The State Of Rajasthan vs Chatra on 18 March, 2025

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Bench: Sanjay Karol, Vikram Nath

2025 INSC 360

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.586 OF 2017

STATE OF RAJASTHAN … APPELLANT(S)

VERSUS

CHATRA … RESPONDENT(S)

JUDGMENT

SANJAY KAROL, J.

1. Nearly forty years ago, on 3rd March 1986 happened an incident, that forever altered the trajectory of a minor girl's life, who for the purposes of this judgment, shall be referred to as 'V'1. She was discovered unconscious and bleeding from her private parts, by one Gulab Chand, after the respondent-accused had Identity concealed allegedly subjected her to sexual assault. The said Gulab Chand filed a report with the concerned police station on 4 th March, 19862 - and now by way of this judgment, the matter shall be finally laid to rest. It is a matter of great sadness that this minor girl and her family have to go through nearly four decades of life, waiting to close this horrific chapter of her/their lives.

2. The State is before us, being aggrieved by the finding of acquittal recorded by the learned Single Judge of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur3, vide judgment dated 12th July 2013 which set aside the finding of conviction entered by learned Sessions Judge, Tonk4 vide judgment dated 19th November 1987.

3. The FIR recorded the occurrence of incident in the following terms:-

> "To, The S.H.O. Uniyara.
>
> Sir, Subject : With regard to the rape with 'V' D/o 'X'5.
>
> It is respectfully submitted that it is incident of about 1:30 hours that I had gone to handle well on hut of In S.B Criminal Appeal No. 503/1987 Name of the father of the victim is also redacted for the purpose of protection of identity Khadda in village Sureli, and as soon as I reached near the house of Chhatra S/o Sukhdeva Jat then I heard sound of cry of a little girl, where upon I entered into the house then the dhoti of accused was in open condition and he ran outside seeing me. I saw that 'V' who is daughter of 'X' was lying unconscious and blood was oozing from her private part, at that time Prabhu Kumhar came there on camel Lattha from the side of Banatha, as such I sit with girl over the Lattha of camel and brought her to house because neither Mother of her was present in house and nor 'X'. After some time Savitri mother of 'V' came to our village but since any means of conveyance was not available for going to police station therefore report was not lodged. Primary treatment was provided by calling nurse of Sureli and Private Sindhi Doctor Siwad and thereafter today after coming from there I had lodged report in police station.
>
> Applicant – Gulab Chand S/o Sunder Lal Caste Mahajan R/o Sureli Sd/-
>
> Gulab Chand Gupta Date 4.3.86"

4. After completion of the investigation, the challan was presented to the Court for trial. To prove its version of events, the prosecution examined 15 witnesses and exhibited 19 documents. The respondent-accused termed it to be a false case that Gulab Chand had concocted since he wanted the father of 'V' to vacate the house of the respondent-accused. He put forth 2 witnesses and four documents in his defence.

TRIAL COURT JUDGMENT

5. The sole issue before the Trial Court was whether the respondent-accused had sexually assaulted 'V' or not. A perusal of the judgments reveals that the complainant, Gulab Chand who was examined as PW-2 has been greatly relied on, supported by the deposition of PW-14, Dr. Vasudev. Regarding the commission of sexual assault against 'V', the finding is as under :

> "39. In such situation when we again believe on deposition of PW-2 Gulabchand then his such evidence that accused committed forcible rape with PW-1 'V' becomes believable and in this regard deposition of PW- 2 Gulabchand stands corroborated from deposition of PW-14 Vasudev that what injury in vagina of PW-1 'V' was caused, that was caused by forcible sexual intercourse and that sexual intercourse was forcibly committed by accused with PW-1. PW-14 Dr. Vasudev has stated even to the

