

AFR
RESERVED

Case :- JAIL APPEAL No. - 4325 of 2009

Appellant :- Manvir

Respondent :- State

Counsel for Appellant :- From Jail

Counsel for Respondent :- A.G.A.

Hon'ble Suneet Kumar,J.

Hon'ble Vikram D. Chauhan,J.

(Per : Hon. Vikram D. Chauhan, J.)

1. Heard Ms. Abida Syed, learned Amicus Curiae for the appellant and learned A.G.A. for the State.

2. The present jail appeal is filed by appellant through Senior Jail Superintendent, Agra against the judgment dated 5 December, 2007 and sentence dated 6 December, 2007 passed by IIInd Additional Sessions Judge, Gautambudh Nagar in Sessions Trial No. 497 of 2006 (State Vs. Manvir) arising out of Case Crime No. 136 of 2006 under Sections 376 and 302 of the Indian Penal Code, Police Station Sector-49, NOIDA. Appellant - Manvir has been convicted under Sections 376 and 302 of the Indian Penal Code. Appellant is sentenced to 10 years rigorous imprisonment under Section 376 I.P.C. and a fine of Rs. 5,000/- and under Section 302 I.P.C., life imprisonment has been awarded to appellant - Manvir and a fine of Rs. 5,000/- is awarded.

3. As per the legal proviso to Section 228A I.P.C., it is not expedient to disclose the name of the victim in this case; she is being referred as victim in the judgment.

4. On 2 July, 2006 at 6:15 a.m., a First Information Report was lodged by Sunil Singh, son of late Kailash Singh at Police Station, Sector 49, Gautambudh Nagar against appellant – Manvir under Sections 376 and 302 of Indian Penal Code.

5. The prosecution case as per First Information Report is that the informant – Sunil Singh is tenant of Sri Rajendra Singh and was residing along with her wife and mother; mother of the informant is aged about 80 years; in the intervening night of 1 / 2 July, 2006, mother of the informant as usual was sleeping in the open space, adjacent to the room of the informant; informant along with his other family members was sleeping at the terrace; at about 12:00 in the night his neighbour Manvir, son of Ram Prasad (who was living in the same house), was walking near the place where the mother of the informant was sleeping; informant and his family members went to sleep at terrace; at about 5:00 a.m. when the informant and his family members (wife Renu Devi and son Deepak) came down, they saw Manvir was washing the blood stains with water and the door could not be opened. Thereafter, the son of the informant, namely, Deepak crossed the boundary wall and opened the door. Manvir on seeing the informant and his family members ran away from the house; informant and his family members found that his 80 years old mother was blood stained and her petticoat was up to the knee level; wife of the informant also informed that blood was coming out from the private part of his mother; Manvir committed rape and killed his mother.

6. On the basis of above mentioned First Information Report dated 2 July, 2006, a case was registered being Case

Crime No. 136 of 2006 under Sections 376 and 302 of the Indian Penal Code against appellant – Manvir.

7. In pursuance of the First Information Report, investigation was carried out. Investigating Officer prepared recovery memo dated 2 July, 2006 (Ex. Ka-7) for recovery of the pillow, three bedsheets and broom (Jharu). The aforesaid recovery was witnessed by Naresh Mahto, son of Ram Chandra and Sushil Kumar Singh, son of Thakur Maheshwar Singh. Recovery memo was prepared by Investigating Officer – Matadeen Verma (P.W. - 5).

8. Investigating Officer on 2 July, 2006 recovered the underwear of accused Manvir in presence of Naresh Mahto, son of Ram Chandra and Sushil Kumar Singh. Recovery memo was prepared by Investigating Officer – Matadeen Verma (P.W. - 5). Recovery memo also recorded that the aforesaid undergarment was having blood stains. The recovery memo was marked as Ex. Ka-8 before the trial court.

