

Reserved on : 23.11.2022

Delivered on : 23.12.2022

Court No. - 66

Case :- CRIMINAL APPEAL No. - 1201 of 2021

Appellant :- Bablu @ Jitendra And Another

Respondent :- State of U.P.

Counsel for Appellant :- Brijesh Chand Kaushik, B.N.Singh, Manish Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Samit Gopal,J.

1. The present appeal under Section 374(2) Cr.P.C. has been filed by the appellants-accused Bablu @ Jitendra and Master against the judgment and order dated 03.01.2019 passed by the Additional Sessions Judge/Fast Track Court No.1, Kanpur Dehat in Sessions Trial No. 272 of 2013 (State of U.P. Vs. Bablu @ Jitendra and another) whereby the accused-appellants have been convicted and sentenced under Section 376(g) IPC to 12 years rigorous imprisonment each along with fine of Rs. 15,000/- and in default of payment of fine to one year additional simple imprisonment each, accused appellant Bablu @ Jitendra has further been convicted and sentenced under Section 363 IPC to seven years rigorous imprisonment along with fine of Rs. 10,000/- and in default of payment of fine to six months additional simple imprisonment. The trial court has ordered that out of fine as recovered Rs. 10,000/- shall be paid to the victim as compensation whereas the remaining amount shall be deposited in the account of the State. The benefit of set off under Section 428 Cr.P.C. has been extended to the accused-appellants. The sentences have been ordered to run concurrently.

2. The name of the prosecutrix is not being disclosed and mentioned in the present judgment in the light of directions of the Apex Court in various judgments and as per Section 228-A of the Indian Penal Code, 1860. She is thus referred to as 'X' in the judgment.

3. In the appeal, the trial court records were summoned by another Bench of this Court. As per office report dated 17.11.2021 the trial court records have been received in the office of this Court. On 18.11.2021 another Bench of this Court passed the following order:-

“Heard learned counsel for the victim/informant and learned AGA for the State and perused the record.

As per office report lower court record has been received and appellant no. 1 is in jail since 09.04.2013.

Keeping in view the detention period of the appellant is directed to prepare the paper book within 10 days. Copy of the same be provided to learned counsel for the appellant on payment of usual charged and to learned AGA free of cost.

List this case on 16.12.2021 for final hearing.”

4. Subsequently, an application for correction was moved for correction in the order dated 18.11.2021 which was rejected vide order dated 29.11.2021 passed by the said Court. The order dated 29.11.2021 is extracted herein-below:-

“Ref: Criminal Misc. Correction Application No. 9 of 2021.

Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

Learned counsel for the applicant submitted that order dated 18.11.2021 passed by this Court may be corrected to the extent that in the first line of fourth paragraph, the word "for order" may be added in place of word "for final hearing".

The prayer made by learned counsel for the applicant, is misconceived.

Accordingly, this correction application, is rejected.”

5. In compliance of the order dated 18.11.2021 the paper book of the matter was prepared as has been reported by the office vide its report dated 15.12.2021. The application for bail of the accused-appellants remained pending. Subsequently, on 23.11.2022 learned counsel for the appellants stated that the same be dismissed as not pressed and the matter be heard finally. This Court thus dismissed the same as not pressed and heard the matter finally on the said date.

6. The prosecution case as per an application dated 08.01.2013 given by Smt. Sushila Banjara wife of Mohan Singh of which Kumari Sapna the daughter of Bahadur Singh was the scribe addressed to the Station House Officer, Police Station Musha Nagar, Kanpur Dehat is that on 08.01.2013 at about 11:00 am, her daughter victim 'X' aged about 17 years had gone to Balaji Mandir, Musha Nagar for Darshan along with her friend Sapna the daughter of Bahadur Singh. Her daughter sat outside on the plank (takhat) whereas Sapna went inside the temple. At about 1:30 pm, when Sapna came out from the temple then victim 'X' aged about 17 years was not found sitting outside. On not finding her there, she inquired about her from Neeraj Tiwari and Ashok Shukla the shop owners (selling prasad) after which they said to her that the girl sitting outside and having a dupatta on her, was gesturing with two persons who were sitting on a green coloured Bolero vehicle parked at some distance and called them in street and then went away from the said vehicle. She after sometime called Sapna on her mobile from a mobile and told her that her younger brother Ajay has fallen ill and her mother has called her and as such she is going. Sapna informed Mohan Singh the husband of the first informant who then informed it to Balwan Singh of the village. She on getting information about it went to the temple with Sapna and had talked with Neeraj Tiwari and Ashok Shukla, her daughter has been lured and enticed away by someone. The First Information Report be lodged and her daughter be recovered and legal action be taken. The said report is Exb: Ka-2 to the records.

7. On the basis of the said report, a First Information Report was lodged on 08.01.2013 at about 15:10 hrs by Smt. Sushila Banjara against two unknown persons which was registered as Case Crime No. 4 of 2013, under Sections 363, 366 IPC, Police Station Musha Nagar, District Kanpur Dehat. The Chik First Information Report is Exb: Ka-8 to the records.

