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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 27TH DAY OF SEPTEMBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL APPEAL NO.802 OF 2013

BETWEEN:

STATE OF KARNATAKA
BY N.R. PURA POLICE.

... APPELLANT

(BY SRI. NAMITHA MAHESH B.G., HIGH COURT
GOVERNMENT PLEADER)

AND:

S. RAJU
SON OF SHANMUGHA
AGED ABOUT 47 YEARS
RESIDENT OF KARNATAKA ELECTRICITY BOARD COLONY
BALEHONNUR
N.R. PURA TALUK-577 112. ... RESPONDENT

(BY SRI. P.B. UMESH, ADVOCATE FOR
SRI. R.B. DESHPANDE, ADVOCATE)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION
378(1) AND (3) OF CRIMINAL PROCEDURE CODE PRAYING
TO GRANT LEAVE TO APPEAL AGAINST THE JUDGMENT
AND ORDER OF ACQUITTAL DATED 05.03.2013 PASSED
BY THE PRINCIPAL SESSIONS JUDGE, CHIKMAGALUR IN

SESSIONS CASE NO.68 OF 2012 ACQUITTING THE RESPONDENT/ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 376 OF INDIAN PENAL CODE.

THIS APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 03.09.2019 COMING ON THIS DAY, *H.P. SANDESH, J.*, PRONOUNCED THE FOLLOWING:-

JUDGMENT

This appeal is filed by the State challenging the judgment of acquittal passed in S.C.No.68/2012 dated 5.3.2013 on the file of Principal Sessions Judge at Chikmagalur for the offence punishable under Section 376 of Indian Penal Code.

2. Brief facts of the prosecution case are:

Complainant-P.W.1 is having three children. Her son was working in a hotel at Mangalore. Victim-P.W.2 was studying in SSLC. On 4.4.2012, the younger daughter of the complainant had been to school excursion and complainant had gone for coolie work to the coffee land of one Krishnegowda. Victim was alone in the house. At about 9.00 a.m. when the victim after washing the clothes, she was drying the clothes, accused came and held her

hand dragged her inside his house. In spite of P.W.2 making hue and cry, nobody came. The accused took her inside the house and switched on the TV and by keeping high volume, pushed P.W.2 on the cot and removed his clothes, by lifting her under garments raped her. After committing rape, he gave life threat to P.W.2 that if she discloses the said fact to anybody, he will break her legs. When she came out from the house of the accused, she met one Sachin-C.W.3. When he questioned as to why she is weeping, P.W.2 narrated the incident and both of them went and informed the same to C.W.4 and at that time C.W.5 was also present. Thereafter, she was taken to the house of P.W.3(C.W.6) and they narrated the incident. P.W.3 told C.Ws.3 to 5 that they should take her to her mother and accordingly, all of them took the victim to the coffee land of Krishnegowda where victim's mother- P.W.1 was working and informed the same to her. P.Ws.1 and 2 came back to the house and from there they went to the police station and lodged the complaint. The police have registered the case against the accused and

investigated the matter and filed the charge sheet for the offence punishable under Section 376 of Indian Penal Code.

The prosecution, after committal of the matter to the Sessions Court, since accused claimed to be tried, in order to prove its case, examined P.Ws.1 to 14 and got marked Exs.P1 to P18 and M.Os.1 to 5. After closure of prosecution evidence, accused was examined under Section 313 of Cr.P.C. and the statement of the accused was recorded. The accused denied the incriminating materials and did not chose to lead any evidence. After completion of the evidence, the Court below heard the arguments of the learned Public Prosecutor appearing for the State as well as the learned counsel appearing for the accused and on considering the material on record, has acquitted the accused. Hence, present appeal is filed by the State.

3. The grounds urged in the appeal memo are that, the Court below has failed to consider both oral and

documentary evidence available on record, which has resulted in miscarriage of justice. The victim has been examined as P.W.2 and P.Ws.3 and 4 are the neighbours who immediately after the incident saw the victim and gathered factual information and proceeded along with the victim to the place where her mother was working and informed the same to P.W.1. The evidence of P.Ws.1 to 4 is consistent with regard to the act of the accused and also the circumstances under which they gathered the information. The prosecution also relied upon the evidence of P.W.6, Head Master of the school who issued the certificate to establish the fact that victim was a minor and the same is not disputed. The Court below has given more importance to the evidence of P.Ws.9 and 10 who are the medical officers and only on the ground that medical evidence does not corroborate the case of the prosecution, has committed an error in acquitting the accused. The reasons assigned in the judgment of acquittal are against the material on record. The Court below while evaluating the evidence of prosecutrix and coming to the conclusion

that prosecution has not proved the charge beyond all reasonable doubt should have taken into consideration the minority of the victim. Even though there has been no need of any medical evidence for corroboration, the Court below has committed an error in acquitting the accused.

