

AFRReserved Judgment**Court No. - 27****Case :-** CRIMINAL APPEAL No. - 2073 of 2014**Appellant :-** Dinesh Kumar Maurya**Respondent :-** State Of U.P.**Counsel for Appellant :-** Gaurav Kumar Shukla, Rajiv
Lochan Shukla**Counsel for Respondent :-** Govt. Advocate**Hon'ble Mrs. Ranjana Pandya, J.**

1. Challenge in this appeal is to the Judgment and order dated 30.4.2014 passed by the learned Additional Sessions Judge, Court No.6/Special Judge(POCSO Act), Basti passed in Special Sessions Trial No. 16 of 2013 (State Vs. Dhananjai Singh and others) arising out of Crime No. 392 of 2013 under Sections 363, 366, 376 I.P.C. and $\frac{3}{4}$ POCSO Act, Police Station Gaur, District Basti whereby the accused Dhananjai was acquitted of all the charges levelled against him whereas the appellant Dinesh Kumar Maurya was found guilty for the offences punishable under Sections 363, 366, 376 (1), 506 I.P.C. and Section 4 POCSO Act and was convicted and sentenced to 10 years rigorous imprisonment and Rs.20,000/- fine under Section 376(1) I.P.C.; three years rigorous imprisonment and Rs.3,000/- fine under Section 363 I.P.C.; five years rigorous imprisonment and Rs.5,000/- fine under Section 366 I.P.C.; one year rigorous imprisonment and Rs.1,000/- fine under Section 506 I.P.C. and ten years rigorous imprisonment and Rs.16,000/-fine under Section 4 POCSO Act with default stipulation. Out of the fine recovered, Rs.25,000/- were directed to be paid to the victim.

2. Filtering out unnecessary details, the prosecution case is that the informant Amar Singh presented a written report to the S.O., Gaur, District Basti on 24.7.2013 stating that his daughter was enticed away on 21.7.2013 by Dhananjai Singh and Dinesh. On the information of the informer that his daughter will be taken away elsewhere from Gonda, he accompanied by his *pattidars* went to Gonda bus-stand where he saw his daughter with Dinesh, who was caught by these people on the bus-stand. The victim was aged 14 years.

3. Investigation of the matter was entrusted to P.W.9 S.I. Ram Nagina Prasad on 24.7.2013. On 25.7.2013, he copied the written report in the case diary and recorded statements of Constable Ram Lal, Ram Lal Kureel, informant Amar Singh, victim and the statement of the accused Dinesh Kumar Maurya. On 28.7.2013, he copied the medical report of the victim in the case diary and recorded the statement of Sant Prakash Singh. On 29.7.2013, he copied the statement of the victim recorded under Section 164 Cr.P.C. On 30.7.2013, accused Dhananjai Singh was arrested and his statement was recorded. On 1.8.2013, Section 6 of the POCSO Act was added in the matter. On 4.8.2013, he recorded the statement of witnesses Harish Chandra Singh and Ajay Singh. On 9.8.2013, the statement of Indra Sen was recorded. The investigation ended into a charge sheet which was proved by this witness as Ext. Ka-6.

4. The victim was medically examined by Dr. Archana Pandey (P.W.10), who did not find any external or internal injury on the body of the victim. She proved her medical

report as Ext.Ka-7, the supplementary report as Ext. Ka-9 and the examination report as Ext.Ka-8. P.W.11 is Dr. Jitendra Pratap, who prepared the ossification report, which was proved by this witness as Ext.Ka-9.

5. The prosecution examined as many as 11 witnesses in support of its case. P.W.1 is Amar Singh, the informant who has proved the written report as Ext.Ka-1 and the copy of the order as Ext.Ka-2. P.W.2 is the victim, who has proved her statement recorded under Section 164 Cr.P.C. as Ext.Ka-3. P.W. 3 is Soldi Singh, wife of the informant and mother of the victim. P.W.4 is Sant Prakash Singh, who is said to be scribe of the written report. P.W.5 is Harish Chandra, who is said to be the witness about the enticing away of the victim by the accused. P.W. 6 is Indra Sen, who is also said to be witness of enticing away of the girl. P.W.7 Ajai Singh is witness of the same fact. P.W. 8 is Head Constable Ram Lal Kureel, who has proved the chik report as Ext.Ka-4A and the copy of G.D. as Ext.Ka-5. The statement of P.W.9 Ram Nagina Prasad, P.W.10 Archana Pandey and P.W. 11 Jitendra Prasad has been discussed by me earlier.