9. Inquest of the deceased was conducted on 2 July, 2006 by Investigating Officer – Matadeen Verma (P.W. - 5) on the direction of S.H.O – Vishwajeet Singh. The inquest report was marked as Ex. Ka-2 before the trial court. The inquest report noted following injuries on the deceased :-

"चोटे शवः- मृतिका के शरीर को उलट पलट कर देखा व हया शर्म का स्वायल रखते हुये वादी की पत्नी श्रीमती रेनू से दिखवाया गया तो जिस्म पर निम्न जखात पायी गयी-

1. दाहिने एवं बांये गाल पर दांत से काटे के निशान बने पाये गये हैं।
2. गर्दन में खुरसठ एवं नीलगू निशान चोट खून आलूद
3. बाँये एवं दाहिने हाथ की कोहनी में चोट खरास एवं जाबजा नीलगू निशान
4. वादी की पत्नी से गुसांग को दिखवाया गया तो गुसांग पर (पेशाब के रास्ते) चोट खून आलूदा"

10. Thereafter, S.H.O – Vishwajeet Singh (P.W. - 8) on 2 July, 2006 prepared a site plan of the place of occurrence.

11. The postmortem of the deceased was conducted on 2 July, 2006 at 4:30 p.m. by Dr. Madan Lal (P.W.-7). The following injuries were recorded in the postmortem report dated 2 July, 2006 :-

1. Blackening over an area of 7 x 7 cm on right side eye and face.
2. Bleeding and laceration present all around vagina over an area of 20 x 20 cm.
3. Bite marks present on front of neck on left side over an area of 6 x 2 cm.

12. After investigation, charge sheet was submitted against accused-Manvir. The charge under Sections 376 and 302 I.P.C. was framed by the IIInd Additional Sessions Judge, Gautambudh Nagar on 6 November, 2006.

13. Prosecution in support of its case examined nine witnesses, namely, (PW-1) Sunil Singh (Informant), (PW-2) Smt. Renu Devi, (PW-3) Master Deepak, (PW-4) Anil, (PW-5) S.I. Matadeen Verma, (PW-6) S.I. R.B. Kaul, (PW-7) Dr. Madan Lal, (PW-8) Vishwajeet Singh and (PW-9) Head Constable Intazar Ahmad.

14. The prosecution also produced documentary evidence in support of the prosecution case i.e. Written Report (Ex. Ka-1), Panchayatnama (Ex. Ka-2), Medical Form (Ex. Ka-3 and Ka-4), Specimen Seal (Ex. Ka-5), Letter to C.M.O (Ex. Ka-6), Recovery Memo (Ex. Ka-7 and Ka-8), Charge Sheet (Ex. Ka-9), Postmortem Report (Ex. Ka-10), Site Plan (Ex. Ka-11) and F.I.R. (Ex. Ka-12).

15. Prosecution Witness-1 : Sunil Singh, who is the informant of the First Information Report dated 2 July, 2006 has proved the First Information Report as Ex. Ka-1. He has stated that the occurrence is of 9 months earlier; he was living in a tenanted accommodation in the house of Rajendra Singh along with his family; along with Sunil Singh his wife Renu Devi and mother, the victim, was also residing; on the date of occurrence as usual his mother (the victim) was sleeping in the Veranda outside his room; the informant and his wife were sleeping on the terrace; at 12:00 in the night his neighbour Manvir was seen walking near the place where the mother of the informant was sleeping; informant and his wife went to sleep; when the informant and Renu Devi and his son Deepak woke up at 5:00 in the morning and came down to room, his neighbour accused - Manvir was washing all the blood stains from the floor of his room; when he tried to look into the room of Manvir, he closed the door and did not allow him to see the blood stains; when the informant, his wife and his son saw the victim, she was dead and her petticoat was torned and blood was coming out from the private part of the deceased; Manvir tried to run away from the house however he was caught by the informant; mother of the informant was subjected to rape and murdered by the accused Manvir; mother was murdered between 12:00 in the night and 5:00 in the morning. He has also stated that the informant has lodged First Information Report at Police Station, Sector 49, NOIDA and the scribe of the First Information Report was his son Tinku who has written the First Information Report on his verbal instructions. The said witness has lodged First Information Report at the Police Station on 2 July, 2006.

16. Prosecution has further produced Smt. Renu Devi, wife of Sunil Singh, as Prosecution Witness-2. She has stated that she was residing at Village Agdhapur at a tenanted accommodation of Rajendra Singh along with his husband and family; her mother-in-law was resident of Bihar; about one month prior to the incident her husband brought the deceased to Agdhapur; since then she is residing with them; in the night of 1 / 2 July, 2006, she and her husband Sunil and children were sleeping on the terrace and her mother-in-law was sleeping in the Veranda on the ground floor; at 12:00 in the night neighbour Manvir was walking around the place where her mother-in-law was sleeping; at about 12:00 in the night she and the family members had gone to sleep and woke up at 5:00 in the morning; when she came down in the morning she found blood on the floor at the place where her mother-in-law was sleeping and Manvir was washing the blood stains from the floor; Manvir on seeing her and other family members coming down left the cleaning of the floor and went into his room; her mother-in-law was lying dead with blood; blood was oozing out from the private part; there was bite injury on the cheeks of the deceased; on seeing deceased she was under impression that she was subjected to rape; she has also stated that at that time Manvir was in his room and he had locked his room from inside; when his son Deepak knocked the door of the room of Manvir, he opened and tried to run away but was caught and was handed over to the police.