extent that the hymen of PW-1 'V' was completely fresh ruptured and her forshite and posterior commissions ruptured and doctor has also stated that if there was slight more penetration then the penis would have reached in stomach of girl after rupturing uterus and by which death of girl might have caused. Thus from the evidence of this doctor it is clear that what penetration was done by accused in vagina of PW-1 that was grievous and from doing such whatever ingredients in section 375 IPC are told are fulfilled." There was an issue of motive raised by the counsel for the accused. However, neither that nor the possibility that the injury sustained by 'V' was as a result of injury by a nail found favour with the Court. There was also the aspect of the FIR being lodged on the next day. On this issue, the Trial Court held that given P.S. Uniyara, was situated 14 kms. away from the village where the incident took place, i.e., Sureli, and that the injuries sustained by 'V' were quite severe, the delay was held to be justified. It was finally held that the respondent-accused had indeed committed the offence punishable under Section 376 of the Indian Penal Code, 18606, and he was, vide order of sentencing dated 19th November 1987 sentenced to 7 years rigorous imprisonment instead of 10 years given that he was a first-time offender and at the relevant time of the offence he was aged only 21 years. He was further sentenced to pay a fine of Rs.500/- in default and one month of simple imprisonment.

IMPUGNED JUDGMENT

6. The respondent-accused aggrieved by the sentence awarded to him, carried the matter in appeal to the High Court. By way of a judgment running into all of 6 pages, the findings of guilt returned by the Trial Court were upturned and the respondent-accused was acquitted of the charges against him. Suffice it to say that we are surprised with the manner in which Hereafter 'IPC' this matter was dealt with by the High Court. As the First Appellate Court, the High Court is expected to independently assess the evidence before it before confirming or disturbing the findings of the Court below. This is the settled position of law. [See: Atley v. State of U.P.7; and Geeta Devi v. State of U.P. etc.8]. Clearly, the same has not been followed. The discussion on merits of the matter by the High Court is reproduced herein below :

"The statement of PW-2 Gulab Chand, the central witness of the prosecution, as recorded in Ex.D-1, assumes importance. A bare perusal of that document reveals that he is stated to have witnessed the appellant to be engaged in the act of forcible sexual intercourse with the victim, when he entered the room. This runs counter to the narration made in his written report on which the investigation was initiated as well as his deposition at the trial. PW-10 Prabhu also has not supported him in full. His statement that his attention was drawn by the cries of the victim is belied by her statement that she was found unconscious and unable to speak.

Though the victim, 'V'9 was a child at the time of her examination in Court, it is unlikely that if the incident would have been true she would have been so indifferent and inert as she happened to be when asked about the same. It seems that no attempt

> as well had been made to brief her in this regard. Though keeping her age in mind, the incident even if had occurred in the manner as projected by the prosecution, could have been forgotten by her, it is not acceptable that if true, the AIR 1955 SC 807 Name redacted parents or her relations would have made no attempt to have at least the skeletal facts narrated in court through her. This assumes importance in view of the consistent stand taken on behalf of the defence that the appellant had been framed due to subsisting dispute between him and the father of the victim. Though the medical evidence proves injury on her private parts, the Forensic Science Laboratory report does not show the presence of semen in the frock of the victim, the lungi on which she was laid by Gulab Chand (PW-2) and also the blood smeared soil by the police. The varying versions of Gulab Chand is also a factor which strikes at the trustworthiness of the prosecution case. On a cumulative consideration of all the above, I am thus of the view that the prosecution has not been able to prove the charge beyond all reasonable doubt, and that, the appellant is entitled to the benefit thereof. The impugned judgment and order is set aside. The appeal is allowed. The appellant stands discharged from his bail bonds.
>
> While acknowledging the assistance rendered by Mr. Raunak Singhvi, learned amicus curiae, this Court directs payment of his professional fee of Rs.5000/- to be borne by the State Government."

7. We note with some surprise that the High Court has referred to the victim by name throughout. This Court in judgments, going at least a decade further back from the date of the impugned judgment, has highlighted the importance of abiding by such a restriction, preserving the privacy of the unfortunate victim, even though the restriction does not expressly apply to the High Court or this Court. [See: Bhupinder Sharma v. State of H.P.10; State of Karnataka v. Puttaraja11; and Dinesh v. State of Rajasthan12] We have redacted the name of the child victim. The record as it is before us, does not conceal the name of the prosecutrix, however, considering the fact that the directions in Nipun Saxena v. Union of India13 were issued in the pendency of this appeal, her name stands redacted even in the portion quoted from the record.