8. The victim 'X' was recovered on 09.04.2013 by the police after which her statement under Section 164 Cr.P.C. was recorded on 25.04.2013. The same is Exb: Ka-3 to the records.

9. Victim 'X' was medically examined on 20.04.2013 at about 02:31 pm by Dr. Rama Saraf, EMO, District Female Hospital, Rambai Nagar while being brought by two police constables. The doctor on physical examination noted as follows:-

"Victim is of average-built, height 5' 1½", weight 49 kg, teeth 12/14, breast, pubic and axillary hair well developed. No mark of injury on the body. L.M.P. - victim having period."

On examination of private parts, the doctor noted as follows:-

"No mark of injury in and around private parts. Hymen old torn and healed. Introitus admits two fingers easily. Pt. having period. Vaginal smear taken, slide prepared and sent to Pathology Department, JDH, Akbarpur, Kanpur Dehat for evidence of spermatozoa. For age she is referred to CMO, Kanpur Dehat. Reports are awaited."

The said report is Exb: Ka-4 to the records.

Subsequently, a supplementary medical report dated 24.04.2013 was prepared by Dr. Rama Saraf in which she stated that as per vaginal smear report, no spermatozoa was seen. Further, she stated that as per age certificate given by CMO, Kanpur Dehat, the age of the girl is about 15 years. The opinion as given is follows:-

"i) No definite opinion regarding sexual assault can be given.

ii) Age of the girl is about fifteen (15 years)."

The said report is Exb: Ka-5 to the records.

The Chief Medical Officer, Kanpur Dehat gave his report dated 22.04.2013 ascertaining the age of victim 'X', he opined the age of victim 'X' as about 15 years. The said report is Exb: Ka-14 to the records.

10. The site plan of the place of occurrence was prepared on 08.01.2013 by the Investigating Officer. The same is Exb: Ka-7 to the records.

11. Subsequently, the investigation concluded and a charge sheet no. 60 of 2013 dated 12.05.2013 under Sections 363, 366, 376 IPC was submitted against accused Bablu @ Jitendra and Master. The same is Exb: Ka-10 to the records.

12. Vide order dated 04.06.2021 passed by the Additional Sessions Judge, Court No.1, Kanpur Dehat charge under Sections 363, 366 IPC and 376(g) IPC was framed against the accused appellants. They pleaded not guilty and claimed to be tried.

13. The trial court examined Smt. Sushila Banjara the first informant and the mother of victim 'X' as PW-1, Smt. Ram Beti as PW-2, Kumari Sapna Devi the scribe of the First Information Report and the person who accompanied victim 'X' as PW-3, Victim 'X' as PW-4, Dr. Rama Saraf the Medical Officer as PW-5, Sub Inspector Jai Singh as PW-6, Sub Inspector Vinayak Ram as PW-7, Arun Kumar the Principal where the victim 'X' studied as PW-8 and Dr. Karan Singh the Medical Officer as PW-9.

14. The accused Bablu @ Jitendra in his statement recorded under Section 313 Cr.P.C. stated that he and victim 'X' were involved in a love affair. He states that the allegation of rape is false. Victim 'X' called him 3-4 days before when he was in Bangalore and told him that she is getting marriage and he should come and take her away. He was along with the driver in the vehicle. He took victim 'X' from the temple and took her away. Ram Beti was not there and Sapna was in the temple. Sapna had called victim 'X' and asked about her whereabouts on which she said that she is going home as her mother has called her as her brother fell from the

roof and then on his saying she switched off the mobile. He states that he took away victim 'X' from Balaji temple on her saying, he was alone. He states that victim 'X' was aged about 17-18 years. He further states that the first informant and her husband had forcibly got his younger sister married with their nephew who was missing since the last 2½ years in which there was police action and he was taken many times to the police station. He was tortured a lot. There was a lot of insult and in retaliation he enticed away the girl. He was again summoned and additional statement under Section 313 Cr.P.C. was recorded where he stated that the evidence is false and he has been falsely implicated in the present case.

15. The accused Master in his statement recorded under Section 313 Cr.P.C. denied the prosecution case and stated that the witnesses are given false statement. The Investigating Officer, concluded the investigation in a wrong manner. He states that victim 'X' was aged about 17-18 years. He further states that there was some quarrel between the parties and he has been falsely implicated in the present case. Subsequently, the accused appellant Master was produced as DW-1 before the trial court.

16. Heard Sri Manish Kumar Singh, learned counsel for the appellants and Sri Ankit Srivastava, learned brief holder for the State of U.P. and perused the record.

