

IN THE HIGH COURT OF JUDICATURE AT PATNA

Chunchun Kumar @ Tuntun

vs.

State of Bihar

Criminal Appeal (DB) Number 1447 of 2017

22 September, 2023

(Hon’ble Mr. Justice Vipul M. Pancholi and Hon’ble Mr. Justice
Chandra Shekhar Jha)

Issue for Consideration

Whether judgment of conviction and order for sentence passed by learned Additional District Judge-Presiding Officer, Fast Track Court, Civil Court, Gaya in connection with Session Trial No. 337 of 2017/561 of 2014 (S.J.), arising out of Belaganj P.S. Case No. 252 of 2012, G.R. No 3972 of 2012 is correct or not?

Headnotes

Indian Penal Code, 1860—Section 376—Rape—victim was raped by accused/appellant—accused/appellant was found with victim girl in a room, where occurrence took place—accused/appellant found run away from the place of occurrence after opening the door of the room on arrival of co-villagers.

Held: it difficult to accept the version/testimony of prosecutrix/victim on its face—lack of corroboration on material particulars—on her medical examination no mark of violence was found—victim deposed that she went to doctor and police station in same clothes what she was wearing during the occurrence, but PW-8 deposed clearly that the victim was not produced in original clothes—victim deposed that after the occurrence, when she came out from the alleged room, she did not see any villagers but in her examination-in-chief itself, she deposed that the moment she came out from the house she found all closed family members of accused/appellant—non-examination of Investigating Officer of case also appears fatal—extreme difficulty in relying upon the version of the victim/prosecutrix alone to bring home the charges against the accused/appellant—appeal allowed—impugned judgment of conviction and order for sentence set aside—accused/appellant acquitted of the charges levelled against him.

(Paras 27, 29, 30)

Case Law cited

Ramdas and Ors. vs. State of Maharashtra, (2007) 2 SCC 170; Narendra Kumar vs. State (NCT of Delhi), (2012) 7 SCC 171; Manoharlal vs. State of Madhya Pradesh, (2014) 15 SCC 587; Santosh Prasad @ Santosh Kumar vs. State of Bihar, (2020) 3 SCC 443—**Relied Upon.**

List of Acts

Indian Penal Code, 1860.

List of Keywords

Rape, non-examination of Investigating Officer, prosecutrix, medical examination.

Case Arising From

From judgment of conviction dated 06.10.2017 and order for sentence dated 07.10.2017 passed by learned Additional District Judge-Presiding Officer, Fast Track Court, Civil Court, Gaya in connection with Session Trial No. 337 of 2017/561 of 2014 (S.J.), arising out of Belaganj P.S. Case No. 252 of 2012, G.R. No 3972 of 2012.

Appearances for Parties

For Petitioners: Mr. Ajay Kumar Thakur, Advocate; Mr. Ritwik Thakur, Advocate; Mrs. Vaishnavi Singh, Advocate.

For Respondents: Mr. Abhimanyu Sharma, Advocate.

For the State: Mr. Sujit Kumar Singh, APP.

Headnotes Prepared by Reporter: Mr. Abhas Chandra, Advocate.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1447 of 2017

Arising Out of PS. Case No.-252 Year-2012 Thana- BELAGANJ District- Gaya

Chunchun Kumar @ Tuntun Son of Girija Nandan Prasad, resident of Nanhku
Bigha, P.S. Belaganj, District- Gaya Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Ritwik Thakur, Advocate Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr. Abhimanyu Sharma, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 22-09-2023

Heard learned counsel Mr. Ajay Kumar Thakur
appearing on behalf of the appellant and learned Additional
Public Prosecutor Mr. Sujit Kumar Singh appearing on behalf of
the State.