17. Prosecution examined Master Deepak, son of Sunil Singh, as Prosecution Witness-3. He has testified that deceased is his grandmother and she was murdered on 2 July, 2006; body of the deceased was sealed before him; inquest report was

also filled before him; the inquest report was also signed by him. The witness has identified his signature on the inquest report.

18. Prosecution examined Anil, son of Rajendra Singh, as Prosecution Witness-4. He has stated that the incident is of 2 July, 2006 and he has seen the body of the deceased; police had sealed the body of the victim in his presence; the inquest report was filled in his presence and he has signed the inquest report. The said witness has identified his signature on the inquest report.

19. Prosecution has examined S.I. Matadeen Verma, as Prosecution Witness-5. He has stated that on 2 July, 2006 he was posted at Police Station, Sector 49, NOIDA as Sub Inspector; on the relevant date on the direction of the Station House Officer Sri Vishwajeet Singh, he had filled the Panchayatnama of deceased; he had prepared the inquest report at the tenanted accommodation of the informant; he has identified his signature and handwriting on the Panchayatnama and the signature of the Panch witnesses on the inquest report. The inquest report was marked as Ex. Ka-2. He has also testified that the Police Form No.13 Photo Laash, Namuna Mohar and Chitthi C.M.O. was prepared by him and the same was marked as Exhibits Ka-3 to Ka-6. The said witness has also recovered pillow on which there were blood stains from the place of occurrence and three pieces of Bedsheet (Chaddar) which was also blood stained and one broom (Jharu) which was also blood stained; Naresh Mahto and Sunil Kumar Singh are witnesses to the aforesaid recovery; recovered articles were sealed and the recovery memo was prepared; he has identified

his handwriting and signature on the recovery memo and the same was marked as Ex. Ka-7 before the trial court; on 2 July, 2006 after arrest of accused Manvir, recovered the underwear of the accused in the presence of witnesses Naresh Mahto and Sushil Kumar Singh and the same was sealed by him; he had prepared the recovery memo and has identified his handwriting and signature on the recovery memo and signature of the Naresh Mahto and Sushil Kumar Singh. The recovery memo of the underwear is marked as Ex. Ka-8 before the trial court. The material exhibits of the recovery were identified by the aforesaid witness. He has also stated that on the place of occurrence he sealed the dead body of the deceased and sent the same for postmortem through Constable Manjeet Singh.

20. The next prosecution witness produced is Sri R.B. Kaul, Sub Inspector, Thana Dadri, District Gautambudh Nagar, as Prosecution Witness-6. He had stated that on 2 July, 2006, he was posted as Station House Officer, Police Station Sector 49, NOIDA; on 3 July, 2006 he had received the pathology report of deceased; on 8 August, 2006 he had recorded the statements of Sub Inspector Matadeen Verma, Constable Manik Chand and Constable Manjeet Singh in the Case Diary; on 8 August, 2006, he had submitted charge sheet against the accused Manvir. The aforesaid witness has identified the handwriting and his signature on the charge sheet and the charge sheet was marked as Ex. Ka-9.

21. Prosecution examined Dr. Madan Lal, as Prosecution Witness-7. He has stated that on 2 July, 2006, he was posted at District Hospital, NOIDA, Gautambudh Nagar as Eye Surgeon; conducted the postmortem of deceased, aged about 80 years;

postmortem was held on 2 July, 2006 at about 4:30 p.m.; the dead body of the deceased was brought by Sipahi C.P. No. 777 Manik Chandra and C.P. No. 917 Manjeet Singh, Police Station, Sector 49, NOIDA. He has also testified the following injuries:-