4. The learned High Court Government Pleader appearing for the State in her arguments has vehemently contended that the Court below has failed to appreciate the evidence on record and in a case of sexual assault against a minor, if the evidence of prosecutrix inspires confidence of the Court the same has to be considered. Hence, the judgment of acquittal passed by the Court below requires to be reversed.

5. Per-contra, learned counsel appearing for the respondent-accused in his arguments has vehemently contended that the Court below has given anxious consideration to both oral and documentary evidence available on record and doubted the very incident. In order to reverse the finding there is no cogent and corroborative

evidence available on record and hence, prayed this Court to dismiss the appeal.

6. Having heard the arguments of the learned High Court Government Pleader and also the learned counsel for appearing for the respondent, the points that arise for our consideration are:

- (i) Whether the Court below has committed an error in acquitting the accused for the offence punishable under Section 376 of Indian Penal Code and whether it requires interference by this Court?
- (ii) What order?

7. The case of the prosecution is that the accused has committed rape on the minor girl who was aged about 16 years. The accused dragged her into his house and subjected her for sexual act. Now let us consider the evidence available on record.

8. P.W.1 lodged the complaint on the same day of the incident in terms of Ex.P1 and FIR was registered in terms of Ex.P18. In order to substantiate the case of

prosecution, the prosecution has examined P.W.1, who is the mother of the victim. In her evidence she states that on 4.4.2012 P.W.2-Victim was alone in the house and P.W.1 had been to coolie work in the coffee plantation belonging to one Krishnegowda. At that time, P.W.2 came crying along with her neighbours and even on enquiry, she did not tell anything. By consoling her, she brought her back to the house and thereafter, she told that when she was drying the clothes after washing at around 9.45 a.m. the accused forcibly took her to his house and by raising volume of the TV raped her. Accordingly, she gave the complaint as per the information given by the victim girl in terms of Ex.P1. She has also stated that P.W.2 told her that accused has threatened her that if she discloses about the incident to anybody he will break her legs and kill her. On the next day, police took the victim to the Government Hospital and she was subjected to medical examination and police have also seized the clothes worn by her at the time of alleged incident. P.W.1 was subjected to cross-examination.

In the cross-examination it is elicited that when her daughter was brought to the land of Krishnegowda, C.Ws.3 to 5 did not tell anything about the incident, but they were informed that P.W.2 is crying. It is elicited that C.W.5 is the father of C.W.4. P.W.1 is not rearing dogs, but C.W.5 was rearing two dogs in his house. It is also elicited that she is not raring any hens in her house. It is suggested that two days prior to filing of the complaint her two hens were eaten by the dogs of C.W.5 and in that context, there was a quarrel between her and C.W.5 and the same was denied. There was no quarrel between her and the accused in this behalf. She does not know the name of the person who wrote the complaint Ex.P1. But she was searching for the writer to write the complaint and hence, there was a delay in lodging the complaint. It is elicited that nearby her house there are so many residential houses and there is also a KEB office. It is also elicited that in between her house to police station there are residential houses and shops. It is elicited that she was not having any impediment to immediately go to police

station. When the victim was taken to the hospital police also came along with them and police only brought a requisition along with them for examination. It is also elicited that P.W.2 once consumed excess tablets and she was unconscious and they took her to N.R. Pura hospital. It is further elicited that PW.2 sometimes used to fall down and become unconscious. It is elicited that C.W.5 is literate and he knows writing.

9. P.W.2-victim in her evidence states that on the date of incident, she washed clothes at about 09:00 am and at about 9:45 am, she was putting the clothes to the wire for drying. At that time, accused came and by holding her hands dragged her to his house. Even though she made hue and cry, nobody was there. In spite of her cry, accused took her inside the house. When she cried loudly, he increased the volume of the T.V. so that no body could hear her cry. Thereafter, accused pushed her on the cot and removed his shirt, knicker and undergarment. Thereafter, accused by lifting her inner garments raped