8. In ordinary circumstances, given the fleeting consideration bestowed on the merits of the matter, an order of remand to the High Court for consideration afresh, could have been a permissible view, however as already noted supra the genesis of this case is 40 years old, and, therefore, justice would not be served by adopting this approach, especially taking note of the fact that an appeal of the year 1987 was disposed of by the impugned judgment in the year 2013. In other words, it took twenty-six years for the criminal appeal to be disposed of. As such, we now proceed to examine the evidence on record.

(2003) 8 SCC 551 (2004) 1 SCC 475 (2006) 3 SCC 771 (2019) 2 SCC 703 ANALYSIS AND FINDINGS

9. The mainstay of the reasoning of the High Court are the statements of PW-1, 'V', PW-2, and PW-10.

The relevant extract of the statement of the victim (PW -1) is as follows :

> "Question : Are you studying.
>
> Ans : Yes I am studying.
>
> Question : In which standard are you studying. Ans : I am studying in 1st standard.
>
> Question : Do you know meaning of smell. Ans : Yes.
>
> Question : Should speak lie or should speak truth? Ans : Should speak truth.
>
> Note :- The witness knows meaning of truth, although has small age. The mother of witness is present in the court with the witness. The learned counsel for the accused has objection that mother of witness will have to go outside the court as she is also witness in the matter. As the mother of the witness is not eye-witness of the occurrence and is a witness of facts after the occurrence and witness has small age and not capable in standing in the court room in absence of mother, therefore, on the prayer of P.P., the permission of presence of mother in the court room granted and instructed not to suggest any answer to the witness to the questions asked to the witness.
>
> Question : Do you know the accused?
>
> Ans: Said yes by nodding neck Question: Do you know the name of the accused? Ans: Witness is not giving answers on aking repeatedly and keeps silent.
>
> Question: What happens with you and when?
>
> Ans: The learned P.P., her mother and Court repeatedly explained to give answer, but witness keeps mum and not speak a single word. Tears were flowing from eyes on much pressure, but not speak from mouth" PW-2 Gulab Chand :
>
> "...when I open the door I have seen that accused Chatra, he was present in the court was seating upon her on that time. When accused saw me he ran away from the room accused dhoti was open and lying on there. When I sent to support her at that time she was in a unconscious condition and the blood was oozing from her private part, on back side of her body one white cloth was lying down on which blood stain was there ... ... On Exhibit B-1 there is no mentioing about the accused seating upon the girl 'V', How they cannot remember to write about this on their report I don't know. On Exhibit D-1 about this nothing is mentioned, I told to the police about this. On Exhibit B-1, they did not wrote on a report about the piece of cloth choke inside the mouth of 'V', so that she cannot shout at that time, when I opened the door accused saw me and ran away at that time. Therefore, I cannot say that at that time when

accused was above ['V'] at that time accused arms was open or not." PW-10 Prabhu14 :

"... I came near the hut of Khadda to find that X's daughter was unconscious at the 'Bayana Chabootri'. I then went to drop off the load I was carrying on the cart, and then proceeded towards Sureli, and then stopped of at the house of PW-2 Gulabchand. There was no other male with me, in the cart at that time. The child was in a Translated from the original record bad state and her clothes were soiled with blood. There was blood oozing out from her private parts. I did not see the accused at the spot of the crime.

... The police did not question me. It is wrong to say that when I reached Khadda's hut, at that time the accused Vatar/Chatra was running away from the scene catching a hold of his dhoti, towards the riverbank."

10. At this stage, let us consider the other witnesses relevant to the prosecution case. PW-14, the doctor, testified as follows:

"....I medically examine the accused Chatra on 13.03.86, On his penis top, scratch spot was found and on his penis swelling was found, and scratch was also found. These type of wound can only be found by forcefully inter- course with minor girl.....