2. The present appeal preferred under Section
374(2) of Criminal Procedure Code in short (Cr.P.C.) by above
named accused/appellant, challenging the judgment of
conviction dated 06.10.2017 and order for sentence dated
07.10.2017 passed in connection with Session Trial No. 337 of
2017/561 of 2014 (S.J.), arising out of Belaganj P.S. Case No.
252 of 2012, G.R. No 3972 of 2012, whereby and whereunder



learned Additional District Judge- Presiding Officer, Fast Track Court, Civil Court, Gaya convicted the appellant under Section 376 of the Indian Penal Code (In short 'I.P.C.') and sentenced him to undergo rigorous imprisonment for life.

3. The crux of prosecution case as it springs from the written information of informant/victim/**PW-4** that she came to her *Nanihal* situated at village Nanhku Bigha, Belaganj with her mother ten days ago. In the evening of 04.10.2012 at about 5:30 PM, while she was on way to attend the call of nature and so, when she reached near the house of one Kamlesh Yadav in the village, accused Chunchun Kumar caught her hand and dragged in the house of Kamlesh Yadav, then she raised alarm. Accused Chunchun Kumar locked her in a room, threw her on the ground and committed rape upon her. She tried to cry but her mouth was pressed. After sometime, maternal aunt of victim/PW-4, namely, Savitri Devi came and knocked the door. Then accused/appellant left the victim/PW-4, opened the door and fled away. It is stated that mother of victim/PW-4, namely, Sharmila Devi and maternal aunt Savitri Devi, Sarswati Devi, Samudri Devi entered inside the room and brought the victim/PW-4 out. In the meantime, Sushila Devi wife of Kamlesh Yadav, wife of accused/appellant, Malti Devi (mother



of accused/appellant), Rajmanti, Girija Prasad and Akhilesh Prasad reached. When mother and maternal aunt of victim/Pw-4 made complaint of rape by accused/appellant Chunchun, they abused and assaulted them with fists and slaps catching their hair. Thereafter, they came back in the house of Ramdev Prasad (Nana).

4. On the basis of above self-statement of informant/victim (PW- 4), Belaganj P.S. Case No. 252 of 2012 dated 04.10.2012 was registered. After completion of investigation, the investigating officer submitted charge-sheet against accused persons including appellant under Section 376, 376/149, 341/149, 323/149, 504/149 of I.P.C., where learned Jurisdictional Magistrate took cognizance for afore-mentioned offences and after compliance of Section 207 of Cr.P.C., committed case to session court for trial and disposal as per mandate available under Section 209 of Cr.P.C.

5. Learned trial Court after perusal of record and materials/evidences collected during course of investigation framed charges against accused persons. Charge under Section 376 of Indian Penal Code was framed against accused/appellant Chunchun Yadav alongwith charge under Section 376 read with Section 149 of Indian Penal Code against accused/appellant



Chunchun Kumar, Shushila Devi, Malti Devi, Rajwanti Devi, Akhilesh Prasad and Girijanandan Prasad. A separate charge under Section 341/149, 323/149 and 504/149 of Indian Penal Code was also framed, which were duly explained to accused persons including accused/appellant Chunchun Kumar what they pleaded “not guilty” and claimed trial.

6. On commencing trial to establish its case before the learned trial court the prosecution altogether examined total of eight (08) witnesses, namely, Savitri Devi (PW-1), Samundri Devi (PW-2), Sharmila Devi (PW-3), who is mother of the victim, Shimpi Kumari (PW-4), who is victim and also informant of this case, Indresh Yadav (PW-5), who is brother of the victim, Ram Deo Yadav (PW-6), who is father of the victim, Pintu Yadav (PW-7), and Dr. Poonam Kumari (PW-8).

7. The prosecutions also exhibited the following documents during the trial which are as under:

1. Exhibit 1 – Six signatures on Fardbeyan

F.I.R.

2. Exhibit 1/1- Signature of victim on

written report.

3. Exhibit 2 – Signature of victim on stated

under Section 164 of

Cr.P.C.



4. Exhibit 3 – Medical Report of victim.

8. After closure of the prosecution case, the statement of accused/appellant was recorded under Section 313 of the Code of Criminal Procedure (In short 'Cr.P.C.'), where they show their complete innocence by denying all incriminating circumstances/evidences explained to them.

