

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.936 of 2018

Arising Out of PS. Case No.-40 Year-2015 Thana- AMBA District- Aurangabad

1. Deepak Kumar @ Sunny
2. Rahul Kumar, Both are Son of Yogendra Singh, R/o Vill.- Balia, P.S.- Amba, District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 612 of 2018

Arising Out of PS. Case No.-40 Year-2015 Thana- AMBA District- Aurangabad

1. Yogendra Singh and Anr S/o Late Sheonandan Singh,
2. Pradeep Singh S/o Late Sheopujan Singh, Both R/o Vill.- Balia, P.S.- Amba, District- Aurangabad.

.. ... Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 936 of 2018)

For the Appellant/s : Mr. Vishwanath Pd. Sinha, Sr. Advocate
Sri. Sanjay Kumar Singh, Advocated
Sri. Prabhash Ranjan Thakur, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 612 of 2018)

For the Appellant/s : Mr. Vishwanath Pd. Sinha, Sr. Advocate
Sri. Sanjay Kumar Singh, Advocated
Sri. Prabhash Ranjan Thakur, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

and

HONOURABLE MR. JUSTICE DR. ANSHUMAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date: 18-03-2026

Both the criminal appeals filed by the convicts challenge the judgment of conviction dated 03rd May 2018 and order of sentence dated 10th May 2018 passed by the learned



Special Judge (POCSO Act), Aurangabad in GR Case No. 864 of 2015/46 of 2015 arising out of Amba P.S. Case No. 40 of 2015.

2. The appellants challenged their conviction under Section 366A of the IPC where they were sentenced to rigorous imprisonment for 7 years with fine of Rs. 10,000/- in default of payment of fine further imprisonment for three months and under Section 376D of the IPC sentencing the appellants to imprisonment for life with fine of Rs. 50,000/- as well as Section 4 of the Protection of Children from Sexual Offence Act, 2012 (hereinafter described as the 'POCSO Act') awarded thereunder. The trial court directed that the sentences of imprisonment shall run concurrently. The principle grounds urged assailing the impugned judgment are misappreciation of evidence by the learned trial court, undue reliance on interested family witnesses, material contradictions between the victim's statement under Section 164 of the CrPC and her deposition in Court, absence of independent corroboration, lack of medical support for forcible gang rape and the Investigating Officer's finding that the case was unfounded against appellant Yogendra Singh.

Case of the Prosecution

3. Amba P.S. Case No. 40 of 2015 was registered on 16th May 2015 on the basis of a complaint lodged by the father of the victim, (hereinafter called as the 'informant'), alleging *inter alia*



that in the night of 15/16 May 2015 at about 12:00 at midnight her minor girl (name of the victim girl is not disclosed and she is described as victim), then aged about 15/16 years, was kidnapped from her house situated at Village Balia within P.S. Amba in the District of Aurangabad. It was alleged by the informant that the co-villagers, namely, Yogendra Singh, Deepak Kumar Singh @ Sunny, Rahul Kumar, Pradeep Singh and Sonal Kumar kidnapped her for the purpose of illicit intercourse or to marry her illegally. The trial court's record shows that the victim was rescued on 18.05.2015 near the *Haat* (market) situated by the side of a Shiva Temple in the same village in early morning. Her statement under Section 164 of the CrPC was recorded on 20.05.2015. The victim was medically examined on 19.05.2015 by a Medical Board. The accused persons were arrested. The I.O. examined available witnesses and recorded their statement under Section 161 of the CrPC and on conclusion of investigation, the I.O. submitted charge sheet against Deepak Kumar Singh and Rahul Kumar Singh while final report was submitted against the accused Yogendra Singh, Pradeep Singh and Sonal Kumar. On the basis of the said charge sheet, cognizance was taken against the charge-sheeted accused persons on 5th January 2016.

4. Since the offence punishable under Section 366A/376D of the IPC and Section 4 of the POCSO Act are exclusively triable by



the learned Court of Sessions, the case was committed to the learned Special Court under the POCSO Act for trial and disposal.

Witnesses on behalf of the prosecution.