6. The accused persons were examined under Section 313 Cr.P.C. in which they denied the occurrence and stated that they had been falsely implicated. Accused Dinesh had stated that he was not arrested with the victim on Gonda and in fact the police apprehended him from his village and falsely implicated. The accused produced Mahesh Maurya as D.W. 1. to prove that the accused was apprehended from his village by the police.

7. Learned lower court, after hearing counsel for the parties, returned the finding of guilt against the accused Dinesh Maurya while acquitting the accused Dhananjai as has been mentioned in para 1 of the Judgment. Feeling aggrieved the accused Dinesh Maurya has preferred this appeal.

8. I have heard learned counsel for the parties and perused the trial court record.

9. The learned counsel for the appellant has submitted that the trial court has wrongly convicted the appellant Dinesh on the basis of inadmissible evidence. It is further submitted that the evidence of the prosecution witnesses is contradictory to each other. The case of the prosecution is also not reliable inasmuch as she has resiled from her statement under Section 164 Cr.P.C. and, thus, the appeal is liable to be allowed.

10. Per contra the learned A.G.A. has submitted that the findings of the fact recorded by the trial court is based on evidence of the victim and no corroboration was required when the testimony of the victim was clear, cogent and convincing. He has further contended that there was nothing to show that the victim has falsely implicated the accused and the appeal is liable to be dismissed.

11. Generally, the court does not ponder to find corroboration if the statement of the victim inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the victim and no corroboration would be required unless there are compelling reasons which necessitate the court

for corroboration of her statement. Corroboration of testimony of the victim as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions are insignificant. Discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. The testimony of the victim has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the victim on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony as has been held in **Vishnu Vs. State of Maharashtra, AIR 2006 SC 508.**

12. The evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, prosecutrix making deliberate improvements on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence as has been held in **Suresh N. Bhusare & others Vs. State of Maharashtra, (1999) 1 SCC 220.**

13. Counsel for the appellant has submitted that there is inordinate delay in lodging the F.I.R. Inasmuch as the accused are said to have been enticed away the girl on 21.7.2013 at 4 p.m. whereas the report was lodged on 24.7.2013 and no explanation has been given by the

prosecution for not lodging the report in time. Counsel for the appellant has also placed reliance on 2015 (3) Supreme Court Cases (Cri) 82, Mohd. Ali @ Guddu Vs. State of Uttar Pradesh in which the Hon'ble Apex Court has laid down in paragraph 27 as under:-

"27. Be it clearly stated here that delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW 2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown-up daughter. In the absence of any explanation, it gives rise to a sense of doubt."

14. In **2010 Cr.L.J. 2062 , Ram Raj Vs. State of Chhatisgarh**, the Hon'ble Apex Court has observed that we are conscious of the fact that in a matter of rape, the statement of the prosecutrix must be given primary consideration. But, at the same time, the broad principle that the prosecution has to prove its case beyond reasonable doubt applies equally to a case of rape and there can be no presumption that a prosecutrix would always tell the entire story truthfully.

15. Counsel for the appellant has submitted that there is

vast contradiction in the F.I.R., statement of the victim recorded under Section 164 Cr.P.C. and the statement of the victim recorded before the trial court, hence, the whole prosecution story becomes unreliable.

16. As far as the F.I.R. (Ext.Ka-1) is concerned, it has been proved by P.W.1 Amar Singh, father of the victim. According to the F.I.R., the accused Dhananjai Singh and Dinesh both enticed away the girl making it abundantly clear that both the accused were named in the F.I.R. P.W.1 Amar Singh has stated that he got the report scribed by Sant Prakash. He had not mentioned the name of Sant Prakash. The written report was not read over to him. This witness has further stated that it appears that due to enmity of Sant Prakash with Dhananjai, the scribe Sant Prakash mentioned the name of Dhananjai Singh falsely. The victim has also not taken the name of Dhananjai Singh, who is innocent meaning thereby as per version of this witness, the name of Dhananjai Singh has wrongly been mentioned in the F.I.R. As far as the F.I.R. is concerned, I think either Amar Singh was the person who could state about the facts written in the F.I.R. or Sant Prakash Singh, who scribed, could have thrown light on this issue.