9. One witness namely, Ashok Kumar Singh (DW-1) was examined in defence during trial, where duty chart of accused/appellant Chunchun Kumar was also exhibited in defence, as:

Exhibit 'A'- Duty Chart.

10. After conclusion of trial, learned trial court by taking note of evidences available on record, legal positions and argument advanced by the parties, convicted the accused/appellant for the offences under Section 376 of the Indian Penal Code, where upon conviction, accused/appellant was sentenced for life imprisonment for the offence committed under Section 376 of the Indian Penal Code, rest of the accused persons were acquitted from their respective charges as discussed above. Impugned judgment is silent, whether accused/appellant convicted for the charges framed under Section 341, 323 and 504 read with Section 149 of Indian Penal



Code, being aggrieved with aforesaid order of conviction and sentence accused/appellant, namely, Chunchun Kumar @ Tuntun preferred the present appeal.

11. Hence, the present appeal.

ARGUMENT OF LEARNED COUNSEL FOR THE APPELLANT

12. Learned counsel appearing on behalf of accused/appellant submitted that on the basis of evidences available against accused/appellant, it cannot be said that prosecution established its case beyond reasonable doubt. It is pointed out that several contradicting material appears from the depositions of prosecutrix/victim of this case, who examined before the learned trial Court as PW-4 and certainly her depositions cannot be accepted as 'sterling witness'. It is submitted that as per the case of prosecution, occurrence took place inside the house of one Kamlesh Yadav, who was residing there with his wife and six children. It appears that said place of occurrence is surrounded three side by wall and one side by house and as such, case of prosecution as to drag prosecutrix/victim inside the house from the road is not appearing convincing on its face. It is also submitted that there is several contradicting materials in depositions of witnesses, who claimed to arrive at the place of occurrence on alarm raised



by prosecutrix/victim and most of them are relative/family members of the prosecutrix/victim. It is pointed out that out of local political dispute and differences, the present false case was lodged with interference of daughter of maternal uncle of prosecutrix/victim, namely, Priti Kumari, who is working as a police inspector with Bihar Police. It is submitted that upon medical examination no injuries were noticed upon prosecutrix/victim rather, she was found menstruating. While concluding the argument, it is submitted that investigating officer of this case was also not examined during the trial, as to deprive accused/appellant to contradict the depositions of prosecution witnesses, which surfaced first time during the trial and as such, he was deprived from basic legal right of criminal trial, as to prove his innocence.

13. While concluding the argument learned counsel relied upon the report of Hon'ble Supreme Court as reported in the matters of :

(i) Ramdas and Ors. v. State of Maharashtra reported as (2007) 2 SCC 170.

(ii) Narendra Kumar v. State (NCT of Delhi) reported as (2012) 7 SCC 171.

(iii) Manoharlal v. State of Madhya Pradesh reported as (2014) 15 SCC 587.

(iv) Santosh Prasad@Santosh Kumar v. State of



Bihar reported as (2020) 3 SCC 443.

ARGUMENT OF LEARNED APP FOR THE STATE

14. Learned APP while appearing on behalf of the State submitted that the accused/appellant was found with victim girl in a room, where occurrence took place and same fact appears corroborated by several prosecution witnesses, who arrived immediately, on alarm raised by prosecutrix/victim. It is submitted that accused/appellant found run away from the place of occurrence after opening the door of the room on arrival of different prosecution witnesses and co-villagers. It is submitted that rape is a legal finding and therefore, non-finding of any physical injuries does not lead to conclusion, *ipso facto*, that rape was not committed upon. It is submitted that victim consistently supported the occurrence through her deposition against accused/appellant and as such, there is no doubt to accept her as 'sterling witness'. It is submitted that, if any, contradictions surfaced during the course of trial on part of other prosecution witnesses, on that score firm deposition of prosecutrix/victim *qua* commission of rape upon her cannot be discarded.

15. We have perused the trial court records and proceedings and heard the arguments as canvassed by learned



counsel appearing on behalf of the parties.