her. The accused also threatened her after committing the rape. When she came out of the house of the accused, she was weeping. There she met C.W.3. and he asked as to why she was crying. At that time, accused was also present. He told C.W.3 that she has asked beetle nut and leaves for which he has assaulted her, as such, she is weeping. Thereafter accused went inside his house and C.W.3 also went. Thereafter, she went to the house of C.W.4 – Marina who has been examined as P.W.11 and she narrated the incident. When she told PW.11, C.W.5 was also present. Both, PW.11 and C.W.5 took her to the house of P.W.3.(C.W.6). She narrated the incident to PW.3 also. Thereafter, PW.3 told to take her to PW.1 and accordingly, she was taken to her mother where she was working and thereafter, she revealed the incident to her mother in the house and accordingly, complaint was given to the police. Police also came to the spot and she showed the place to the Police and Mahazar was drawn in terms of Ex.P2. She also handed over the clothes worn by her at the time of rape to the police. In the presence of panch

witnesses, the same were seized by drawing mahazar in terms of Ex.P3. She identifies her signature as Ex.P3(a).

P.W.2 also identifies MOs.1 to 3 as clothes belonging to her. On the next day, she was subjected to medical examination. She has also stated that the house of CW.3 is in front of her house. After two houses, there is house of C.Ws.4 and 5. She was subjected to cross examination.

In the cross-examination it is elicited that on the date of the incident, C.W.3 was there in the house. The distance between the front yard of her house and the house of the accused is about 6 yards. If anybody makes hue and cry, it will be heard to the house of One Saleem and C.W.4. Till she was taken inside the house, nobody came there. She tried to go towards the door but the door was latched. The said door of house of the accused was having tower bolt. The accused might have raped her for about half an hour. At that time also, she was making hue and cry. Accused only put clothes to her and thereafter he worn his clothes. After telling to C.Ws.4 to 6, they went to P.W.1 at about 11 a.m. The police recorded her statement.

The police did not record the statement of P.W.1. It is elicited that from their house at K.E.B. colony, after bus-stand there is a circle and thereafter there is a police station. The distance between her house to police station may be about half a kilometer. The complaint was written by her to which P.W.1 subscribed her signature. Ex.P1 is in her handwriting. When Ex.P2 was written it may be about 4.30 or 5.00 p.m.

10. P.W.3 is another neighbouring witness. In her evidence she states that when she was in her house P.W.2 was crying near the gate. She went and asked for which, P.W.2 told her that accused dragged her and committed rape on her. She advised C.Ws.3 to 5 to take her to P.W.

1. She was subjected to cross-examination.

In the cross examination it is elicited that she came out of her house and only at that time she heard the crying voice of P.W.2. Then she went and asked. Around her house, there are 3 to 4 houses. When she told to fetch

P.W.1, P.W.2 went to her house. She does not know what happened thereafter.

11. P.W.4 is also the neighbouring witness. In his evidence he states that when himself and her daughter C.W.4 were there in the house at about 10:00 a.m, C.W.3 and P.W.2 came and P.W.2 was crying. Her daughter who has been examined as P.W.11 asked P.W.2 and she narrated about the incident and he was also present at that time. When he was intending to take P.W.2 to P.W.1 at that time, P.W.2, C.W.3 and C.W.4 were talking to P.W.3 in front of their gate. Thereafter himself, P.W.2, C.W.3 and 4 went to the coffee plantation of Krishnegowda where P.W.1 was working and informed the same to P.W.1.

In the cross examination it is elicited that there was a criminal case registered against him for having stabbed his wife and he was also in jail for two days. He further admits that subsequently, charge sheet also came to be filed in that case in N.R.Pura Court. He further admits that

the same was compromised and he was acquitted. It is suggested that at that time, accused helped his wife to file the complaint against him and the same was denied saying he does not know about the same. He admits that house of P.W.3 is nearer to the house of P.W.1 and the police have not recorded his statement. In between 10.00 and 10.30 a.m. P.W.2 came and told about the incident.

12. P.W.5 is the Engineer who has drawn the sketch in terms of Ex.P4.

13. P.W.6 is the Headmaster of the school who issued the certificate of date of birth of the victim as 03.07.1995. It is marked as Ex.P5. The same is not disputed.

14. P.W.7 has issued house tax assessment list of the house of Zahida Banu, W/o Abdul Khaleem and the same is marked as Exs.P6 and P7.

15. P.W.8 is the Assistant Executive Engineer who gave certificate in terms of Ex.P8 that there was electricity supply at the time of incident.

