, it stands explained on record. There is no premeditation or determination of mind prior to the matter being reported to the police. The incident took place in the evening of 14.3.2013. It has come on record that the father of the prosecutrix is no more in the land of living. Prosecutrix was residing with her mother and siblings. Her uncle was not having a joint kitchen with them. Even though same day, incident was brought to the notice of her uncle Satpal (PW-4), however, as has emerged from his testimony, he waited for Usha Devi (PW-3), mother of the prosecutrix, to return from the temple. Now, Usha Devi has categorically deposed that she reached in the morning at about 9 a.m. and Satpal had telephonically informed her about the incident. We find that on 15.3.2013 itself, matter was immediately brought to the notice of the police when statement of the prosecutrix, under the provisions of Section 154 of the Code of Criminal Procedure, came to be recorded. In rural areas, generally people are reluctant to report the

matter till the arrival of head of the family. Thus, there is no delay in lodging the FIR.

41. Absence of injury on the body of the accused or for that matter prosecutrix, would not render her version in any manner to be false or doubtful. Exact location of the angle in which she was subjected to intercourse, cannot be left to the imagination of the doctor, in whose view, there ought to ought to have been some marks on the buttocks of the prosecutrix. After all, there were injury marks on the face of the prosecutrix, which she has stated to be on account of gagging of her mouth.

42. In our considered view, prosecution has been able to establish the guilt of the accused, beyond reasonable doubt, by leading clear, cogent, convincing and reliable piece of evidence.

43. For all the aforesaid reasons, we find no reason to interfere with the well reasoned judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and/or in complete appreciation of the material so placed on record

by the parties. Hence, the appeal filed by the accused are dismissed.

44. Trial Court has sentenced the accused to rigorous imprisonment for a period of seven years and fine of ₹5,000/-, and in default of payment thereof to further undergo simple imprisonment for a period of three months. This was so done by taking into account the fact now accused is 22 years of age; is married and that it is his first offence. We find no infirmity in the same. Hence, the appeal filed by the State for enhancement of sentence is also dismissed.

Appeal stands disposed of, so also pending application(s), if any.

(Sanjay Karol),
Judge.

(P.S. Rana),
Judge.

May 23, 2016(sd)