DISCUSSION OF EVIDENCES

16. PW-4 is victim as well as informant of this case. It appears from her deposition that ten days prior to this occurrence, she was in village of her maternal uncle and on 04.05.2012, while she was on the way to attend her natural call at about 5:30 PM and so as she reached near to the house of one Kamlesh Yadav, Chunchun Kumar @ Tuntun (accused/appellant) hold and dragged her in the house of one Kamlesh Yadav. Her mouth was pressed and room was locked from inside by accused/appellant and thereafter, pushing her to the ground rape was committed upon her by accused/appellant. After sometime, the door was knocked by mother of victim and thereafter, accused/appellant opened the door and run away. Her mother came inside the room and after dressing her properly brought her to house of maternal grandfather. It was deposed by her that when she came out from the house of Kamlesh Yadav her mother complained about the occurrence to accused Malti Devi, Indu Devi, Sushila Devi, Rajwanti Devi, Kamlesh Yadav, Akhilesh Yadav and Girijanand Yadav and on said complaint, they all started to assault them and thereafter, she was brought to the house of her maternal uncle. She went thereafter, to



police station and lodged case. She identified her signature on her *fard-e-beyan*, which is exhibited as **Exhibit no. 1/1**. She remained in police station during night and in morning went to hospital and thereafter, on next day her statement was recorded before learned Judicial Magistrate. She also identified her signature over her statement under Section 164 of Cr.P.C., which has been exhibited as **Exhibit No. 2** and thereafter, she came to her own village. She identified the accused persons present before the Court and also claimed to identify those, who were not present on that day.

On cross-examination, it was deposed by her that Indu Devi is the wife of accused/appellant Chunchun Kumar @ Tuntun, Malti Devi is the mother, Rajwanti Devi and Sushila Devi are aunts, Girijanand is father and Akhilesh Yadav is uncle. It is specifically deposed that the Kamlesh Yadav is uncle of accused/appellant Chunchun Kumar @ Tuntun. She stated that the name of his maternal uncles are Pintu Kumar and Indresh Yadav whereas, name of her maternal grandfather is Ramdeo Prasad. The name of maternal aunts are Samudri Devi and Savitri Devi. The distance between her village and village of her maternal uncle is of 3 Km. She claimed to be literate and also claimed to be a student of Gandhi High School Parbhat



Nagar. It was stated that she was assaulted by Indu Devi by fight and fists for 2 to 3 minutes, assault was made on her back but she did not disclose it to doctor that she received injury. It was stated by her that she was not acquainted with the name of accused/appellant prior to this occurrence and same was disclosed by her maternal uncle Inder Yadav. She also deposed that name of one maternal uncle is Vijay Yadav, the name of daughter of Vijay Yadav is Priti Kumari, who is working as police inspector. It was also stated by her that at the time of occurrence, there was visibility. House of Kamlesh Yadav is surrounded by the houses of several villagers and when she was caught hold by accused/appellant outside the house of Kamlesh, none came there. She tried to save herself but was dragged for two minutes before taking inside room and in this process, she received injuries upon her leg and hand. She also stated to receive injuries on her hand, which became swollen and also on leg, which became red. She stated to raise alarm, while she was dragging. It is stated that when she was taken inside the room at that point of time, she did not hear any alarm raised by her mother, maternal uncle and villagers. It is stated specifically by her that when she was thrown to the ground, she received injuries on her right elbow. It was stated that after half an hour,



the door was knocked, she tried her best during the course of rape to protest accused/appellant with her all possible efforts. She stated to receive injuries on her back, elbow and waist but those injuries were only scratch in nature. She stated that during occurrence blood was oozed, but failed to disclose whether same was spread over ground or not, but deposed that her clothes became dirty. It was stated that during occurrence, she was wearing '*Salwar*', where the string of '*Salwar*' was broken by accused/appellant. It is also deposed by her that when mother and maternal aunt came inside the room, she tied the string of her *salwar* and when she came outside the room after the occurrence, she did not find any villagers thereof. She went to police station and hospital in same clothes what she was wearing at the time of occurrence. The said clothes were not taken by the police inspector but it was disclosed by her to doctor that at the time of occurrence, she was wearing the same clothes. She also deposed that Kapil Yadav is not known to her and also denied suggestion to depose so intentionally as Kapil Yadav is her cousin maternal uncle, who is accused in the murder case of one Rajesh Kumar and to create pressure, the present false implication was raised. She stated that she is not aware, whether accused/appellant Chunchun Kumar @ Tuntun