17. Learned counsel for the appellants argued that the appellants have been falsely implicated in the present case. It is argued that the statements of the alleged witnesses are contradictory to each other. The contradictions are of relevant facts and material. The same thus does not inspire confidence. It is argued that the medical report does not corroborate the prosecution story. Doctor did not give any opinion of rape being committed upon victim 'X'. It is argued that victim 'X' eloped with the appellant Bablu @ Jitendra on 08.01.2013 after which she was recovered on 19.04.2013. She remained with him for about 3 months and 10 days without any resistance whatsoever and without making an attempt to

inform anyone of it. She was a consenting party. It is argued that the trial court has given a finding with regards to age of victim 'X' as being about 17 years at the time of the incident. It is argued that victim 'X' can very safely be treated to be above 17 years. It is argued that as such she is major. It is argued that the appellants are not named in the First Information Report which has been lodged against unknown persons.

18. It is further argued that Sapna PW-3 the scribe of the First Information Report was stated to be with victim 'X' who had accompanied her till Mandir but still she did not disclose the name of the persons with whom victim 'X' eloped. It is argued that victim 'X' PW-4 has also stated that no rape has been committed on her. Learned counsel argued that as such the implication of the appellants in the present case are false. The appellants deserve to be extended the benefit of doubt. The present appeal be thus allowed and the appellants be acquitted.

19. Per contra, learned counsel for the State opposed the arguments of learned counsel for the appellants and argued that the appellants have been convicted on reliable and cogent evidence. The appellant Bablu @ Jitendra in his statement recorded under Section 313 Cr.P.C. stated of taking away victim 'X' with himself. Victim 'X' was a minor at the time of incident. The trial court has given a finding that victim 'X' aged about 17 years at the time of incident and as such she was a minor. It is argued that there is reliable and clinching evidence against the accused-appellants. The trial court has passed a detailed and well reasoned judgment and order and convicted the appellants. The prosecution has proved its case beyond reasonable doubt against the accused-appellants. It is argued that as such the appeal deserves to be dismissed.

20. Smt. Sushila Banjara PW-1/the first informant of the case is the mother of victim 'X'. She states that victim 'X' is her daughter. The incident is of 08.01.2013. Her daughter had gone with her friend Sapna to Balaji Mandir, Musha Nagar for Darshan. After Darshan, her daughter was

standing outside, Sapna was in the temple. After sometimes, she also came out and saw victim 'X' was not there. She inquired from people present there and came to know that three persons have taken her daughter in a Bolero vehicle. She informed about the incident to Reetu who is a villager at her mobile who informed her and then she reached there. Victim 'X' called on the mobile of Sapna and told her that Jitendra @ Bablu, Sanjay and Veer Singh have told her that her brother Ajai has fell down from the roof and is seriously ill and have taken her but now they are not stopping the vehicle. She then went to the police station with Sapna and got a report written by her and affixed her thumb impression. Her report was then lodged. She then came to know that in the said report, the name of the accused persons is not written and the police also not disclosed the name of the accused persons and then she and her husband gave applications to higher officials of police and the government which was with an affidavit. In the affidavit, her photograph was affixed and it was typed. It was read out to her and then she affixed her thumb impression on it. On seeing paper No. 25 and 26 which was read to her she states that it is the same affidavit which was given. The same was marked as Exb: Ka-1 to the records. She states to have given the said affidavit to the Superintendent of Police herself. On seeing the application given to the police for lodging of the report, she identifies the same and states that is the same which was dictated to Sapna but states that Sapna had not written the name of accused, the same was marked as Exb: Ka-2 to the records.

In her cross examination, she states that she is illiterate. Her husband is somewhat literate. He is having a brother. He is the eldest. Amar Singh is his younger brother. She has five nands. The eldest is unmarried and then Bhuri, Lajja, Munna and youngest is Virma. The eldest has four sons and is married in Kara. The other is married in Kandhi, Rampur. She has three sons. The third is married in Gurgaon having five sons amongst whom, Govind and Gopal are married. Govind is married in Phaphoond.

Gopal married out of his own choice in Hardua with the sister of accused Jitendra. She and her family did not attend his marriage. She has three daughters. Victim 'X' is the eldest who is aged about 16 years and then the next daughter is 12 years old and the youngest is about 5 years old. Victim 'X' was born in the house. She does not know as to when was she born. She was studying in Turki Mau. She does not know the name of the school. She does not know the class in which she was admitted in the school. After Turki Mau, she did not study in any school. She states that Sapna is her niece. She is the daughter of cousin jeth. She got married around a year back. Victim 'X' went with Sapna to the temple. They went walking and then on a tempo to the temple. She came back with Sapna at about 07:00 pm. Sapna had told Reetu that the daughter of Mohan Singh went away. She came to know about the incident at 02:00 pm. Reetu told her that her daughter has gone somewhere. Her husband does the business of hairs. Accused Master does the business of sari. He goes out for 15 days and then comes back and does farming. Accused Bablu @ Jitendra also does the business of sari. He also goes out for 10 days and then comes back. She got the application written at the police station. Sapna dictated the application to the police personnels who read it. She had told the name of accused Jitendra @ Bablu and Master while writing the tehrir. She was interrogated by the police after 15 days of the incident. A fight has taken place between her husband and Bablu around 2 $\frac{1}{2}$ years back. Bablu had caught the collar of her husband at about 09:00 am on the road. The dispute was with regards to filling of water at the handpump. She went to the police station alone. Bablu lives in her village and as such she knows him. He used to visit her house. Whenever he used to come after his business he used to come to her house. She states that it is incorrect to state that Bablu and his father Master have been implicated due to previous enmity. She further denies that she did not get the names of the accused written in the FIR. She states that it is incorrect to state that the First Information Report has been lodged against unknown persons.