Sl. No.	Prosecution Witness	Role/Relation
1	Prosecution Witness no. 1	Victim
2	Prosecution Witness no. 2	Mother of the victim
3	Prosecution Witness no. 3	Grandmother of the victim
4	Prosecution Witness no. 4	Father of the victim/informant
5	Prosecution Witness no. 5	Uncle of the victim
6	Prosecution Witness no. 6	Investigating Officer
7	Prosecution Witness no. 7	Dr. Vikash Kumar Sinha – Member of the Medical Board/Radiologist
8	Prosecution Witness no. 8	Dr. Bibhuti Prasana- Medical Board Member/ Dentist
9	Prosecution Witness no. 9	Dr. Rina Kumari – Member of the Medical Board/Gynecologist

5. After examination of the witnesses on behalf of the prosecution, the accused persons were examined under Section 313 of the CrPC. Subsequently, in support of their defence, the accused persons examined the following witnesses.

Sl. No.	Defence Witness	Remarks
1	Defence Witness no. 1	Ramashish Mahto
2	Defence Witness no. 2	Sanyog Kumar Singh

6. Consistent defence taken by the appellants is that they were not involved in kidnapping the victim or to commit any act of sexual atrocities upon her, they were falsely implicated in the instant case.

Evidence in Trial Court



7. The victim girl was examined during trial as PW-1. She deposed in her evidence that on 15.05.2015 at night she was sleeping on the roof of their house with her mother and other family members. She woke up hearing some sounds coming from the ground floor. She thought that her grandfather was asking for water. She came down and found that someone was knocking at the entrance door of their house. She opened the door immediately, appellant Deepak Kumar Singh, Rahul Kumar and Sonal Kumar gagged and blind-folded her. She was forcibly taken in a four-wheeler to some distance and confined her to a dark room. PW-1 further deposed that the appellants repeatedly raped her one by one for three days. On 17.05.2015, Yogendra Singh and 2/4 other persons visited the said house where she was confined and the appellants discussed about either releasing her or committing her murder. The appellants also threatened her that she and her family members would be killed if she discloses the incident. One Pradeep Singh also threatened her. On the next day in the early morning she was again blind-folded and dropped at a place. The victim could understand that she was dropped in front of a *Haat* situated by the side of a Shiva Temple of their village. Then after 2/3 minutes of her release, police arrived at the spot and rescued her and took her to the local police station.



8. During investigation of the case, she made statement under Section 164 of the CrPC. In her statement she identified all the accused persons and narrated the incident which had alleged been committed upon her by the appellants. In her cross-examination she denied that she was having any romantic relationship with any of the appellants or that she tried to implicate the appellants falsely. It is important to note at this stage that the deposition of PW-1 appears to be consistent with the evidence of other witnesses in relation to the charge of kidnapping, but lacks precision regarding the place where she was allegedly confined. It is important to note that the deposition of PW-1 is materially inconsistent with her previous statement under Section 164 of the CrPC which described only a story of kidnapping by three persons without any mention of rape by the appellants or giving threats to her. This omission goes to the root of the offence under Section 376D of the IPC and Section 4 of the POCSO Act.

9. PW-2, is the mother of the victim. It is ascertained from her deposition that on 15.05.2015, she woke up from her sleep at about 02:00 am at night and found her daughter (victim herein) who was sleeping by her side missing. She also discovered that the main gate of the house was open. On her call, other family members of the house woke up and they conducted search for the



victim in the village. It is also found from her deposition that she was previously threatened by appellants, namely, Deepak Kumar Singh, Rahul and Sonal not to make a fuss or the girl would be killed. On the following morning also, the family members of the victim vigorously searched to find out the girl. During such time, Yogendra Singh and Pradeep Singh threatened the husband of PW-2. thereafter, he lodged FIR in the local police station. The victim was recovered on 18.05.2015 in the morning. She narrated the entire incident to her parents and other family members. PW-2 came to know from her that she was taken to a dark room by a car and the appellants committed rape upon her. However, the medical officer did not find any external or internal injury on the person of the victim.