was living separately with Kamlesh. She failed to disclose that mother of Priti Kumari and aunt of accused/appellant Mamta Devi were contested Zila Parishad election in which Mamta Devi was elected and for the said reason Priti Kumari in collusion with Kapil Yadav and Mamta Devi, lodged present false and fabricated case. She also denied suggestions that as she was studying at Panahi School and was living with Priti Kumari, therefore, under her influence she lodged present case, which was never committed upon.

17. PW-1 Savitri Devi & PW-2 namely, Samudri Devi are maternal aunts of prosecutrix/victim and PW-3 namely, Sharmila Devi is the mother, almost deposed the same fact in their examination-in-chief, as they arrived at place of occurrence on hearing alarm raised by unknown person. PW-1 deposed that she came to know that accused/appellant Chunchun Kumar forcibly taken victim inside room of the house, belongs to Kamlesh Yadav and when she alongwith PW-2 and PW-3 arrived there, they found that door was closed from inside and by that time they noticed Malti Devi, Rajwanti Devi, Sushila Devi, Girijanand Prasad, wife of accused/appellant, namely, Indu Devi and Akhilesh Prasad were there. She deposed that when door was knocked by them, accused/ appellant opened the



door and ran away, whereas victim was remain inside room and was half necked, where on query she disclosed the occurrence that accused/appellant committed rape upon her. When the occurrence was reported to the parents and family members of the accused/appellant they were assaulted. It was deposed by her that other persons were remain outside, whereas she alongwith two persons entered into the room in which occurrence took place. It was deposed by her in cross-examination that accused/appellant ran away after jumping boundary wall. The house having two rooms and courtyard surrounded by walls by three sides, the people tried to chase and catch accused/appellant but he ran away towards western side. It was deposed by her that Malti Devi is the mother of accused/appellant, Rajwanti Devi and Sushila Devi are aunts, Girijanand Prasad is father and Akhilesh Prasad is uncle of accused/appellant. She stated that the victim was taken to doctor in same clothes, what she was wearing at the time of occurrence and said clothes were not given to police inspector for investigating present case.

18. PW-2 namely, Samudri Devi, who was admittedly, present on place of occurrence deposed in her examination-in-chief itself that the door was opened by victim and then, she went inside room and thereafter, accused/appellant



ran away. She deposed in her cross-examination that she saw accused/appellant Chunchun to catch hold prosecutrix/victim near to house of Kamlesh and also saw to take her inside and to close the door but subsequently, she said that she is not the eye-witness of the occurrence.

19. PW-3 is the mother of the victim who on the date of occurrence was also available in her parental village, where occurrence took place but she was not the eye-witness of the occurrence. She stated that the door was knocked by the villagers, and it was knocked for five minutes and thereafter it was opened and by that time total ten persons were gathered in courtyard (Angan). She stated that the house of Akhilesh having four rooms living there with wife, four daughters and two sons. She specifically deposed that three women received injuries during the course of occurrence and they were also treated. Police inspector Priti Kumari had not visited house on the day of occurrence before going to police station rather, she came on second day of the occurrence.

20. PW-5, PW-6 and PW-7 are also not eye-witnesses of the occurrence and deposed in support of the case of prosecution on the basis of hearsay version, as they received from PW-1, PW-2 and PW-3. PW-5 is the husband of PW-2 and



as such also appears relative of prosecutrix/victim. PW-6 is Ramdeo Yadav, who came to know about the occurrence from Samudri Devi (PW-2), who is his daughter-in-law. Accordingly, this witness appears maternal grandfather of prosecutrix/victim.