.....

"....At the time of examination there was no blood oozing from the private part of 'V' but the blood spot was found all round the private part. In 'V' private inside by seeing from microscope I did not find spermatozoa. In 3 years old child the distance between the private part inside inner kennel and uterus, are very less the if the penetration will be more, then the pennies will torn the uterus and penetrate till the stomach of the girl due to which the girl can die. There was injury in inner kennel but there is no injury in uterus...."

11. PW-3, Savitri, the mother of 'V' testified that she had to go to a neighbouring village since someone there had passed away. When she left her village, she had entrusted the care of 'V' to the respondent accused. When she returned from having attended the funeral procession in the neighbouring village, she was informed by the women of her village that 'V' had been injured and taken to Sureli. She also went there subsequently and found that 'V' was unconscious. She has positively identified the clothes worn by the victim. The nurse at the hospital informed her that 'V' had been raped.

DW-1 is the brother of the respondent-accused. He testified that 'X' was a tenant of theirs and had been asked to vacate said dwelling, but he refused to do so. He further testified that PW-2 Gulab Chand had bribed the doctor with Rs.4,000/-, for him to say in the report that 'V' had been sexually assaulted. Further, it was said that the doctor asked him to pay Rs.7,000/- and if paid, so the report

was to say that 'V' was not raped. He did not pay the money and instead lodged complaints which fell on deaf ears. He denies that Savitri, PW-3 had left 'V' in the care of the accused and that he had committed sexual assault against her.

12. Let us now consider pronouncements of this Court in cases involving a child victim of sexual assault.

In State of Rajasthan v. Om Prakash15 this Court sounded a warning against offences of sexual nature against children, in the following terms:

> (2002) 7 SCC 745 "19. Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection.

Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse. These factors point towards a different approach required to be adopted..." In numerous cases, this Court as well as others, have discussed the applicability of the statement of a child witness to a case. We may notice a few of them:

> In Dattu Ramrao Sakhare v. State of Maharashtra16 this Court held :
>
> "5....A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a (1997) 5 SCC 341 reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored..." In Hari Om v. State of U.P.17, a three-Judge Bench reiterated the caution observed by this Court in Suryanarayana v. State of Karnataka18, that "corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence". It was further observed therein :
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> "6. This Court in Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177 : 1998 SCC (Cri) 1561] held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be

> swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical wisdom than of law (vide Prakash v. State of M.P. [Prakash v. State of M.P., (1992) 4 SCC 225 : 1992 SCC (Cri) 853]; Baby Kandayanathil v. State of Kerala [Baby Kandayanathil v. State of Kerala, 1993 Supp (3) SCC 667 : 1993 SCC (Cri) 1084]; Raja Ram Yadav v. State of Bihar [Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287 : 1996 SCC (Cri) 1004] and Dattu Ramrao Sakhare v. State of Maharashtra [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685]).

7. To the same effect is the judgment in State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] .” (2021) 4 SCC 345 (2001) 9 SCC 129

13. The rule regarding child witnesses was laid down by the US Supreme Court as far back as 189519 in the following terms :

> “5. ... While no one would think of calling as a witness an infant only two or three years old, there is no precise age which determines the question of competency. This depends on the capacity and intelligence of the child, his appreciation of the difference between truth and falsehood, as well as of his duty to tell the former. The decision of this question rests primarily with the trial Judge, who sees the proposed witness, notices his manner, his apparent possession or lack of intelligence, and may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligations of an oath. As many of these matters cannot be photographed into the record the decision of the trial Judge will not be disturbed on review unless from that which is preserved it is clear that it was erroneous.” In interpreting the evidence given by a child victim of sexual assault, this Court in State of H.P. v. Sanjay Kumar20, held that social realities have to be given due attention. It was observed by Sikri J., writing for the Court that :
>
> “30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted. We have already discussed above the manner in which the testimony of the prosecutrix is to be examined and analysed in order to find out the truth therein and to ensure that deposition of the victim is trustworthy. At the same time, after taking all due precautions which are necessary, when it is found that Wheeler v. United States, 1895 SCC OnLine US SC 220 (2017) 2 SCC 51 the prosecution version is worth believing, the case is to be dealt with all sensitivity that is needed in such cases.