16. P.W.9 is the Doctor. He states that he examined P.W.2 and collected vaginal swab and smear in a sealed bottle. The Investigating Officer furnished the same to RFSL. He examined RFSL report and gave the opinion that there are no signs of forcible intercourse to P.W.2. This document is marked as Ex.P9 and this witness is not cross-examined.

17. P.W.10 is the doctor who conducted medical examination of the accused. In his evidence he states that there were no injuries on the body of the accused and also over the private part of the accused and also there were no blood stains and seminal stains on his private part. He gave the report in terms of Ex.P11.

18. P.W.11 is the neighbour who took the victim to P.W.1. She states that P.W.2 revealed how the incident

has taken place and thereafter herself, her father (P.W.4) and C.W.3 took the victim to the garden land of Krishnegowda where P.W.1 was working. They reached around 11.45 p.m. and thereafter, P.Ws.1 and 2 went to the police station.

In the cross-examination it is elicited that 4.4.2012 was Monday. Her school remained closed for summer vacation. The house of P.W.3 is nearer than the house of P.W.11 to the house of P.W.2. When P.W.2 told about the incident, at that time, P.W.3 was not present at that place. If anybody makes hue and cry inside the house of the accused it will be heard to the house of P.W.3. Till P.W.2 came and informed about the incident, they did not hear any hue and cry.

19. P.W.12 is the panch witness for the spot mahazar Ex.P2 and he identified the signature as Ex.P2(b). He is also panch witness to the seizure mahazar Ex.P3 and also identified M.Os.1 to 3. On the next day also he was called to the police station. At that time, accused was

there in the police station and he led them and produced his clothes and mahazar in terms of Ex.P12 was drawn. He identifies M.Os.4 and 5.

In the cross-examination it is elicited that Madhugiri village is at Balehonnur-N.R.Pura road at a distance of about 3 kms. from KEB colony. It is suggested that he is the relative of P.W.1 and the same was denied. The police wrote Exs.P2, P3 and P12 and he does not remember the grade of the police officer who wrote the said mahazars. When the said mahazars were drawn himself, C.W.8, police and apart from that, neighbours including the female folk were there.

20. P.W.14 is the PSI who received the complaint in terms of Ex.P1 and sent the FIR in terms of Ex.P18. It is also his evidence that as per the instructions of P.W.13 he apprehended the accused on 5.4.2012 and brought him and produced before P.W.13 and he gave the report in terms of Ex.P15.

It is suggested in the cross-examination that he did not apprehend the accused and the same was denied. It is further suggested that P.W.1 has not appeared before him and given the complaint in terms of Ex.P1 and the same was denied.

21. P.W.13, the Investigating Officer, in his evidence states that he took further investigation from P.W.14 and instructed P.W.14 to trace and apprehend the accused. On the same day he had visited the place of scene of occurrence and secured the panch witnesses and drawn the spot mahazar as per Ex.P2. He also prepared the rough sketch of the spot. The same is Ex.P13. He also took the photographs as per Ex.P14. On the same day evening P.W.2 produced M.Os.1 to 3 in the police station. He secured the panch witnesses and seized the same by drawing the mahazar in terms of Ex.P3. He also recorded the statement of P.Ws.11, 4 and 3.

He has further stated that on 5.4.2012 at about 7.15 a.m. the accused was apprehended and produced before

him along with the report in terms of Ex.P15. He also recorded the voluntary statement of the accused. The accused during his voluntary statement volunteered that he will produce his clothes and the relevant portion of voluntary statement of the accused is marked as per Ex.P16. The accused led himself, P.W.12 and C.W.8 to his house and produced M.Os.4 and 5 and mahazar was drawn in terms of Ex.P12. He sent P.W.2 and also the accused to medical examination. He has collected the house property register of the accused and also collected date of birth certificate of P.Ws.2 from P.W.6. He also requested the Engineer to prepare the sketch. He also recorded the statement of other witnesses, collected necessary documents and sent seized articles to FSL and obtained the report in terms of Ex.P17. He was subjected to cross-examination.

In the cross-examination it is suggested to the witness that he did not conduct further investigation and the over all evidence given in his chief evidence was controverted, but the same was denied.

22. Having considered the oral and documentary evidence available on record and also considering the contentions urged by the learned High Court Government Pleader appearing for the State as well as the learned counsel appearing for the respondent, this Court has to re-appreciate the material available on record.