21. PW-7 is Pintu Yadav, who also came to know about the occurrence from the mouth of Savitri Devi (PW-1), Sharmila Devi (not examined) and Samudri Devi (PW-2). He stated in cross-examination that one Priti Kumari is her niece and she is police inspector and his brother is also working with Bihar Police. He deposed that mother of Priti namely, Vijayalakshmi and Mamta Devi, mother of accused/appellant contested election against each other. He denied to depose falsely out of political disputes.

22. PW-8 is the doctor, namely, Dr. Punam Kumari, who examined victim on 05.11.2012 at about 1:30 PM at Prabhawati Hospital, Gaya, where she was working as a medical officer and found that:

(i) Clothes not original

(ii) M.B.- No mark of violence present

(iii) Vaginal slide did not show presence of any live or dead 'spermatozoa'.

(iv) Pubic hairs present. No making of pubic hairs.



Mons Veneris, labia Majora, labia minora normal looking. Vestibule, fourchette and posterior commissure visualized after wiping the area with wet cotton swab all normal looking as the victim is menstruating that confirmed by speculum examination that blood seen coming from the external as no mark of either external or internal violence present on her private part. No foreign stain neither any foreign hair is present on her private part. Vaginal orifice admits index finger easily.

Opinion:- Though there is no evidence of recent sexual intercourse yet rape cannot be denied. This report has been written and signed by her and exhibited as **Exhibit No. 3**.

On cross-examination, she deposed specifically that victim was menstruating and did not complain any pain during walking. It was specifically deposed by her that she did not find any mark of violence on her arm, breast, lower part of abdomen, face, inner part of thigh. Vaginal orifice admits index finger easily. A question was asked at this stage, whether she was habitual of sexual intercourse and same was replied in negative. It was opined by her that rape cannot be denied but, on what



basis, was not mentioned by her.

23. In the matter of *Ramdas and Ors. v. State of Maharashtra* reported as **(2007) 2 SCC 170**, it has been held by Hon'ble Supreme court in paragraph no. **23** as under:

23. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality.

24. In the matter of *Santosh Prasad@Santosh Kumar v. State of Bihar* reported as **(2020) 3 SCC 443**, it has been held by Hon'ble Supreme court in paragraph nos. **5.4, 5.4.1, 5.4.2 and 5.4.3** as under:

5.4 Before considering the evidence of the prosecutrix, the decisions of this Court in the cases of Raju v. State of M.P., (2008) 15 SCC 133 and Rai Sandeep @ Deepu, v. State (NCT of Delhi), (2012) 8 SCC 21 relied upon by the learned Advocate appearing on behalf of the accused/appellant are required to be referred to and considered.

5.4.1 In the case of Raju v. State of M.P., (2008) 15 SCC 133, it is observed and held by this Court in paragraphs 11 and 12 as under:

"11. It cannot be lost sight of that rape causes the



greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in State of Punjab v. Gurmit Singh, [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should,



without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

5.4.2 *In the case of Rai Sandeep @ Deepu, v. State (NCT of Delhi), (2012) 8 SCC 21, this Court had an occasion to consider who can be said to be a “sterling witness”. In paragraph 22, it is observed and held as under:*

“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.”

5.4.3 In the case of Krishna Kumar Malik v. State of Haryana, (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an 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.

25. Further, in the matter of **Narendra Kumar v. State (NCT of Delhi)** reported as **(2012) 7 SCC 171**, it has been held by Hon’ble Supreme court in paragraph no. **22** and **25** as under:



22. *Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. (Vide: Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220)*

25. *In Tameezuddin @ Tammu v. State (NCT of Delhi), (2009) 15 SCC 566, this Court held as under:*

"It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter."

26. Further, in the matter of ***Manoharlal v. State of Madhya Pradesh*** reported as ***(2014) 15 SCC 587***, it has been held by Hon'ble Supreme court in Paragraph 8 as under:

8. *Though as a matter of law the sole testimony of the prosecutrix can sufficiently be relied upon to bring home the case against the accused, in the instant case we find her version to be improbable and difficult to accept on its face value. The law on the point is very succinctly stated in Narender Kumar v. State (NCT of Delhi) reported in (2012) 7 SCC 171, to which one of us (Dipak Misra, J). was a party, in following terms: (SCC p. 178, para 20 and 21):*

"20. It is a settled legal proposition that once the



statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial which may lend assurance to her testimony....."