"वाह्य परीक्षणः- शरीर पर अकड़न मौजूद थी आंखे बन्द थी।

मृत्यु पूर्व चोटें:-

1- 7 X 7 सेमी० के आकार की कालिक दाहिनी आंख के चारों तरफ तथा चेहरे पर मौजूद थी।

2- रक्त स्राव तथा कटे फटे घाव महिला के आन्तरिक जननांग [Vagina] चारों तरफ 20 X 20 सेमी० आकार का घाव मौजूद था।

3- दांत के निशान गर्दन के सामने तथा बायी तरफ 6 X 2 सेमी के एरिया पर मौजूद थे।"

22. He has stated that the injuries were one day old and the death was as a result of shock due to ante mortem injuries. The said witness has identified his handwriting and signature on the postmortem report and the postmortem report was marked as Ex. Ka-10.

23. Prosecution examined Vishwajeet Singh, as Prosecution Witness-8. He has deposed that on 2 July, 2006 he has taken statements of F.I.R. Lekhak H.C. Intazar Ahmad, informant Sunil Singh and recorded the same in the case diary; on his direction the inquest report was prepared by S.I. Sri Matadeen and the body was sealed for sending the same for postmortem; he has identified the inquest report and has stated that the inquest report was prepared on his direction and the inquest report contains his signature; inquest report was exhibited as Ex. Ka-2; he had visited the place of occurrence and prepared the site plan of the place of occurrence; identified his handwriting on the site plan and the same was marked as Ex. Ka-11; on 2 July, 2006 he arrested Manvir and recorded his

statement in the case diary; the underwear of the accused Manvir was also recovered and the recovery memo was prepared; the underwear of the accused Manvir was having blood stains; recorded statements of Smt. Renu Devi and Deepak and witness Tinku in the case diary; on 6 July, 2006 recorded the statements of Anil Kumar, Satveer Singh, Rajvir, Deepak, Naresh Mahto and Sushil Kumar in the case diary; on 10 July, 2007 sent the slide for examination and the articles recovered from place of occurrence was sent for forensic examination.

24. Prosecution has examined H.C. 49 Intazar Ahmad, Police Station Sector 49, District Gautambudh Nagar, as Prosecution Witness-9 who has stated that on 2 July, 2006 on the information of Sunil Kumar, son of Kailash Singh, he has prepared the Chik No. F.I.R. No. 105/06 in Case Crime No. 136/06 under Sections 376 and 302 I.P.C., and had registered the same; he has also identified the GD entry and stated that the same is in his handwriting and under his signature and same was marked as Ex. Ka-12.

25. In the present case, there are no eye witness of the occurrence and the incident is of night, outside the room of the informant. The occurrence is based on the circumstantial evidence. The PW-1 (Sunil Singh) and PW-2 (Smt. Renu Devi) had testified before the trial court that the deceased on the night of occurrence was sleeping outside the room of the informant and the room of the accused Manvir was nearby; when the informant and his family members (who were sleeping on the terrace) came down in the morning they saw that accused Manvir was cleaning the blood stains on the floor with the

broom. Aforesaid witnesses further stated that on seeing the said witnesses, the accused Manvir went inside the room and locked his room.

26. It is to be noted that under Section 8 of the Indian Evidence Act, 1872 the conduct of the accused is relevant if such conduct is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto. Section 8 of the Evidence Act is reproduced hereinbelow :-

“8. Motive, preparation and previous or subsequent conduct.—Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.”

27. This section embodies the rule that the testimony of res gestae is allowable when it goes to the root of the matter concerning the commission of the crime. The conduct of a person involved in crime becomes relevant if his conduct is related to the incident that happened. Where a crime has been committed, the court has to take into account both the previous and subsequent conduct of the accused pertaining to the commission of the crime. In certain cases, the previous conduct of the accused throws light on whether the accused is innocent or guilty whereas in some cases it is the subsequent conduct that becomes very important in determining the innocence or guilt of the accused. The Apex Court in the case of **Anant**

Chintaman Lagu Vs. State of Bombay, AIR 1960 SC 500
observes thus :-

“(15)... A criminal trial, of course, is not an enquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection, that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material...”

28. In the present case, deceased was found in the morning near the room of the accused. Deceased had gone to sleep at night in front of the room of the informant who is his son and the informant and his family members were sleeping on the terrace of the room. When the informant and his family members came down in the morning they found that the accused was cleaning the blood stains with the broom and on seeing the informant and family members, the accused went into his room and locked his room. The said facts have been duly testified by the witnesses produced by the prosecution. The said facts are relevant under Section 8 of the Evidence Act and indicates towards the fact that the accused is guilty of the offence.