23. The main contention of the learned High Court Government Pleader appearing for the State is that the Court below has erroneously acquitted the accused only on the ground that medical evidence does not corroborate the evidence of the prosecutrix who has been examined as P.W.2. The Court below has also magnified the minor contradictions in the evidence of neighbouring witnesses who have been examined before the Court who have witnessed the crying of P.W.2 on the date of incident. If the evidence of P.W.2, the victim is acceptable, there is no need to consider the medical evidence. In the absence of corroboration of medical evidence, if the evidence of the prosecutrix inspires confidence of the Court, the Court

below ought to have convicted the accused. Keeping in view the contentions of both the parties, we would like to refer to some of the judgments of the Apex Court.

24. Firstly, we would like to refer to the judgment reported in *(2011)2 SCC (Cri) 674* in the case of *State of Uttar Pradesh Vs. Chhotey Lal* wherein in paragraphs 22 to 25 and 26 to 28, it is held as under:

22. In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape,

the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

23. *In State of Maharashtra v. Chandraprakash Kewalchand Jain, this Court at SCC page 559 of the Report said: (SCC para 16)*

"16. A prosecutrix of a sex-offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and

feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

24. In *State of Punjab v. Gurmit Singh*, this Court made the following weighty observations at pages 394-396 and page 403: (SCC paras 8 and 21)

"8.....The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.... The courts must, while evaluating evidence remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before replying upon the same, as a rule, in such cases

amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

21. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

25. In Vijay v. State of Madhya Pradesh, decided recently, this Court referred to the above two decisions of this Court in Chandraprakash Kewalchand Jain and Gurmit

Singh and also few other decisions and observed as follows : (SCC p.198 para 14)

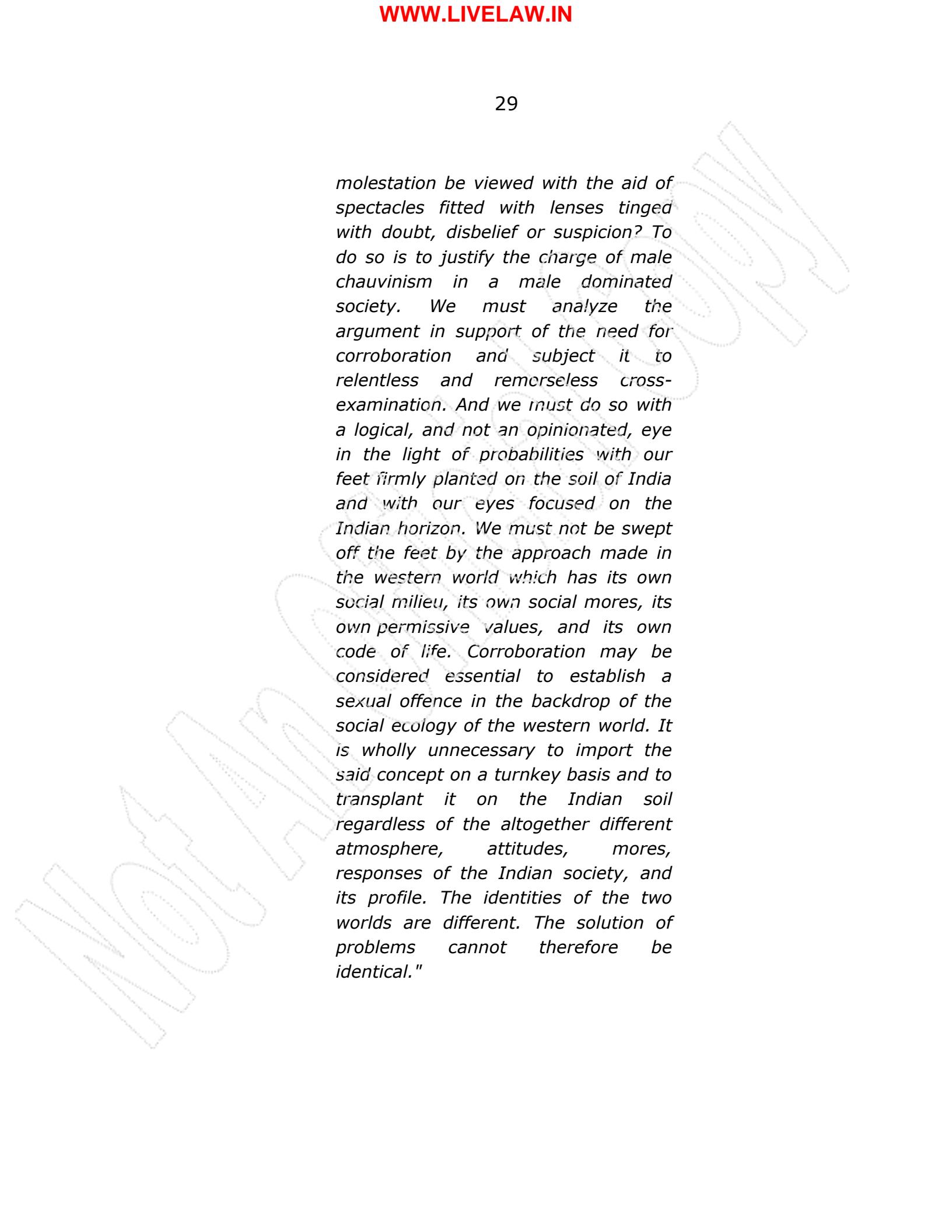
"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

26. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment,

sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the leveling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge.

27. *This Court has repeatedly laid down the guidelines as to how the evidence of the prosecutrix in the crime of rape should be evaluated by the court. The observations made in the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat deserve special mention as, in our view, these must be kept in mind invariably while dealing with a rape case. This Court observed as follows : (SSC p.224 para 9)*

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual



molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical."

28. This Court went on to observe at SCC pp.225-26: (Bharwada case, SCC para 10):

"10. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because –

(1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

(2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours.

(3) She would have to brave the whole world.

(4) *She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.*

(5) *If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family.*

(6) *It would almost inevitably and almost invariably result in mental torture and suffering to herself.*

(7) *The fear of being taunted by others will always haunt her.*

(8) *She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo.*

(9) *The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy.*

(10) *The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour.*

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence.

(12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent."

25. Further, we would like to refer to the judgment reported in (1998)8 SCC 635 in the case of *Ranjit Hazarika Vs. State of Assam* wherein in paragraphs 5 and 6 it is observed as under:-

"5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained

unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In State of Punjab v. Gurmit Singh, to which one of us (Anand, J.) was a party, while dealing with this aspect observed:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a

humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the

occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

26. In the judgment reported in (1996)2 SCC 384 in the case of *State of Punjab Vs. Gurmit Singh and others*, in paragraph 9 regarding evidence of victim of sexual assault, it is held as under:

"9. We are in respectful agreement with the above exposition of law. In the instant case our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness. Her testimony suffers from no infirmity or blemish whatsoever. We have no hesitation in acting upon her testimony alone without looking for any 'corroboration'. However, in this case there is ample corroboration available on the record to lend further credence to the testimony of the prosecutrix.

27. In the judgment reported in 1983 *Crl.L.J. 1285*

SC in the case of *Sheikh Zakir Vs. State of Bihar*, we would like to refer to paragraph 9 of the said judgment, wherein it is held as under:

"9. A reading of the deposition of the complainant shows that it has a ring of truth around it. Section 133 of the Indian Evidence Act says that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But the rule of practice is that it is prudent to look for corroboration of the evidence of an accomplice by other independent evidence. This rule of practice is based on human experience and is incorporated in illustration (b) to section 114 of the Indian Evidence Act which says that an accomplice is unworthy of credit unless he is corroborated in material particulars. Even

though a victim of rape cannot be treated as an accomplice, on account of a long line of judicial decision rendered in our country over a number of years, the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration.

*It is accepted by the Indian Courts that the rule of corroboration in such cases ought to be as enunciated by Lord Reading C.J. in *King v. Baskerville*, (1916) 2 KB 658. Where the case is tried with the aid of a jury as in England it is necessary that a Judge should draw the attention of the jury to the above rule of practice regarding corroboration wherever such corroboration is needed. But where a case is tried by a judge alone, as it is now being done in India, there must be an indication in the course of the judgment that the judge had this rule in his mind when he prepared the judgment and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both."*

28. In the judgment reported in *ILR 2005 KAR 2232* in the case of *State of Karnataka by the Kadur Police Vs. Revannaiah*, we would like to refer the paragraphs 18, 19 and 20, which reads as follows:

"18. We have to keep in our mind that PW-2 was only six years old when the incident happened and her evidence was taken in 1996. The child could not be expected to keep in mind an unsavoury incident. She was at such an age, when she could not comprehend as to what was happening to her. We have to mainly rely on what she had disclosed to other adult witnesses immediately after they came to know of the incident which facts those adult witnesses had got confirmed. The evidence of PWs 1,2 and 4 having given the correct picture of the incident, this difference of time of actual incident given by PW-2 looses significance.