21. Smt. Ram Beti PW-2 states that on 08.01.2013 at about 01:30 pm she had gone to Balaji Temple, Musha Nagar, she saw a green Bolero standing there in which five persons namely Master, Bablu @ Jitendra, Ramesh, Sanjay and Veer Singh were sitting. They took victim 'X' and then went away in the said vehicle. She tried to stop the vehicle but the vehicle did not stop and they went away. She came in the evening and told about it to Mohan.

22. Km. Sapna Devi PW-3 is the cousin of victim 'X' and the person who had accompanied her to the temple. She states that on 08.01.2013 at about 11:00 am she came out from the temple after doing Darshan. When she had gone inside, victim 'X' was sitting on the wood ply (takhat) outside. When she came back, she did not find victim 'X' sitting there and then she searched her for about half an hour but did not find her. She then received a phone call and she was told that Bablu, Sanjay and Ramesh are taking her, she may be saved after which her mobile was switched off. She then informed the parents of victim 'X' who then came to Musha Nagar crossing and were told about the incident. They then went to the police station and gave information. A report was got lodged at the police station. She was interrogated by the Investigating Officer.

In her cross examination, she states that she went with victim 'X' to the temple on Tuesday. She did not see the accused taking victim 'X'. She states that she cannot tell the number from which she had received the phone call. She does not remember whether it was a phone of victim 'X' or not. She states that she did not have her phone at that time. She was a minor. She states that she and victim 'X' went together to the temple. Before going to the temple, victim 'X' met her outside the house. She knows Reetu. She does not know that Reetu is the sister of Mohan. There was no previous programme for going to the temple. Victim 'X' went with her all of a sudden. Master and Mohan did not use to visit the houses of each other prior to the incident. She went to the temple on an auto. She

states that she knows both the sides did not go to the houses of each other. There is some dispute between them. She had asked her parents before going to the temple. When she reached temple, there were other people of the village also present. In the temple, she did not meet any person of the village. She did not meet any person of the village before reaching the temple. She did pooja for about half an hour. She was observing fast on that day. She performed pooja in the temple. She made victim 'X' sit outside the temple on takhat then went inside to do her pooja. When she came outside, victim 'X' was not there. On not finding her, she searched her there for sometime after which she received a phone of victim 'X' at her mobile on which she told her to save herself and told her that Bablu, Ramesh and Sanjay are taking her. She immediately informed it to the parents of victim 'X'. She had seen the accused Ramesh, Bablu, Sanjay and Master outside the temple. She had told the mother of victim 'X' about it. She had gone to the police station for getting the FIR lodged. Smt. Sushila got the report lodged. Sushila was dictating the FIR. She told her about four persons. The application was written by the Inspector. She had gone with Sushila for getting the FIR lodged. Her chacha Mohan had also gone. The FIR was lodged on the same day of the occurrence. She did not tell the Inspector about the telephone call. Victim 'X' did not tell her that her brother is ill and she is going. She does not remember as to whether the fact of a telephone call was written in her statement recorded under Section 161 Cr.P.C. or not. She had told the name of the accused to the Investigating Officer. He was recording her statement. She had enquired about victim 'X' from the shop keeper from where she purchased Parsad who had stated that he does not know about it. She had enquired about her from shop keeper at about 11:30 am. She did not tell any mobile number to the Investigating Officer. She did not tell the Investigating Officer that victim 'X' was calling a boy by gesturing. Victim 'X' has studied upto Class 8th. She has studied upto Class 10th. Mohan has two sons and three daughters. She was married in the year 2013. She is aged about 26 years as