29. It is to be noted that the broom used by the accused has been recovered by the Investigating Officer and the recovery memo dated 2 July, 2006 was prepared. The recovery memo is marked as Ex. Ka-7. A perusal of the said recovery memo would further indicate that the broom was stained with blood. P.W. 5 – S.I. Matadeen Verma has proved the recovery memo dated 2 July, 2006 and has stated that the broom was recovered

by him from the place of occurrence and the broom was having blood stains.

30. Investigating Officer S.I. Matadeen Verma (P.W. 5) has further recovered pillow from the place of occurrence. The pillow was blood stained. The recovery memo dated 2 July, 2006 was prepared by the Investigating Officer in respect of recovery of the pillow from the place of occurrence and the same was marked as Ex. Ka – 7. The said witness in his testimony proved the recovery memo and stated that the pillow was blood stained. He has further stated that the blood stained pillow was recovered from the place where the body of the deceased was lying.

31. The Investigating Officer S.I. Matadeen Verma (P.W. 5) has further recovered three bedsheets from the place of occurrence. Bedsheets were blood stained. Recovery memo dated 2 July, 2006 was prepared by the Investigating Officer in respect of recovery of three bedsheets from the place of occurrence and the same was marked as Ex. Ka-7. The said witness in his testimony proved the recovery memo and has stated that the bedsheets were blood stained. He further stated that the blood stained bedsheets were recovered from the place where the body of the deceased was lying.

32. The body of the deceased was sent by the Investigating Officer for post-mortem examination. The post-mortem examination of the deceased was held on 2 July, 2006 at 4:30 p.m. by Dr. Madan Lal (P.W.-7) who was posted at District Government Hospital, Noida, Gautam Budh Nagar. The said witness has identified the post mortem report and the same was marked as Ex. Ka-10.

33. The nature of the injuries suffered by the deceased indicates that the death of the deceased was not natural. In the opinion of the doctor who conducted the post-mortem examination, the deceased died as a result of shock due to anti-mortem injury.

34. The Investigating Officer also prepared an inquest report of the deceased on 2 July, 2006. The inquest was held on 2 July, 2006 at 7:15 a.m. The inquest report is marked as Ex. Ka-2. Inquest report was prepared by S.I. Matadeen Verma (P.W. 5). The said witness has proved the inquest report dated 2 July, 2006. He has stated that the inquest report was prepared by him and was in his handwriting. He also stated that the inquest report has been signed by him. The object of inquest proceedings is to ascertain whether a person has died under unnatural circumstances or unnatural death and if so, what is the cause of the death.

35. As per the opinion of the Panch witnesses, the death of the deceased was unnatural and was a result of injury sustained after rape. The Investigating Officer concurred with the opinion of the Panch witnesses. In view thereof, the death of the deceased was unnatural and injuries were sustained by the deceased and blood was seen in the private part of the deceased. The witnesses P.W.-1 and P.W.-2 had also described the injury sustained by the deceased in their statements.

36. P.W.-1 (Sunil Singh) in his statement before the trial court has stated as follows:-

"मैंने तथा मेरी पत्नि व मेरे लड़के ने अपनी मां दरबी देवी को देखा तो वह मरी पड़ी थी तथा उसका पेटीकोट फटा पड़ा था तथा उसके गुसांग से खून जा रहा था।

मैंने अपनी मां का शव देखा था। उसके दोनों गालों पर दातों से काटने के निशान थे। गले पर नाखूनों के खरांचों के निशान साइड से थे। बायें तरफ थे। जाँध पर छुरा मारा हुआ था दाहिनी जाँध में कमर से सट कर। इसके अलावा मां का खून से कपड़ा भीगा था।"

37. P.W.-2 (Smt. Renu Devi) in her statement before the trial court has stated as follows:-

"मैंने अपनी सास को देखा तो वह मरी पड़ी थी तथा खून से लथपथ थी। मैंने उसका पेटीकोट उठाकर देखा था तो उसके गुसांग से खून आ रहा था तथा उसके गाल पर भी काट रखा था।"

38. The prosecution has brought on record the circumstantial evidence and medical evidence including the conduct of the accused immediately after the alleged occurrence which points towards the guilt of the accused and as such, the prosecution has proved its case beyond reasonable doubt.