19. As to how evidence of a witness has to be appreciated, the Supreme Court observes as follows in STATE OF U.P. v. M.K. ANTHONY.

"While appreciating oral evidence of a witness, the approach must be whether the evidence of the witness read as whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in evidence as a whole, and evaluate them to find out whether it is agains the general tenor of the evidence given by the witness and whether

the earlier evaluation of the evidence is shaken as to render it unworthy of belief,"

20. *In SARDUL SINGH v. STATE OF HARYANA .*

"There cannot be a prosecution case with a cast iron perfection in all respects and it is obligatory for the Courts to analyse, sift and assess the evidence on record, with particular reference to its trustworthiness and truthfulness, by a process of dispassionate judicial scrutiny adopting an objective and reasonable appreciation of the same, without being obsessed by an air of total suspicion of the case of the prosecution. What is to be insisted upon is not implicit proof. It has often been said that evidence of interested witnesses should be scrutinized more carefully to find out whether it has a ring of truth and if found acceptable and seems to inspire confidence, too, in the mind of the Court, the same cannot be discarded totally merely on account of certain variations or infirmities pointed or even additions and embellishments noticed, unless they are of such nature as to undermine the substratum of the evidence and found to be tainted to the core. Courts have a duty to undertake a complete and comprehensive appreciation of all vital features of the case and the entire evidence with reference to the broad and reasonable probabilities of the case also in their attempt to find our proof beyond reasonable doubt."

29. We also would like to refer to the judgment reported in 2000 Crl.L.J. 2205 in the case of *State of*

Rajasthan Vs. N.K.(Accused) wherein in paragraphs 10 and 11 of said the judgment, it is held as under:

"10. The questions arising for consideration before us are: Whether the prosecution story, as alleged, inspires confidence of the Court on the evidence adduced? Whether the prosecutrix is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been a victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether there was unexplained delay in lodging the F.I.R.?

11. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the Court of facts may find it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short

of corroboration as understood in the context of an accomplice would do.

It must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

30. Having considered the principles and the law laid down in the judgments referred to supra, this Court has to appreciate the evidence available on record.

31. The important evidence is of P.W.2, who is the victim. The victim in her evidence has narrated how the incident has taken place. It is her evidence that on the date of incident when she was drying the clothes after washing, accused came and dragged her to his house and committed rape on her. It is her specific case that when she came out after the rape by the accused, she met C.W.3 Sachin at the first instance and she explained him

as to what has happened, by that time, accused came out and told him that since she had asked for beetle leaves and nut, accused assaulted her and as such, she is weeping. It is her specific case that accused had threatened her and also gave wrong version to C.W.3 and he went inside the house. Thereafter, she went to the house of P.W.11 and P.W.4, who is the father of P.W.11 and narrated the incident and thereafter, P.W.3 also came out of the house and enquired her and she revealed the same to her also. Hence, P.W.3 told P.W.4 and 11 and C.W.3 to take her to P.W.1. Accordingly, took her to P.W.1. After P.W.2 narrating the incident to her mother P.W.1, the complaint was given. In the cross-examination nothing is elicited except that if she makes hue and cry, it will be heard by their neighbours. Only after she was subjected to rape and she came out of the house of accused, she met C.W.3 and thereafter P.Ws.11, 4 and 3 respectively. P.W.2 was subjected to medical examination, so also, the accused. No doubt, the evidence of the Doctor P.W.9 who conducted medical examination of the victim is

that there are no signs of forcible intercourse on P.W.2.

That report was given based on the RFSL report. In his evidence, he has not mentioned anything about the signs of forcible intercourse when he physically examined her and his report is only based on RFSL report. No doubt, the RFSL report does not suggest anything regarding the clothes seized by the Investigating Officer from the victim and also the accused. In the cross-examination of P.W.2 nothing is elicited to show that she was not subjected to sexual act and also as to why the accused would be falsely implicated in the case and whether there was any enmity between the family of the victim and the accused. It is important to note that an attempt is made in the cross-examination of P.W.1 i.e., mother of the victim that P.W.4 (C.W.5) who is the father of P.W.11 (C.W.4) was rearing dogs in his house and that P.W.1 is not rearing any hens in her house. But it is suggested that two days prior to filing of the complaint her two hens have been eaten away by the dogs of P.W.4. In that context, there was a quarrel between her and P.W.4. However, the said suggestion

was denied. It is important to note that it is not the case of the accused person that there was an enmity between the complainant and the accused that the dogs belonging to the accused having eaten the hens of the complainant. The Court below while appreciating this evidence in paragraph 33 of the judgment has misread the same and has come to a wrong conclusion that there was enmity between the family of the complainant and the accused in connection with two hens belonging to the complainant being eaten away by the dogs belonging to the accused.