of now. She was about 20 years old when she got married. She states that she does not remember as to what time she reached the temple. Smt. Sushila met her at the crossing. They went to the police station directly. She does not remember whether she had told the name of the shopkeeper (selling prasad) to her chachi. Her chachi is not educated. When she had gone to the temple she had taken her food. She does not remember whether she had told the Investigating Officer that victim 'X' had taken her purse and money. Ram Beti is her mother. Her mother was at home on the day of the incident. She did not show the takhat on which victim 'X' was sitting. She does not remember as to which mobile number was with her at the time of incident. She does not know the shopkeeper Neeraj Tiwari and Ashok Shukla. She knows Sanjay since 2-4 days before the day of occurrence. She does not remember as to whether her father and chacha had taken her proposal for marriage to the house of Sanjay and she had also gone to see Sanjay. She did not meet Sanjay before the occurrence. She states that Bablu, Sanjay, Master, Ramesh had taken victim 'X' as the incident had taken place before her. She has studied Class 10th. Mohan and Bablu have their houses in front of each other. She does not remember whether she has seen the children of Master and Mohan playing together and even his wife have visited each others house. She does not remember whether victim 'X' had ever gone to the temple with her before the incident. When she was going to the temple, victim 'X' met her suddenly and said that she is also going to the temple and accompanied her. She is educated. She read Exb: Ka-1 and stated that in it, the name of accused Bablu, Sanjay, Master and Ramesh is not written. She states that she does not remember whether the said tehrir is in her handwriting. She states that it is correct that in the said tehrir, her name is written as the scribe of it. She states that it is incorrect that she has disclosed the name of accused for the first time in court. She states that it is incorrect that her father wanted her to get married to accused Sanjay but Sanjay had broken the marriage and as such under pressure of her chacha Mohan, she has disclosed the

name of accused Sanjay, Master, Bablu and Ramesh. She knows Gopal. He is the son of her bua. She does not know Govind. It is true that Govind is the brother of Gopal. She does not know whether Govind and Gopal were married. They are real nephews of Mohan. Gopal has married in her maika she does not know of it. She does not know whether Aruna Devi is the daughter of Master. Bablu is the son of Master. Guddi is the daughter of Master. She does not know whether Dharmendra is son of Master. She states that it is correct that except for her family and the family of her chacha Mohan, she does not know about anyone of the village. She has seen the incident and as such she is deposing about it. She is not deposing under pressure of her chacha. She states that she does not know where Gopal and Govind live. Her bua lives in her house. Her sasural is in Gurgaon. She does not know under which police station it falls. She had gone to the sasural of her bua when she was very small. She has never seen her coming to her maika. She does not remember whether her bua, Govind and Gopal came her in marriage. Victim 'X' did not attend her marriage. She does not remember after how many days her statement under Section 161 Cr.P.C. was recorded. Her statement was recorded on the same day on which day she had gone. She states that she does not know whether there was a fight between Mohan and Master with regards to filling of water at the handpump. She did not see victim 'X' and the accused Bablu, Master, Sanjay and Ramesh going together. She states that it is incorrect to state that the tehrir/application was written by her. She further states that it is incorrect to state that she disclosed her chachi Sushila Devi that outside the temple, the sweet seller Neeraj Tiwari and Ashok Shukla were present. She does not remember whether she told her chachi that victim 'X' told her that her brother has become ill and she is going. Further, it is incorrect to state that she is giving a false evidence.

23. The victim 'X' was examined as PW-4. She states that on 08.01.2013 at about 11:00 am she and her sister Sapna went to Balaji

Temple, Musha Nagar for Darshan. Her sister Sapna went inside the temple for pooja and she sat on the takhat outside. At about 01:50 pm, Sapna came out from temple. At that time she was not sitting there. She received a call on her mobile and the said person stated that he is Dinesh and said that Ajai has died and she should come on which she without telling Sapna departed for home. On the way, she saw a Bolero vehicle with driver only on which she sat. After going for some distance, three other people sat on the said vehicle. They snatched her mobile and gagged her mouth and filled it with cloth. The said persons had covered their faces. When they opened their faces, she recognises them as Bablu, Ramesh and Sanjay. She then became unconscious. She was then taken to Delhi. She was raped forcibly in a room. She was kept in Delhi for one month. In Delhi, Master the father of Bablu and Veer Singh his fufa met them. She was then taken from Delhi to Bangalore. She was kept under confinement at a place in Bangalore. Bablu raped her many times. Police reached to her in Bangalore. With the police, her father was also present. She was then recovered by the police and brought to police station Musha Nagar. She was aged about 17 years at that time. After reaching police station, her medical examination was done. Her statement under Section 164 Cr.P.C. was recorded. She proves the said statement and identifies her signature and photo on it. The same was marked as Exb: Ka-3 to the records. She identifies her signature on the medical certificate of the Chief Medical Officer, Kanpur Dehat. She identifies her photograph on it.

In her cross examination, she states that the Government Advocate read the file and got her statement written. She is married. Her marriage was solemnized a year ago. Suraj is her husband and her sasural is in Chandapur, P.S. Kannauj, District Kannauj. Her father got her married. She states that she does not remember date of her marriage. She has two brothers and three sisters. Surendra her brother is two years younger to her. The younger brother and sister are Sarita, Ajai and Lali. There is a