10. PW-3, Baban Singh is the grandfather of the victim. In his deposition he stated on oath that he woke up from sleep at about 2:30 am on 15.05.2015 to learn that the victim was missing with the main gate of their house open. He also took part in conducting search in their village for the victim girl and received threats from Yogendra and Pradeep not to make a fuss or the victim would be killed. The evidence of all the witnesses on the prosecution is consistent about her recovery on 18.05.2015. The witness also stated that the victim was sexually assaulted by the appellants but the medical officer did not find any injury. PW-4 is



the father of the victim on the basis of whose fard beyan, Amba P.S. Case No. 40 of 2015 was registered on 16.05.2015. It appears from the statement made in the FIR that in the dead hours of night of 15.05.2015, he woke up hearing the call of his wife and came to know that the victim was missing and entrance door of his house was open. He and other family members conducted search of the victim in the village and heard a rumour that the victim might be kidnapped by Rahul, Deepak @ Sunny and Sonal. He further deposed that he asked about the matter to Yogendra Singh, father of Depak but Yogendra Singh and one Pradeep threatened him seeing that his daughter would be killed. On the 18.05.2015 victim was recovered, then only he came to know that the appellants confined her in a room and committed rape on her for three days. It is pertinent to note that the informant did not state anything about receiving threats from Yogendra Singh and Pradeep in her FIR. No such statement was also made by him before the police.

11. The evidence of PW-5, Amit Kumar is the same as that of the evidence of other witnesses.

12. From the evidence of PW-6, S.I. Surrendra Prasad, conducted investigation of the case. It appears that after registration of Amba P.S. Case No. 40 of 2015 on 16.05.2015, he conducted raid to recover the victim girl and on 18.05.2015, she



was recovered from a place in her village near the *Haat* in front of a Shiva Temple. The victim had no injury mark in person. Her medical examination was conducted on 19th May 2015 and statement of the victim under Section 164 of the CrPC was recorded on 20.05.2015.

13. It is already recorded that in her statement under Section 164 of the CrPC the victim did not state anything about the commission of rape by the appellants and that Yogendra Singh and Pradeep Singh visited the room where she was confined and talked to the appellants either about her release or committing her murder. In her statement under Section 164 of the CrPC, the victim stated her age as 17 years.

14. PW-7, Dr. Vikas Kumar Singh, PW-8, Dr. Bibhuti Prasana and PW-9, Dr. Rina Kumari were posted at Sadar Hospital Aurangabad. They constituted a Medical Board to examine the victim medically. From the evidence of PW-9, Dr. Rina Kumari, it appears that she examined the victim on 19.05.2015 at about 01:10 pm. She did not find any marks of violence on the body, back, breast, thigh or in and around the private part of the victim. She also found ruptured hymen and vagina admitting one finger easily. There was no abnormal discharge, bleeding, injury on her vulva, vagina, perineum, etc. The patient did not make any complaint of tenderness or



bruising. The Medical Board opined that she had undergone sexual act. From the Radiological as well as Dental Report, PW-7 and PW-8 opined that the approximate age of the victim is between 15 and 16 years.

15. The FIR and relevant medical records were duly exhibited during trial. Defence case as disclosed from the cross-examination of the witnesses on behalf of the prosecution and examination of the accused persons under Section 313 of the CrPC appears to be complete denial of the allegation made out against them. The defence also examined two witnesses, One Ramashish Mahto was explained as DW-1. He is the resident of the same village. He deposed that as per his knowledge goes, no incident took place with the daughter of the informant on the night of 15.05.2015 and the appellants were falsely implicated in this case.

16. PW-2, Sanyog Kumar Singh is the son-in-law of Pradeep Singh. It is ascertained from his evidence that he was present in Balia from 07.05.2015 to 18.05.2015. He denied that the victim was kidnapped by the appellants. According to him, the victim remained at home throughout and the entire prosecution's case is false.

Decision by the Trial Court.



17. This Court at the very beginning of the judgment has recorded that the trial court on appreciation of the evidence on record convicted the accused persons/appellants and sentenced them of various descriptions for the offence punishable under Section 366A of the IPC and Section 376 D of the IPC read with Section 4 of the POCSO Act.

Our finding

18. It is found from the evidence of PW-2 to PW-5 that their evidence is absolutely hearsay in nature. Except the victim, none of the above-mentioned witnesses are the eye-witness of the occurrence. They did not see the appellants knocking at door of the informant at dead hours of night on 15.05.2015. They did not see the victim girl opening the door or that three miscreants, namely, Rahul Kumar, Deepak Kumar Singh @ Sunny and Sonal gagged and blind-folded her and forcibly took her by a car and confined her in a dark room. They heard the incident from the victim girl after she was recovered on 18.05.2015 by the police.