27. "By importing above discussed legal ratio, we found it difficult to accept the version/testimony of prosecutrix/victim/PW-4 on its face. We searched for support from other material but find complete lack of corroboration on material particulars."

27.1 Firstly, PW-4/victim specifically deposed in



her cross-examination that she received injuries during the course of occurrence. She was dragged for a short distance before taking inside room and in such process, she received injuries on her leg, hand etc. She stated specifically that she received swollen injuries on her hand and also received scratch injuries and also protest the commission of rape upon her at her best but on her medical examination, which was conducted on very next day by PW-8, no mark of violence and also no any visible injuries were noticed upon her including in and around her private parts, rather she was found menstruating.

27.2 Secondly, PW-1, PW-2 and PW-3 arrived at place of occurrence together, who are none but the maternal aunts and mother of the victim, where PW-1 and PW-3 deposed in their examinations-in-chief that after knocking the door, it was opened by accused/appellant, whereas PW-2 deposed that it was opened by prosecutrix/victim.

27.3 Thirdly, PW-4/victim deposed that she went to doctor and police station in same clothes what she was wearing during the occurrence, but PW-8 deposed clearly that the victim was not produced in original clothes.

27.4 Fourthly, PW-4/victim deposed that after the



occurrence, when she came out from the alleged room, she did not see any villagers but in her examination-in-chief itself, she deposed that the moment she came out from the house of Kamlesh Yadav she found Malti Devi, Indu Devi, Sushila Devi, Rajwanti Devi, Kamlesh Yadav, Akhilesh Yadav and Girijanand Yadav, all closed family members of accused/appellant.

27.5 Fifthly, PW-3 is mother of prosecutrix/victim, who deposed in her examination-in-chief that when the complain regarding occurrence was made to Akhilesh Yadav, Malti Devi, Rajwanti Devi, Sushila Devi, Indu Devi and Kamlesh Yadav who are the family members, mother and wife of accused/appellant, she was physically assaulted by them alongwith Savitri Devi (PW-1) and Samudri Devi (PW-2) but they were not examined by doctor and non-explanation of injuries before the trial court also appears fatal to the prosecutions.

27.6 Sixthly, PW-3 also deposed in her examination-in-chief that she manage to escape anyhow from place of occurrence and thereafter, came to police station, where victim lodged her complaint, but PW-4/victim in her examination-in-chief itself deposed that after making complaint



to the parents of accused/appellant physical assault was caused to her and her mother only and thereafter, firstly she came to house of her maternal grandfather and thereafter, went to police station.

27.7 Lastly, non-examination of Investigating Officer of this case also appears fatal. In the circumstances, we find extreme difficulty in relying upon the version of the victim/prosecutrix alone to bring home the charges against the accused/appellant. No need to discuss separately “*plea of alibi*” of accused/appellant in view of above discussed facts. Accordingly, we are inclined to give benefit of doubt to the accused/appellant.

28. Accordingly, in view of above factual discussions and legal propositions, we find that prosecutions failed to establish its case beyond reasonable doubt.

29. Hence, the appeal stands allowed.

30. The impugned judgment of conviction dated 06.10.2017 and the consequent order for sentence dated 07.10.2017 passed by the learned Additional District Judge-Presiding Officer, Fast Track Court, Civil Court, Gaya in Session Trial No. 337 of 2017/561 of 2014 (S.J.), arising out of



Belaganj P.S. Case No. 252 of 2012, G.R. No 3972 of 2012, are set aside. The accused/appellant is acquitted of the charges levelled against him. He is directed to be set at liberty forthwith unless his detention is required in any other case.

31. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellant in furtherance of order of sentence, be refunded to him immediately.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

Archana/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	
Transmission Date	