government school in the village. Her brothers and sister studied there. She has studied in a private school. The name of the school is Saraswati Kalyani Vidya Mandir. Sapna is her cousin. She does not know whether Sapna used to go to the temple from before. She and her sister had gone to the temple out of their own wish after wearing new clothes. No prior programme was made for visiting the temple. Her sister told her that she is going to temple on which she accompanied her. She had taken puri and sabji from her house for both of them in a hand bag. She had told her that it is Tuesday and in the morning she had told her to go to the temple and had cooked food in the morning itself. Sapna has studied in the village or not she does not know. She knows Govind and Gopal who are the sons of her bua. Her marriage was performed from the temple which is in Auraiya. Many people had attended the marriage. Govind and Gopal did not attend the marriage. Her mother also did not attend the marriage. She knows Bahadur. She does not remember the name of his wife and the name of her chacha. Her chacha and chachi attended her marriage. Amongst her brothers and sisters, only she is married. Sarita is her younger sister. She knows the village where her sister is married. She had attended the marriage. Govind and Gopal did not attend the marriage. She went to the temple at 11:00 am. She was wearing salwar and suit. Sunil is son of her bua and Sarnaam is her jeeja who is son-in-law of her Baba. Sarnaam is married to Shyama. Sarnaam and Sunil attended her marriage. Her father does business of sari and clothes. She does not know whether accused Bablu and Master also do the same business or not. Bablu and Master live in the same village. When she went to the temple, they were not in the village. If her mother calls her by standing outside the room, she would recognise her voice. If her brother and sister talk to her she can identify the voice. She cannot identify the voice of her mother on phone. She can identify the voice of her husband on phone. She was married about 5-6 years ago. She did not attend the marriage of Sapna. She does not know since when she is visiting the temple, she did not do the darshan of

Hanumanji. When Sapna had gone inside the temple, she had given the food and talked to her with mobile. She did not meet anyone while going to the temple. Many people from the village visit the temple. She does not know the distance between temple and her house. The tubewell in the village is fixed at the door of chachi of Bablu. There was a fight between her father and Bablu with regards to filling of water at the tubewell. Her parents had enmity with the family members of Bablu due to it, the case has not been instituted because of the said enmity. She took admission in the school when she was 2-3 years old. She did not go to the school in the village to study. She went to the school in Turki Mau to study. The school in Turki Mau is 3-4 kms away from the village. She used to go to the school with her friends while walking. The house of Bablu is in front of house of her father Mohan. Behind the house of her father, house of father Baba Bahadur is situated. She has studied upto class 6th from Saraswati Jain Kalyani Vidya Mandir. She knows Sanjay who used to visit the house of Sapna. She states that it is incorrect that Sapna had gone to the temple to meet Sanjay. She did not see Sanjay in the temple or outside. She states that she gave the correct date of occurrence in her statement recorded under Section 164 Cr.P.C. She reached the temple at 11:00 am. She stayed there for 2 $\frac{1}{2}$ hrs. People of the village visited the temple when she was there. She got the news regarding the death of Ajai through Dinesh. Her mobile was with her. Her father had a mobile. After receiving phone call, she did not talk to her father and did not talk to anyone. She talked to Dinesh only. Dinesh is her younger brother. He is the son of her chacha. She received a call when she was sitting on the takhat. Prior to the day of occurrence, she had not visited the temple and had gone for the first time on that day. Prior to the occurrence, her parents did not use to visit the house. She knows Master. He has three daughters and three sons. She has five buas. On the day of the incident, her father had gone out of village for some work. Except for her father, others were in the house. Her mother, dadi, brothers and sisters were in the house. Her buva has five sons namely

Govind, Gopal, Ramesh, Rakesh and Arvind. Gopal had married Umakanti the daughter of Master forcibly. She has never gone with the family members of Bablu outside. She states that accused Bablu established physical relationship with her when he had forcibly taken her. She met Ram Beti on the day of incident. Police had recovered from Rampur Pukhraya Station. She was drawn the attention of her statement recorded under Section 161 Cr.P.C. where she stated that she had come to Pukhraya for court marriage and were waiting for a vehicle to go to Kanpur where they were apprehended to which she said that she has not given any such statement. To a question that as to who all of her house were present when police apprehended her, she replies that police did not apprehend. Further, to the question that as to how police reached, she states that she did not know the police coming. She states that she went to Bangalore on a Marshal Jeep. She does not know as to in how many days she reached there. It took around 10-15 days in reaching there. She states that she does not know the name of Bangalore city. She heard of it. She has visited the city. She stayed there for about 10-15 days. She states that she was kept in confinement for about 3 months. She was kept under confinement in the house of Bablu. She did not talk to anyone in Bangalore where she was staying for three months. Toilet etc. was inside the house in Bangalore. She does not remember whether the vehicle in which she travelled to Bangalore stopped in between. She knows Bablu from around 2-3 years before the incident. She met Bablu when they had taken her away. She denies the suggestion that she had first marriage with Bablu. She had called her father after about 3 months. In the room, Bablu, Master, Ramesh, Sanjay, Veer Singh and mother of Bablu used to live there. They used to go within the city and used to come back everyday. They did not sleep in one room. She, Bablu, Sanjay and Ramesh used to sleep in the room. In three months, there had been disputes between them. She had disputes with Bablu in Bangalore. She stayed in the house of Veer Singh who is a relative of Bablu. Sapna did pooja for around 20-25 minutes in

the temple. She had talked to her father from mobile of Bablu. There used to be fight daily with Bablu. After fight with Bablu she did not use to sleep with him but the other people used to make her sleep. Bablu established physical relationship with her many times in three months.