17. P.W. 4 Sant Prakash Singh, who scribed the F.I.R., has stated that he did not have any personal knowledge of the incident. Amar Singh had got the written report scribed on the instigation of others. In cross-examination, he has admitted that he wrote the Tehrir as was directed by the police. He has also stated that he asked Amar Singh as to why he was falsely implicating Dhananjai

Singh at which Amar Singh replied that if they do so, the police would get angry. The trial court was vigilant enough while trying this case. Inasmuch as when the trial court questioned this witness, he confessed that Dhananjai Singh was his *pattidar*. He had written the written report on the saying of the informant Amar Singh and whatever was stated to him by Amar Singh was written by this witness. The mother of the victim and the wife of the informant while submitting an exaggerated version of the matter, has stated that the scribe of the First Information Report is her brother-in-law (*devar*) and whatever was dictated by this witness (wife of the informant PW 3) to Sant Prakash was scribed by him. Thus, the prosecution has not cleared whether the report was dictated by the informant or his wife. Thus, a shadow of doubt is created on the truthfulness of the F.I.R. itself.

18. Another argument has been advanced on behalf of the appellants that the statement of the prosecutrix has recorded under Section 164 Cr.P.C. and that recorded before the trial court are contradictory.

19. A perusal of the statement of the prosecutrix recorded under Section 164 Cr.P.C. reveals that the appellant Dinesh and Dhananjai Singh forcibly took her away. She was called telephonically by Dhananjai. She went out of the village where she met both the accused. P.W. 2 victim has said that she took Rs.20,000/- from her home when she left her home. They threatened her, hence, she went with them. Both raped her. At the Gonda bus-stand, Dhananjai fled away seeing the parents of the victim while Dinesh was arrested on the spot. The

appellant Dinesh and Dhananjai made her spent Rs.6,000/- out of Rs.20,000/- she was carrying. This statement (Ext. Ka-4) was put to the victim P.W.2. This statement is a previous statement of the victim recorded by the Magistrate, which could be used under the provisions of Indian Evidence Act. P.W. 2 has stated that only the accused Dinesh Maurya enticed her away. Dhananjai Singh has been falsely implicated in this case due to enmity. Neither Dhananjai Singh had enticed her away nor raped her and the statement given by her before the Magistrate as against the Dhananjai Singh was not the statement of her will. She was threatened to state against Dhananjai Singh. Lady constable had conspired against Dhananjai Singh and forced this witness to name Dhananjai Singh in the incident. Thus, this witness has very calmly resiled from her statement under Section 164 Cr.P.C. She has also gone to the extent of stating that the scribe Sant Prakash was her pattidar, who was inimical with Dhananjai. Sant Prakash was also inimical to her father, who does not rely on Sant Prakash. The trial court was vigilant enough while recording the statement of this witness noted the demeanor of this witness and the trial court has observed that keeping in view the gestures of this witness and her body language, it appears that the witness is telling lies in the statement and the gestures are also falsifying her statement. Thus, there is contradiction between the F.I.R., the statement of the victim recorded under Section 164 Cr.P.C. and the statement of the victim recorded before the court.

20. P.W. 1 Amar Singh, father of the victim has stated

that his daughter was taken away by Dinesh Maurya. There was whisper in the village that P.W.2 victim was enticed away by Dinesh. This witness was put to test of the cross-examination in which he admitted that he had come to know about the occurrence on the day of occurrence itself. After three days, he came to know that the victim had taken Rs.20,000/- with her and had also taken an amount of Rs.1500 with her. It appears that this witness knowingly concealed this fact and did not mention this fact in the First Information Report which found place in the statement of the victim under Section 164 Cr.P.C. Although the victim had omitted to state this fact before the trial court but the factum that the victim carried away Rs.20,000/- from her home is indicative of the fact that she left her home willingly. Thus, P.W.1 Amar Singh is not a witness of fact.