In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The

strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevents such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism. Therefore, time is ripe to bring about significant reforms in the criminal justice system as well. Equally, there is also a dire need to have a survivor-centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long-lasting effects on such victims." In Pradeep v. State of Haryana21, it was held that the role of the trial Judge, when a case involves a child witness, becomes heightened. The Court recorded :

> "10. Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is 2023 SCC OnLine SC 777 able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court." In Sooryanarayana v. State of Karnataka22 referred to by a Bench of three Judges in Hari Om v. State of U.P.23, it has been held thus :
>
> "5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witness saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts (2001) 9 SCC 129 (2021) 4 SCC 345 are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution,

> the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not." Recently, a coordinate Bench of this Court in State of Madhya Pradesh v. Balveer Singh24 speaking through J.B. Pardiwala, J., considered a large number of prior decisions of this Court to lay down guidelines for the appreciation of the evidence of a child witness. We have perused through the same.

Reference can also be made to other judgments in State of M.P v. Ramesh25; Panchhi v. State of U.P.26; and State of U.P. v. Ashok Dixit27, etc.

14. The principles that can be adduced from an overview of the aforesaid decisions, are:

> a. No hard and fast rule can be laid down qua testing the competency of a child witness to testify at trial.
>
> b. Whether or not a given child witness will testify is a matter of the Trial Judge being satisfied as to the ability and competence of said witness. To 2025 SCC OnLine 390; 2025 INSC 261 (2011) 4 SCC 786 (1998) 7 SCC 177 (2000) 3 SCC 70 determine the same the Judge is to look to the manner of the witness, intelligence, or lack thereof, as may be apparent; an understanding of the distinction between truth and falsehood etc. c. The non-administration of oath to a child witness will not render their testimony doubtful or unusable.

d. The trial Judge must be alive to the possibility of the child witness being swayed, influenced and tutored, for in their innocence, such matters are of ease for those who may wish to influence the outcome of the trial, in one direction or another.

e. Seeking corroboration, therefore, of the testimony of a child witness, is well-placed practical wisdom.

f. There is no bar to cross-examination of a child witness. If said witness has withstood the cross-examination, the prosecution would be entirely within their rights to seek conviction even solely relying thereon.

15. This case rests also on circumstantial evidence. The law on that count is crystal clear. When a conviction is based on circumstantial evidence, the chain of circumstances must be so complete that it rules out all other possible hypotheses other than the guilt of the accused. The most well-recognized judgment is Sharad Birdhichand Sarda v. State of Maharashtra28 wherein S. Murtaza Fazal Ali J., laid down the following Panchsheel Principles :

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047] "Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions." (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (1984) 4 SCC 116 (3) the circumstances should be of a conclusive nature and tendency, (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

16. Also important to consider is the degree of certainty required, in a given set of facts and circumstances, before a person can be either convicted or acquitted of a crime. This question engaged the Court in Ramakant Rai v. Madan Rai29, wherein it was observed :

> "23. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to (sic) of probability amounts to "proof" is an exercise, the interdependence of evidence and the confirmation of one piece of evidence by another, as learned author says : [see The Mathematics of Proof II : Glanville Williams, Criminal Law Review, 1979, by Sweet and Maxwell, p. 340 (342)] "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the (2003) 12 SCC 395 defendant did the prohibited act with the specified state of mind are generally dependent. A juror may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other."
>
> 24. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than the truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be

> actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.
>
> 25. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof.

Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of the administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in State of U.P. v. Krishna Gopal [(1988) 4 SCC 302 : 1988 SCC (Cri) 928 : AIR 1988 SC 2154]." 16.1 Observations by O. Chinappa Reddy J., in K. Gopal Reddy v. State of A.P.30 are also instructive. He observed :

> "9. ... "A reasonable doubt", it has been remarked, "does not mean some light, airy, insubstantial doubt that may flit through the minds of any of us about almost anything at some time or other; it does not mean a doubt begotten by sympathy out of reluctance to convict; it means a real doubt, a doubt founded upon reasons [Salmon, J. in his charge to the jury in R. v. Fantle reported in 1959 Criminal Law Review 584] . As observed by Lord Denning in Miller v. Minister of Pensions [(1947) 2 All ER 372] "Proof beyond a reasonable doubt does not mean proof beyond a shadow of a doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable", the case is proved beyond reasonable doubt, but nothing short of that will suffice." In Khem Karan v. State of U.P. [(1974) 4 SCC 603 : 1974 SCC (Cri) 689 : AIR 1974 SC 1567] this Court observed:
>
> "Neither mere possibilities nor remote possibilities nor mere doubts which are not reasonable can, without danger to the administration of justice, be the foundation of the acquittal of an accused person, if there is otherwise fairly credible testimony."

17. Having considered the principles of law as above, let us now proceed further. We have independently examined the evidence of the witness, by placing reliance on whom the Trial Court recorded the conviction of respondent-accused, which was erroneously appreciated by the High Court, the same was (1979) 1 SCC 355 reversed by the High Court. The child witness (victim), it is true, has not deposed anything about the commission of the offence against her. When asked about the incident, the trial Judge records that 'V' was silent, and upon being further asked, only shed

silent tears and nothing more. Nothing could be elicited from the testimony regarding the commission of the offence. This, in our view, cannot be used as a factor in favour of the respondent. The tears of 'V', have to be understood for what they are worth. This silence cannot accrue to the benefit of the respondent. The silence here is that of a child. It cannot be equated with the silence of a fully realised adult prosecutrix, which again would have to be weighed in its own circumstances. It has been held in Hemudan Nanbha Gadhvi v. State of Gujarat31, that a nine-year-old prosecutrix turning hostile would not be a fatal blow to the prosecution case when other evidence can establish the guilt of the accused. In these facts, 'V' has not turned hostile. Trauma has engulfed her in silence. It would be unfair to burden her young shoulders with the weight of the entire prosecution. A child traumatized at a tender age by this ghastly imposition upon her has to be relieved of being the basis on which her offender can be put behind bars. In almost all other cases, the testimony of the prosecutrix is present and forms an essential part of the conviction of an accused, but at the same (2019) 17 SCC 523 time, there is no hard and fast rule that in the absence of such a statement a conviction cannot stand, particularly when other evidence, medical and circumstantial, is available pointing to such a conclusion. Reference can be made to State of Maharashtra v. Bandu alias Daulat32, wherein the prosecutrix was "deaf and dumb and mentally retarded". The Court held that even in the absence of her being examined as a witness, other evidence on record was sufficient to record conviction of the accused. The principle of law, therefore, is that if the prosecutrix is unable to testify, or for some justifiable reason remains unexamined, the possibility of conviction is automatically excluded. At this stage, it is important to record that we should not for a moment be understood saying that a person with a disability is by definition an incompetent witness. This Court in Patan Jamal Vali v. State of A.P.33 frowned upon an earlier observation made by this Court in Mange v. State of Haryana34, wherein the Court observed "apart from being a child witness, she was also deaf and dumb and no useful purpose would have been served by examining her." It was held in para 48 as under :

> "48. This kind of a judicial attitude stems from and perpetuates the underlying bias and stereotypes against persons with disabilities. We are of the view that the testimony of a prosecutrix with a disability, or of a disabled witness for that matter, cannot be considered (2018) 11 SCC 163 (2021) 16 SCC 225 (1979) 4 SCC 349 weak or inferior, only because such an individual interacts with the world in a different manner, vis-à-vis their able-bodied counterparts. As long as the testimony of such a witness otherwise meets the criteria for inspiring judicial confidence, it is entitled to full legal weight. It goes without saying that the court appreciating such testimony needs to be attentive to the fact that the witness' disability can have the consequence of the testimony being rendered in a different form, relative to that of an able-bodied witness. In the case at hand, for instance, PW 2's blindness meant that she had no visual contact with the world. Her primary mode of identifying those around her, therefore, is by the sound of their voice. And so PW 2's testimony is entitled to equal weight as that of a prosecutrix who would have been able to visually identify the appellant." (Emphasis supplied) We fully endorse this view. The upshot of the discussion is that the absence of evidence of the prosecutrix is, not in all cases, a negative to be accounted for in the prosecution case.