39. Learned counsel for the appellant has submitted that there are no independent witness of the alleged crime and the witnesses P.W.-1 and P.W.-2 are relative of the deceased and as such, the testimony of P.W.-1 and P.W.-2 cannot be relied upon.

40. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. It is worthy to note that there is a distinction between a witness who is

related and an interested witness. A relative is a natural witness.

The Apex Court in **Kartik Malhar Vs. State of Bihar, (1996) 1 SCC 614** has opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term “interested” postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

41. Merely because the witnesses are family members their evidence cannot *per se* be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. There is no bar in law on examining family members as witness. Evidence of a related witness can be relied upon provided it is trustworthy.

42. The Supreme Court in **State of Uttar Pradesh Vs. Samman Dass, (1972) 3 SCC 201** observed as under:-

“23...It is well known that the close relatives of a murdered person are most reluctant to spare the real assailant and falsely involve another person in place of the assailant...”

43. In **Khurshid Ahmed Vs. State of Jammu and Kashmir (2018) 7 SCC 429**, the Supreme Court on the issue of evidence of a related witness observed as under :-

“31. There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason

has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused.”

44. The prosecution case is that the incident is of night and of a place where the informant along with his family members and the accused were residing as tenants and as such, the incident has occurred inside the house and at night. The incident has occurred at a place which is not ordinarily accessible by the public at large or the incident is of the private house, under normal circumstances an independent witness may not be available and the related witnesses may be natural witness. Further circumstantial evidence plays a vital role in finding the truth of the occurrence.

45. In the instant matter, we find the testimony of the witnesses to be consistent and reliable, and therefore reject the contention of the appellant that the testimony of the witnesses must be disbelieved because they are close relatives of the deceased and hence interested witnesses.

46. Counsel for the appellant has urged that there is difference in the injuries stated by the prosecution witness and the medical evidence. In the present case, there is no eyewitness to the alleged occurrence and the prosecution case rests on the circumstantial evidence. The injuries noted by the Prosecution Witness No. 1 and Prosecution Witness No. 2 are based on the observation made by them when they reached the place of occurrence. The inquest report was prepared in the presence of Prosecution Witness No. 3 and Prosecution Witness No. 4. The observations made by the witnesses (who are related to the deceased or who are independent witnesses) having no medical

expertise their observation may not be as accurate as the observation of a doctor who is conducting the post-mortem examination. The injuries which are common in the witness account and the medical examination are that the deceased suffered bite injury on her cheeks; injury in the private part of the deceased. The argument of the learned counsel for the appellant has no force as the injuries indicate that the deceased was subjected to rape prior to her death. It is further to be noted that although the medical evidence of the doctor has not indicated in his post-mortem report with regard to the allegations of rape however the nature of injury sustained by the deceased itself indicate that the deceased was subjected to rape prior to her death. It is also to be noted that the defence has not given any suggestion to the doctor who conducted the post-mortem that the deceased was not subjected to rape.

47. It is argued by the learned counsel for the appellant that the First Information Report has been lodged on the dictation of the Station House Officer and the time for scribe of the First Information Report has been stated as 6:15 a.m. whereas the witness has stated that the First Information Report was scribed at 9:00 a.m. As per the First Information Report dated 2 July, 2006 (Ex. Ka-12), information was received at 6:15 a.m. First Information Report has been lodged by Sunil Singh (P.W.-1). Said witness in his cross-examination has stated that the report was scribed by Tinku on the questioning of the Station House Officer; Station House Officer on the narration of the incident by Sunil Singh has got the report scribed by Tinku; report was taken by the Station House Officer at 9:00 a.m. It is on the aforesaid basis that the learned counsel for the appellant states that there is a contradiction in the time of lodging of the First