She denies the suggestion that she had married Bablu and on the pressure of her father, has given a false statement in the court that she has not married him. She further denies the suggestion that Bablu and Master had not abducted her. She further denies the suggestion that on the day of incident, she had run away with Govind and Gopal and went to the temple. Further, suggestion is that on that day, when she ran away with Govind and Gopal, she had taken purse and money. She further denies that due to enmity, she is giving the statement against Bablu and Master as they had assaulted her father. She further denies the suggestion that Bablu has not committed rape on her. Further suggestion that she is giving false evidence is denied by her.

24. Dr. Rama Saraf PW-5 is the Medical Officer who conducted the medical examination of victim 'X'. The details of the same have already been stated above. She proves the medical examination report which is Exb: Ka-4 to the records. She further proves the supplementary medical examination report which is Exb: Ka-5 to the records. The report sent to the pathologist by her for examination of the vaginal smear was also proved by her which is Exb: Ka-6 to the records.

In her cross examination, she states that she does not know when a person has 12/14 teeth, axillary hairs generally grows at about 13 years, there was no injury on the body of victim 'X'. There was no injury on the private parts of victim 'X'. She did not take clothes of victim 'X' in her possession. In the slide which was sent by her, there was no live or dead spermatozoa seen. She cannot give any opinion whether victim 'X' was raped or not. She states that it is incorrect to state that she did not do the medical examination of victim 'X'.

25. Sub Inspector Jai Singh PW-6 had received the matter after lodging of the First Information Report for investigation. He did the investigation from 08.01.2013 to 19.04.2013 after which he was transferred. During investigation, he transcribed 10 parchas of the case diary. He arrested accused Bablu @ Jitendra and Master and recovered victim 'X' on 19.04.2013. He interrogated victim 'X' and both the accused. He states that Constable Clerk 106 Kapoor Singh was posted at the Police Station. He identifies his hand writing and proves the Chik First Information Report which was marked as Exb: Ka-8 to the records. The GD corresponding to it was also proved by him which was Exb: Ka-9 to the records. He states that during investigation, the name of the accused did not surface.

26. Sub Inspector Vinayak Ram Johari PW-7 states that on 25.04.2013 he took over the investigation of the matter. He gave an application to the C.J.M. concerned for recording the statement of victim 'X' under Section 164 Cr.P.C. which was recorded. He concluded the investigation and submitted a charge sheet against the accused persons which was marked as Exb: Ka-10 to the records.

27. Arun Kumar the Principal where the victim 'X' studied was examined as PW-8. He states that victim 'X' was admitted in the school under Sarva Siksha Abhiyan in Class 5th on 15.09.2009. She was allotted registration No. 924. Her date of birth was recorded as 06.02.2001. She passed class 5th as per the said school from Lou Memorial Prathmik Vidyalaya, Kanpur Dehat. On 30.06.2010 her name was struck off from the said school. He proves the admission form and result of victim 'X'. The admission form was Exb: Ka-11 and the student register as Exb: Ka-12 and the result was marked as Exb: Ka-13 to the records. He states that as per the school records, the date of birth of victim 'X' is 06.02.2001.

In his cross examination, he states that she had taken admission in Class 5th in his school. No mark sheet or T.C. of class 1 to 4 was given at the time of admission. He did not take any affidavit or any certificate with

regards to date of birth of victim 'X' and her father had come for the admission. He denies that victim 'X' did not study in his school. He further denies that victim 'X' studied in Saraswati Jankalyani Vidyalaya, Turki Mau. He further denies that the admission form of class 5th was issued by him and it was a forged paper and her admission has been done in a forged manner.

28. Dr. Karan Singh PW-9 was posted at the Chief Medical Officer, Kanpur Dehat on 22.04.2013. He states that on the said date, victim 'X' was brought before him by police constables and as per report of radiologist, he gave his certificate regarding her age. She was opined by him to be about 15 years of age at that time. He proves the said report which is Exb: Ka-14 to the records.

In his cross examination, he states that he did not count her teeth at that time. He states that if a person has 14 teeth each on the upper and lower side then the person would be about 14 to 16 years of age. He states that he ascertained the age as per the report. He denies that he did not opined regarding the age as per the radiologist report. He further denies that he did not read report of radiologist properly and gave his report regarding age of victim 'X'.