18. Therefore, we move to the statement of the other witnesses. The ground adopted by the High Court in disbelieving the statement of PW-2 is that there was a material contradiction between his statement which formed part of the FIR, and his deposition before the Court. The FIR, as reproduced supra, states that when PW-2 reached the spot of the offence, the garment worn by the accused (Dhoti) was in loose, open condition and he ran out upon seeing the deponent. Whereas, in the deposition made before the Court, also reproduced supra, the statement is to the effect that when he saw the accused, he was bent down and 'seated' upon the victim, which he had allegedly mentioned to the authorities, and they neglected to mention the same in the report. At this juncture, it is important to note the testimony of PW-2 does not reveal whether he is able to read/write, it does not speak to the factum of who wrote the report, and neither is it clear that if someone else, that is a scribe, wrote the report, as to whether he was examined or not.

19. The question that arises for consideration is whether this contradiction in the FIR versus the statement made in Court is material, in as much as, to discredit his statement, thereby landing a fatal blow to the prosecution case. A Constitution Bench of this Court in State of Punjab v. Kartar Singh35 speaking through Pandian J., held that the purpose of cross-examination is to discredit the witness/elicit facts from such person, which may favour the other party, etc. Having gone through the cross- examination of this witness, we find none of these criteria to have been met. Even this discrepancy was not put to him so as to get an answer from the witness in this regard. That apart, we may also take note of what has been held in Sanjeev Kumar Gupta v. State of U.P.36. In the said case, a coordinate Bench of this Court was confronted with a similar situation while deciding an appeal arising from the High Court of Uttarakhand. There was a (1994) 3 SCC 569 (2015) 11 SCC 69 discrepancy in the statement made in the FIR and the deposition in Court. It was held that whether the discrepancy is material or not so, is a determination to be made in the facts and circumstances of the case. It was held that since evidence of other nature, such as the medical evidence, supports the prosecution case, then the contradiction is to be judged in that light, as was done in that case.

20. We have examined the evidence of PW-14. The version suggested by the defence that the injury caused to the private part of 'V' could not have been caused by a nail or an all-pin. Further attempt to discredit the evidence of the Doctor by suggesting that he had, in fact, given his findings, influenced by a bribe, is only a mere allegation/statement, as the same is entirely unsubstantiated by the record. Even on being queried by the Court, the witness answered that the cause of injury to 'V' can be through sexual intercourse, or an accident. That, coupled with the finding of injury on the genital organ of the accused being possible only due to forceful intercourse with a minor female, leads to a circumstance pointing to the respondent-accused having committed the offense against 'V'.

21. The possibility of animosity between the accused and the father of 'V' has not been established to the point that it would represent a crack in the wall of the prosecution case, giving rise to reasonable doubt.

22. As a consequence of the above discussion, the appeal is allowed. The judgment of acquittal entered by the learned Single Judge of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur, in S.B Criminal Appeal No.503/1987 is set aside, and the judgment of conviction returned by

the Sessions Judge, Tonk, by judgment dated 19th November 1987 in Sessions Trial No.26/86 is restored. The respondent-accused is directed to surrender before the competent authority within four weeks from the date of this judgment, to serve out the sentence as awarded by the learned Trial Court, if not already served.

Pending Application(s) if any, shall stand closed.

Original records of the case be sent back to the concerned Court.

.....J. (VIKRAM NATH) .....J. (SANJAY KAROL) New Delhi;

March 18, 2025.