21. P.W. 2 victim is a witness of fact, who has stated that the accused Dinesh met her at the village crossing and asked her to go to Bombay from Gonda and wanted to take her Bombay to marry her. She believed him and went to Gonda. At 9 p.m. she reached Gonda bus-stand from where Dinesh took her to a room and raped her. P.W. 2 the victim has said that she took Rs.20,000/- from her home when she left her home. After that Dinesh took her to Gonda bus-stand. When she was standing at the Gonda bus-stand, her father Amar Singh, Sant Prakash and mother reached the bus-stand and she was caught with Dinesh Maurya.

22. Counsel for the appellant has submitted that even the recovery of the victim is doubtful inasmuch as per the

F.I.R., it appears that the victim was recovered by the parents along with Dinesh and the scribe of the F.I.R. on 24.7.2013.

23. The recovery memo of the victim is not on record as to from where she was recovered but the Investigating Officer was a person, who could state about from where the victim was recovered. P.W.9 S.I.Ram Nagina Prasad has stated that he did not visit the bus-stand from where girl is said to have been recovered. The witness as regards the recovery of the victim with Dinesh is P.W.6 Indra Sen and P.W.7 Ajai Singh. Although the names of these witnesses have been mentioned by the informant but both P.W. 6 and P.W. 7 have stated that neither they saw the victim going with accused Dinesh and Dhananjai nor she was recovered in their presence. Both these witnesses were declared hostile by the prosecution, who proceeded to cross examine these witnesses but even the cross-examination of these witnesses could not help the accused. Sant Prakash (P.W.4) is also said to be present when the victim was recovered with Dinesh at the Gonda bus-stand. But, this witness has specifically stated that he does not know whether the victim was traced at Gonda bus-stand or not. Now, the evidence of Amar Singh (P.W.1) and Soldi Singh (P.W.3) remained. Both these witnesses are interested witnesses whose evidence has to be scrutinized with care and caution.

24. Amar Singh (P.W.1) has stated that he accompanying with Sant Prakash reached Gonda when he came to know that his daughter would be taken away by Dinesh to Bombay. He recovered his daughter and Dinesh. How he

came to know that his daughter is at Gonda bus-stand is a question which remained unanswered throughout the trial. He has stated that he reached Gonda at 6 a.m. P.W.2 victim has stated that her parents and Sant Prakash reached the Gonda bus-stand. The victim has admitted that prior to the occurrence, she knew the appellant Dinesh. Two-three months prior to the occurrence, she used to converse with appellant Dinesh telephonically. She has stated her time of recovery to be 9 p.m. from the bus stand when she was sitting with Dinesh on a bench. She could not see her parents when they suddenly caught her. She has admitted that she was waiting at the Gonda bus-stand for the last two hours before she met with her family members. Thus, it is clear that this witness was sitting with the accused on the bus-stand, which is a public place, without raising any alarm. P.W.3 is the mother of the victim, who has stated that when her daughter left her home without telling anybody, while she was searching for the daughter, she accompanied with Harendra Singh, Chandra Bhan and her husband reached Gonda bus-stand where they found the appellant with the victim. Even Sant Prakash was present with them. She has also admitted that Dinesh used to come to her house. He used to talk to the victim but she did not anticipate the conduct of Dinesh, hence, she did not restrict her movements. Thus, the time of recovery of the victim is doubtful.

25. Learned A.G.A. and counsel for the informant has placed reliance upon **(2010) SCC 191, Vijay @ Chinee Vs. State of Madhya Pradesh**, in which the Hon'ble

Apex Court has held as under:-

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

"16. A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the

case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence."

10. In *State of U.P. Vs. Pappu* this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597 para 12)

"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 upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds 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."

11. In *State of Punjab Vs. Gurmit Singh*, this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution

case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 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 relying 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."

12. In *State of Orissa Vs. Thakara Besra* this Court held that rape is not mere a physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence."