19. It is needless to say that in plethora of cases the Hon'ble Supreme Court held that in a case of sexual assault, the evidence of the victim is of utmost importance. The victim's evidence cannot be equated with the evidence of accomplice. She is a victim of crime. A victim does not generally make a false statement regarding commission of an offence at the cost of her



virginity and womanhood. In ***Chandraprakash Kewalchand Jain v. State of Maharashtra*** reported in ***1990(1) SCC 550***, the Hon'ble Supreme Court summarized the position of law regarding appreciation of evidence of a prosecutrix in the following words:-

“16. A prosecutrix of a sex offence cannot be put on 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. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

“It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary.”

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.”

20. In the instant case, the FIR was lodged by the father of the victim when she was missing. Therefore, he did not know whether the victim had been ravished or not. According to the prosecution's case and the statements of the witnesses, the family members of the victim came to know about the commission of



sexual assault by the appellants only after she was recovered. It is already recorded that she was recovered on 18.05.2015. Her medical examination was done on 19.05.2015 and the victim made her first statement recorded judicially under Section 164 of the CrPC on 20.05.2015. Surprisingly enough, she did not make any allegation of the commission of rape by the appellants before the learned Magistrate. Except for the allegation of kidnapping, she did not utter a single word. This is where serious abnormalities lie between the prosecution's case, the initial statement of the victim under Section 164 of the CrPC, and her subsequent evidence on oath.

21. The victim herself stated that she was about 17 years old at the relevant point of time. The Medical Board, by way of an ossification test and dental examination, found her approximate age to be between 15 and 16 years. From the report of PW-9, Dr. Rina Kumari, we find that the victim was well-oriented, therefore, when a girl aged about 15-17 years was kidnapped and she was raped repeatedly by three appellants for three days, it is natural and probable that she would at least resist the perpetrators of offence from committing such heinous act. In her evidence, she stated the appellants committed rape upon her against her will forcibly, if there is a forcible physical relationship upon a girl by three persons for three days, there



must be some injury marks on different parts of her body. But the medical officer (PW-9) did not find any mark of violence on her body. On the other hand, she found old rupture of hymen and the vagina easily admitting one finger meaning thereby the victim had previous experience of sexual intercourse.

22. The Hon'ble Supreme Court in *Vadivelu Thevar v. State of Madras* reported in *AIR 1957 SC 614*, laid down "three categories" for appreciating the testimony of a single witness. When the evidence of witness in Court is inconsistent with her earlier statement under Section 164, witness false into the third category of neither wholly reliable nor wholly unreliable. In such cases, the Court must exercise caution and cannot convict an accused on that testimony alone. It must look for corroboration in material particulars from independent sources. The Hon'ble Supreme Court in the aforesaid decision categorized the witnesses into three categories. They are as (i) wholly reliable witness, (ii) wholly unreliable witness and, (iii) neither wholly reliable nor wholly unreliable. The Court can base its conviction on the basis of evidence of a single wholly reliable witness. No conviction is based on wholly unreliable witness. In case of neither wholly reliable nor wholly unreliable witness, Court must exercise caution and cannot convict on that testimony alone.



23. The law on the point of appreciation of evidence of a particular witness has developed in course of time. In **Rai Sandeep v. State (NCT of Delhi)** reported in (2012) 8 SCC 21, the Hon'ble Supreme Court cautioned the term "sterling witness". The Hon'ble Apex Court further describes the nature and quality of sterling witness in the case of **Rai Sandeep** (supra) in paragraph no. 22 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.”