32. The Court below has also relied upon the suggestion made to P.W.4 that the accused had helped the wife of P.W.4 in filing complaint against P.W.4 even though there was no such admission regarding the said fact in the cross-examination of either P.W.1 or P.W.4 that there was any such enmity, in order to implicate the accused falsely that too in a serious offence of rape. The Court below has given much importance to minor discrepancies found in the evidence of P.Ws.3, 4 and 11 regarding P.W.2 victim

approaching them when she came out from the house of accused.

33. P.W.3 has also specifically stated that when she heard the crying of P.W.2 she came and enquired and she only referred P.W.2 to fetch P.W.1 through P.Ws.4 and 11. The circumstantial evidence of P.Ws.3, 4 and 11 substantiate that all of them have witnessed P.W.2 coming out from the house of accused crying and hence P.W.2 was referred to P.W.1, the mother of the victim and when P.W.1 came to know about the same, she lodged the complaint on the very same day. No doubt, there is a delay in going to the police station which is one km. away from the house of P.W.1. It is important to note that in a case of rape normally the Court cannot give much importance to consider the delay in filing the complaint. It is the question of life of a girl who was subjected to sexual assault. Non filing of the complaint immediately after the incident is not a ground to disbelieve the case of the prosecution. The mother was not in the house and she

was in work place. It is also important to note that, first of all, there is no any enmity between the family of the complainant and also the accused and if there is no such enmity between the two families, there was no need to implicate a person that too in a heinous crime of rape. It is also important to note that no parent would take a decision to falsely implicate a person in a serious offence of rape of her own daughter, which would be a stigma to the family of the victim. Further, P.W.6 has spoken to about the age of the victim as 16 years as on the date of incident and he was not cross examined. Hence, it is clear that she was a minor and no mother would spoil the life of her daughter by giving false complaint assassinating the character of daughter.

34. The material available before the Court particularly the evidence of the victim who has been examined as P.W.2 is consistent that she was subjected to rape and also that the accused had threatened her that if she discloses the said fact to anybody he will take away

her life. Apart from that, the evidence of P.W.2 is clear that when she met C.W.3 after the incident, the accused came out from the house and told C.W.3 that since she had asked for beetle nut and leaves, he has assaulted her. The accused has made an attempt to pretend that the reason behind P.W.2 crying was not on account of his heinous act and but for some other reason. The evidence of other witnesses who have been examined as neighbouring witnesses also is consistent and in their cross-examination none of the witnesses have made out that those witnesses were having any enmity against the accused except making suggestion to P.W.4 that he was having enmity against the accused on the ground that accused had helped the wife of P.W.4 in lodging the complaint.

35. Having considered the evidence available on record, the very evidence of P.W.2-victim inspires confidence of the Court that accused subjected P.W.2 for sexual act and even in the absence of medical evidence

this Court can come to the conclusion that P.W.2 was subjected to sexual assault and as held by the Apex Court in the judgments referred to supra, there need not be medical corroboration in the cases of sexual assault. If the evidence of the victim inspires confidence of the Court this Court can come to the conclusion that P.W.2 was subjected to sexual act by the accused. The Court below has committed an error in considering the suggestions made by the accused counsel through P.W.1 and P.W.4 and has come to a wrong conclusion that there was enmity between the family of the complainant and the accused, which is opposed to the evidence on record. The other reasonings given by the trial Court shows that the Court below has magnified the minor discrepancies found in the evidence of P.Ws.1, 3, 4 and 11 regarding victim meeting those persons after the incident. Hence, the very approach of the trial Court is erroneous and it requires interference by this Court. It is a fit case to reverse the finding of the trial Court.

In view of the discussions made above, I pass the following:

ORDER

- (i) Appeal is allowed.
- (ii) The impugned order of acquittal dated 5.3.2013 passed by the Principal Sessions Judge, Chikmagalur in S.C.No.68/2012 is hereby set aside.
- (iii) The accused is convicted for the offence punishable under Section 376 of Indian Penal Code and sentenced to undergo 07 years rigorous imprisonment and to pay a fine of Rs.2,00,000/- to the victim. In default of payment of fine, he shall undergo further rigorous imprisonment for a period of one year.

Sd/-
JUDGE

Sd/-
JUDGE

Bkp