29. Subsequently, the trial court convicted the accused-appellant as stated above.

30. After having heard learned counsel for the parties and perusing the records, it is evident that the prosecution case per the First Information Report states of victim 'X' going to the temple with Kumari Sapna Devi from where she states to have been lured and enticed her away by the accused. She is said to have been taken away on 08.01.2013 after which she was recovered with the accused appellants on 19.04.2013. Kumari Sapna Devi was the person with whom victim 'X' is said to have gone to the temple. She is stated to have called Kumari Sapna Devi on her mobile after she was taken wherein she disclosed the name of the accused who

had enticed her away. Kumari Sapna is then stated to have informed about the incident to Reetu who then in turn informed it to the parents of victim 'X'. The parents of victim 'X' are then said to have come to crossing nearby the temple where Kumari Sapna Devi met them and they went to the police station. The application for lodging of the First Information Report is said to have been dictated by Smt. Sushila Devi the mother of victim 'X' to Kumari Spana Devi which was given and then the FIR was lodged. The First Information Report has been lodged against unknown persons. There are contradictions with regards to the fact as to who had transcribed the application for lodging of the First Information Report. Smt. Sushila Devi PW-1 states to have dictated to Kumari Sapna Devi PW-3 whereas Kumari Sapna Devi states that the same was written by police officer in which her name was written as scribe. Even after the same, there is no disclosure regarding the details and the name of the accused persons. The name of the accused appellants surfaced in the matter during investigation. In so far as the age of victim 'X' is concerned, although Arun Kumar PW-8 states of her date of birth as 06.02.2001 written in the school records at the time of her admission in class 5th but does not state of the basis on which the same was recorded there. Dr. Karan Singh PW-9 the Chief Medical Officer concerned opined the age of victim 'X' as about 15 years in his certificate dated 22.04.2013 which is Exb: Ka-14 to the records.

31. It is further evident that in so far as the age of victim 'X' is concerned, the trial court has in the impugned judgment and order given a finding that she is aged about 17 years at that time of the incident. The medical evidence does not state of any rape being committed on her and in the supplementary medical report, the doctor has not given any opinion regarding sexual assault on her. The victim 'X' is said to have been taken away by the accused persons on 08.01.2013 from Balaji Mandir, Musha Nagar, Kanpur Dehat. She states that from Kanpur Dehat, she went to Delhi and stayed there for some days and then they went to Bangalore after

which she is said to have been recovered on 19.04.2013. The First Information Report has been lodged against unknown persons. Sapna the cousin sister of victim 'X' with whom she is said to have gone to the temple from where she is said to have been abducted and is the scribe of the First Information Report. In the First Information Report, she states that she had called victim 'X' on her phone, on not finding her in the temple and after search on which she stated that her younger brother Ajai is ill and her mother has called her and as such she has gone away. She stayed with the accused appellants for about 3 months. There has been no effort by her to resist her staying with them or make an attempt to get herself freed from them. There is no recovery memo on record regarding the recovery of the victim.

32. On the contrary, there is a suggestion by the defence that victim 'X' had married the appellant no.1/Bablu @ Jitendra as in the affidavit of PW-1 Smt. Sushila given to the Superintendent of Police, Kanpur Dehat which is Exb: Ka-1 to the records she states that her daughter victim 'X' had from her mobile informed Sapna on her mobile that Bablu, his mama Sanjay Singh and Virendra Singh have kidnapped her. Despite the same, the First Information Report which was transcribed by Sapna is silent with regards to the disclosure of the name of the accused persons and the same has been lodged against unknown persons. The prosecution case thus has different versions and different stories by the different persons. The same is not in consistent throughout. Even the conduct of victim 'X' for three months while staying with the accused appellants of not making an attempt to free herself and to resist her illegal confinement is not borne out from the records.

33. This Court comes to the conclusion that the accused-appellants deserves to be extended the benefit of doubt. They are thus extended the benefit of doubt in the present case.

34. The judgment and order dated 03.01.2019 passed by the Additional Sessions Judge/Fast Track Court No.1, Kanpur Dehat in Session Trial No. 272 of 2013 (State of U.P. Vs. Bablu @ Jitendra and another), is hereby set aside. The present appeal is *allowed*.

35. The appellants are acquitted of the charges levelled against them. The appellants are on bail. Their bail bonds are cancelled and sureties discharged.

36. **Before parting with the case it is necessary to mention that despite Section 228-A of the Indian Penal Code, 1860, various judgments of the Apex Court and High Courts of not disclosing the name of the victim of offence of rape, the trial court has specifically mentioned the name of the victim/prosecutrix while recording her evidence in court and at various places in the impugned judgment. Despite various reminders by the Apex Court about it, the trial court appears to have been ignorant about it.**

37. **This Court thus takes exception to the impugned judgment where the name of the victim/prosecutrix is mentioned. It is well established that in cases like the present one, the name of the victim is not to be mentioned in any proceeding. The trial judge shall be careful in future while dealing with such cases.**

38. Office is directed to transmit the lower court records along with the copy of this judgment to the District & Sessions Judge concerned forthwith for its compliance and necessary action.

Order Date :- 23.12.2022

M. ARIF

(Samit Gopal, J.)