24. In **Ganesan v. State** reported in (2020) 10 SCC 573, the issue which came up for consideration before the Hon'ble Supreme Court is as to whether in the case involving sexual harassment, molestation, etc., can there be conviction on sole



evidence of the prosecutrix. The Hon'ble Supreme Court referred to the following paragraphs of *Vijay v. State of M.P.*, reported in (2010) 8 SCC 191 :-

“5. Shri Anip Sachthey, learned counsel appearing for the appellant has submitted that the prosecutrix was a major and it was a case of consent. He has further submitted that conviction cannot be based on the sole deposition of the prosecutrix. There is no other evidence to corroborate her version. The prosecutrix's statement suffers from material discrepancies. On the date of examination of the prosecutrix no physical injury was found on her person or on her private parts. The prosecutrix had given the most improbable and unacceptable version of events that the appellant continued to rape her for about two hours. Then one another accused raped her for about an hour. Also, in spite of the fact that the appellant and others had been arrested on the next date of the incident, the investigating officer did not conduct the test identification parade. The prosecutrix was examined on the next day i.e. on 7-12-1988 by Dr. Rupa Lalwani, Medical Officer (PW 3), and the said medical officer referred her for a radiological test to determine her age, but the report of the said test has never been brought on record. Thus, an adverse inference is to be drawn against the prosecution. The appeal deserves to be allowed. The appellant had falsely been enroped in the crime.

6. On the other hand, Shri Siddhartha Dave along with Ms Vibha Datta Makhija,



learned counsel appearing for the State of M.P., vehemently opposed the appeal contending that the prosecutrix was a minor on the date of the incident. The non-production of the report of the radiological test and not holding the test identification parade would not discredit the investigation or the prosecution case. The non-existence of any injury on the person of the prosecutrix cannot be a ground to disbelieve her version. The prosecutrix had such a social background that she did not have any sense of time, duration, etc. and, thus, she was not able to give a precise account of each activity of the incident. She had lost her father; and was an uneducated, rustic villager, who came from a very poor family. The discrepancies in the statements of the witnesses or the prosecutrix are such that the same are not sufficient to demolish the prosecution's case. In a rape case, an accused can be convicted on the sole testimony of the prosecutrix. The appeal lacks merit and is liable to be dismissed.

7. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

8. Before we proceed to examine the impugned judgments of the courts below and the facts of the case, it may be desirable to refer to the settled legal principles which have to be applied in the instant case.

9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [(1990) 1 SCC 550 : 1990 SCC (Cri) 210 : AIR 1990 SC 658] this Court



held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under : (SCC p. 559, para 16)

“16. A prosecutrix of a sex offence cannot be put on 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.”

25. Thus, it was held by the Hon'ble Apex Court not only in Ganeshan (supra) but also in ***Krishna Kumar Malik v. State of Haryana*** reported in ***(2011) 7 SCC 130*** that to hold an accused guilty for commission of offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and of sterling quality. The said principle has subsequently being followed in ***Santosh Prasad vs State of Bihar*** reported in ***(2020) 3 SCC 443***, ***Naresh Kumar v. State (NCT of Delhi)*** reported in ***(2012) 7 SCC 171*** and ***Nirmal Premkumar v. State Rep. by Inspector of Police*** reported in ***2024 INSC 193***.

Conclusion

26. On careful appreciation of evidence, we can categorize the witnesses on behalf of the prosecution into three categories:



- (i) victim being the eye-witness of the incident,
- (ii) PW-2 to PW-5 as family members of the victim hearsay witnesses and,
- (iii) PW-7 to PW-9 expert witnesses.

27. Evidence of the hearsay witnesses is of little or no significance, as they did not even see the appellants forcibly taking away the victim on the night of 15.05.2015. The victim's evidence is not wholly reliable; rather, it is mostly unreliable, because there is no explanation as to why the victim remained silent regarding the alleged commission of rape by the appellants in the course of her statement recorded under Section 164 of the CrPC. Thus, the Court is at liberty to hold that the story of rape was subsequently manufactured by the victim. It is needless to say that when there are two views which the Court can arrive at upon assessment of evidence, the view that supports the innocence of the accused shall be accepted.

28. Thirdly, the expert opinion does not suggest any recent commission of rape within three days prior to the medical examination of the victim. On the contrary, the medical report indicates that the victim had prior sexual experience.

29. In view of above finding, we are of the firm opinion that the evidence on record is not sufficient to support the order of conviction and sentence of the appellants. Accordingly, the instant



appeal is allowed. Consequently, the appellants are acquitted of the charges levelled against them and are set at liberty. They are discharged from the liabilities of their bail bonds. If they are in custody, they shall be released forthwith, unless required to be detained in connection with any other case.

(Bibek Chaudhuri, J)

I agree.
Dr. Anshuman, J:

Suraj Dubey/-

(Dr. Anshuman, J)

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