26. No doubt conviction can be based on the sole testimony of the prosecutrix but it would not be safe to do so if the testimony of the victim is shaky, unreliable and not worthy of credence. This witness P.W.2 victim can be termed to be unreliable witness inasmuch as she had gone to the extent of even accusing the Magistrate who

recorded her statement under Section 164 Cr.P.C. Besides, the evidence of P.W.3 Soldi Singh, mother of the victim, is speaking volumes for itself. She has stated, "मजिस्ट्रेट के बयान 164 में धनन्जय के खिलाफ मेरी लडकी से पुलिस ने दबाव देकर बयान लिखाया था। लडकी बयान देकर जब बाहर निकली तो बताया कि मम्मी मेरा बयान धनन्जय सिंह के खिलाफ पुलिस वाले दबाव देकर दिलवा दिये। मैंने महिला सिपाही से दबाव देने के बावत कुछ नहीं पूछा। बाहर जब मैं कचहरी में इजलास से आयी और पूछा कि ऐसा बयान क्यों बेटी तुम लिखवा दिया। तो वह हंसने लगी।" This shows the arrogance and the conduct of the victim, who was shameless enough to laugh when her mother asked her why she gave an incorrect statement before the Magistrate. The victim has admitted that when Dinesh took her on motor cycle, she was conveniently sitting behind Dinesh. This shows that the victim was carrying twenty thousand rupees from her home and went on her own accord with the accused. Thus, all along she was ready to go with the accused.

27. Learned A.G.A. and counsel for the informant have submitted as per the provision of law, the victim was below 18 years of age, hence, her consent had no value and was of no consequence. In support, the prosecution has relied upon **2013 (14) SCC 340, Kailash Vs. State of Madhya Pradesh**, in which it has been held that the issue of consent is rendered inconsequential if the victim is below the age of consent.

28. As far as the age of the victim, i.e., whether she was below 18 years or not is concerned, I do not think this issue would be very relevant because the whole prosecution story is a bundle of lies. The testimony of the

victim is improbable, unreliable and unworthy of credence, hence, even if she is below 18 years, evidentiary value of her statement is zero keeping in view the contradictions in her statements recorded before the Magistrate under Section 164 Cr.P.C. and the statement recorded before the trial court. Dr. Archana Pandey did not find any mark of internal or external injury on the body of the victim and opined that the victim had 30 teeth in her mouth, which could only appear at the age of 18 to 20 years. I think this is just an opinion of the doctor, which cannot be treated to be final. Dr. Jitendra Pratap has stated the victim to be about 15 years.

29. No doubt rape on the point of threat may be a circumstance for the court to believe that the victim did not resist due to threat. I do not mean to say that conviction in the case of rape would only be possible if there were external/internal injuries on the body of the victim but I think if there had been any forcible sexual intercourse, the victim must have made some strong resistance and, in the process, some injuries ought to have been found on the vagina/private parts of the body or some other parts indicative of any such use of force and it would be too much to assume that there would have been no injuries whatsoever on the body on this account. Though injuries on the body is not always must or sine qua non to prove the charge of rape having regard to the case of the prosecution, as the victim has been helplessly raped and was subjected to sexual intercourse. As I have said earlier, absence of injuries on the private part of the victim will not by itself falsify the case of rape

nor construe as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim specially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rather instances where a parents has persuaded a gullible or obedient daughter to make false charge of rape either to take revenge or extort money or to get rid of financial liability but whether they were raped or not, would depend only on facts and circumstances of each case.

30. The accused in the statement under Section 313 Cr.P.C. has stated that he has been falsely implicated and he was not arrested at the Gonda bus-stand with the victim. He was arrested by the police from his village. He has tried to give evidence in this regard in the shape of Mahesh Maurya (D.W.1) who has said that the police took the accused from the village.

31. Thus, on the basis of what has been said above leads to the conclusion that the statement of the victim is concocted, improbable and unreliable, and the prosecution has miserably failed to prove the case beyond all reasonable doubt.

32. Accordingly, the appeal is allowed. the Judgment and order dated 30.4.2014 passed by the learned Additional Sessions Judge, Court No.6/Special Judge(POCSO Act),

Basti passed in Special Sessions Trial No. 16 of 2013 (State Vs. Dhananjai Singh and others) arising out of Crime No. 392 of 2013 under Sections 363, 366, 376 I.P.C. and $\frac{3}{4}$ POCSO Act, Police Station Gaur, District Basti whereby the accused appellant Dinesh Kumar Maurya has been convicted and sentenced, is hereby set aside. The appellant is acquitted for the charges framed against him.

33. The accused-appellant is in jail. He shall be released forthwith in this case. The provisions of Section 437A Cr.P.C. shall be complied with.

34. Let a copy of this judgment be transmitted to the trial court.

Order Date :-19.2.2016
Ram Murti