Information Report and the manner in which the First Information Report was lodged. The statement of the Prosecution Witness No. 1 – Sunil Singh confirms the fact that the First Information Report was lodged on the basis of the information provided by the informant–Sunil Singh. The statement also indicates that information stated in the report dated 2 July, 2006 is based on the facts provided by the informant which was described on the directions of the Station House Officer. An ordinary citizen who has suffered grief in family member or who is not well educated may not be in a position to provide information in a proper manner and in such a situation if the police officer has assisted the informant in lodging the First Information Report in proper manner, the same would not in any manner dislodge the prosecution case. It is to be noted that the officer concerned was not having the knowledge of the facts stated in the First Information Report and as such, he could not have in any manner changed the circumstances stated in the First Information Report. Insofar as the time when the First Information Report was lodged is concerned, as per the First Information Report, it was lodged at 6:15 a.m. whereas as per the statement of Prosecution Witness No. 1, the information was lodged at 9:00 a.m. The Prosecution Witness No. 1 has proved the First Information Report. It is to be noted that the witness was examined on 4 April, 2007 and the cross-examination was extended to 23 July, 2007. A person who is subjected to long cross-examination may not be able to describe the incident and the time as accurately by lapse of time and the same will not in any manner dislodge the prosecution case.

48. It is submitted by counsel for the appellant that at the time of preparation of the inquest report, the first information report was not in existence. The inquest of the deceased was conducted on 2 July, 2006 at 7:15 a.m. The inquest report was marked as Ex. Ka-2 before the trial court. The inquest report specifies the case crime number of the first information report and the date and time when the information was received at the police station. The object of the inquest proceedings under Section 174 Cr.P.C is to ascertain whether a person had died under unnatural circumstances or unnatural death and if so what is the cause of death. The question regarding the details as to how the deceased was assaulted or who assaulted her or under what circumstances she was assaulted is foreign to the ambit and scope of the proceedings under Section 174 Cr.P.C. Mention of the name of accused and the eyewitness in the inquest report is not necessary. Due to non mentioning of the name of the accused in the inquest report, it cannot be inferred that First Information Report was not in existence at the time of inquest proceedings.

49. It is urged on behalf of the appellant that in the pathological report no spermatozoa was found and as such the prosecution story is not reliable. In the present case the circumstantial evidence as stated hereinabove points towards the guilt of the accused. It is further to be seen that in all cases the spermatozoa may not be traced. At times it happens that the accused is not able to commit the crime completely and in such a situation the spermatozoa may not be found. In a case where the slide is sent for examination with delay there are chances that the spermatozoa may not be found. In the present case Prosecution Witness No. 8 has stated that he had sent the slide

for examination on 10 July, 2007 to the Forensic Science Laboratory. Under the circumstances, if the spermatozoa is not found the same would not affect the prosecution case.

50. It is further submitted on behalf of the appellant that the blood stained soil was not recovered by the Investigating Officer and as such the prosecution case is not trustworthy. Bloodstained soil is recovered from the place of occurrence in order to establish/prove the place of occurrence. Accused has not stated that the place of occurrence is somewhere else. The accused has not given suggestion to any of the witnesses that the occurrence took place at some other place. It is further to be seen that the Investigating Officer has prepared the site plan of the place of occurrence and the same was marked as Ex. Ka-11 before the trial court. The site plan was duly proved by the P.W.-8. Site plan was prepared on 2 July, 2006. Further, the witnesses of fact have also given detailed account of the place of occurrence and the circumstances which prove towards the guilt of the accused.

51. It is submitted on behalf of the appellant that the informant and other witnesses of fact have stated that the accused was caught on the place of occurrence and was handed to the police whereas the Investigating Officer has arrested the accused from petrol pump. The contradiction pointed out by counsel for the appellant with regard to the place and manner of arrest of the accused is without any force. In this respect, it is to be seen that the police tries to show the arrest of the accused in order to enhance their service record. The contradiction pointed out will not demolish the prosecution case when there is other

cogent and trustworthy evidence pointing towards the guilt of the accused.

52. On the basis of the aforesaid facts and circumstances, the prosecution has proved its case beyond reasonable doubt. The allegations against the accused – appellant under Sections 376 and 302 of the Indian Penal Code stands proved by the prosecution.

53. We do not find any infirmity in the impugned judgement dated 5 December, 2007 and sentence dated 6 December, 2007 passed by the trial court convicting the accused – appellant for offence under Sections 376 and 302 of the Indian Penal Code. The sentence awarded by the trial court is in accordance with law and needs no interference.

54. As a result, the present appeal lacks merit and is dismissed.

55. Registrar General of this Court is directed to pay an honorarium of Rs. 20,000/- to Ms. Abida Syed, learned Amicus Curiae for rendering effective assistance in the matter.

56. Let the lower court record be transmitted back to court below along with a copy of this order.

Order Date :- 17.05.2022
VMA

(Vikram D. Chauhan, J.) (Suneet Kumar, J.)