

PHOOL SINGH

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v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal No. 1520 of 2021)

DECEMBER 01, 2021

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[M.R. SHAH AND SANJIV KHANNA, JJ.]

Penal Code, 1860 – s.376 – Rape – Prosecution case that when the husband of the victim/prosecutrix was in another village and she was alone and sleeping in her room, the accused jumped the wall, entered into the room of the prosecutrix and raped her – As per the case of the prosecutrix, she narrated the incident to her sister-in-law and mother-in-law but they did not believe her – On the contrary, she was beaten – Thereafter, she was compelled to go to her parental house – FIR was registered – The trial Court convicted the accused for the offence u/s. 376 IPC and sentenced the appellant to undergo 7 years rigorous imprisonment – Feeling aggrieved, the appellant-accused preferred an appeal before the High Court, which was dismissed – Before the Supreme Court, it was contended that the medical evidence does not support the case of the prosecutrix, as the doctor in her deposition specifically stated that on examination that there were no external or internal injuries found in the prosecutrix – It is further submitted that the prosecution case rests solely on the deposition of the prosecutrix only and there was also delay of three days in filing FIR – Held: The prosecutrix has fully supported the case of the prosecution – She was consistent right from the very beginning – Nothing was specifically pointed out why the sole testimony of the prosecutrix should not be believed – Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution – There is no reason to doubt the credibility and/or trustworthiness of the prosecutrix – No question regarding the external and internal injuries was asked, even remotely, to the prosecutrix in her cross-examination – Therefore, submission regarding external and internal injuries is to be rejected outrightly – So far as the delay of three days in lodging the FIR is concerned, it was the specific and consistent case on behalf of the prosecutrix that immediately on the

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- A *occurrence of the incident, she narrated the incident to her sister-in-law and mother-in-law but they did not believe the prosecutrix – No other family members in her matrimonial home supported the prosecutrix – She was compelled to go to her parental house and thereafter she was able to lodge the FIR – Therefore, when in such*
- B *a situation, the delay has taken place in lodging the FIR, the benefit of such delay cannot be given to the accused who as such was the relative – The conviction and sentence awarded to the accused-appellant herein for the offence u/s. 376 IPC is confirmed.*

Dismissing the appeal, the Court

- C **HELD : 1. Applying the law laid down by the Supreme Court in various decisions to the facts of the case on hand and as observed hereinabove, there is no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole**
- D **testimony of the prosecutrix can be sustained. [Para 6][332-D-E]**

- 2. So far as the submission on behalf of the accused that as there were no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent is concerned, the aforesaid has no substance at all. No such question**
- E **was asked, even remotely, to the prosecutrix in her cross-examination. Therefore, the aforesaid submission is to be rejected outright. [Para 7][332-E-F]**

- 3. Now so far as the submission on behalf of the accused that the trial Court erred in not believing DW1 and erred in not**
- F **believing the defence and the plea of *alibi* that on the night of the incident he had gone to Indore and was not present in the village is concerned, at the outset, it is required to be noted that cogent reasons have been given by the trial Court not to believe DW1 and not to believe the plea of *alibi* raised by the accused. DW1**
- G **belongs to the same village of the accused. The reason to go to Indore has been disbelieved by the court. It was the case on behalf of the accused and the defence that as one ‘B’ had met with an accident, DW1 and the accused had gone to Indore taking**

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‘B’ and they had stayed at Indore on that night. However, it was found that ‘B’ had an injury before two months. Defence had not produced the record of the hospital or examined doctor or employee of the hospital where the said ‘B’ was taken for treatment. According to the defence, they had stayed in the house of one ‘T’ at Indore but the said ‘T’ has not been examined. Even ‘B’ has also not been examined. Under the circumstances, the trial Court has rightly disbelieved the plea of alibi raised by the accused and has rightly disbelieved DW1. On appreciation of evidence, the trial Court has specifically observed that the deposition of DW1 does not inspire any confidence. [Para 8][332-G-H; 333-A-C]

4. Now so far as the submission on behalf of the accused that there was a delay of three days in lodging the FIR is concerned, at the outset, it is required to be noted that it was the specific and consistent case on behalf of the prosecutrix that immediately on the occurrence of the incident, she narrated the incident to her sister-in-law and mother-in-law but they did not believe the prosecutrix. On the contrary, they beat her. Even no other family members in her matrimonial home supported the prosecutrix and therefore she sent message to her parental house and thereafter she was taken to her parental house and FIR was lodged. It is very unfortunate that in this case the sister-in-law and mother-in-law though being women did not support the prosecutrix. On the contrary, she was compelled to go to her parental house and thereafter the FIR was lodged. Being women at least the sister-in-law and mother-in-law ought to have supported the prosecutrix, rather than beating her and not believing the prosecutrix. Therefore, when in such a situation, the delay has taken place in lodging the FIR, the benefit of such delay cannot be given to the accused who as such was the relative. [Para 9][333-C-F]

5. Now so far as the prayer on behalf of the accused to reduce the sentence considering the proviso to Section 376 IPC is concerned, as per section 376 IPC pre-amendment, the minimum punishment shall be seven years. However, as per the proviso, the court may, for adequate and special reasons to be

- A mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. No exceptional and/or special reasons are made out to impose the sentence of imprisonment for a term of less than seven years. On the contrary and in the facts and circumstances of the case, it can be said that accused
- B 17 has been dealt with lightly by imposing the minimum sentence of seven years rigorous imprisonment only. The victim was the relative. Nobody in the family at matrimonial home supported her and she suffered the trauma. She was compelled to go to her parental house and thereafter she was able to lodge the FIR. The accused has come out with a false case/plea of *alibi*, which is
- C not accepted by the courts below. Under the circumstances, the prayer of the appellant to reduce the sentence and/or to convert the sentence from seven years rigorous imprisonment to seven years simple imprisonment is not accepted and it is rejected. [Para 10][333-F-H; 334-A-C]
- D *Ganesan v. State*, (2020) 10 SCC 573; *State (NCT of Delhi) v. Pankaj Chaudhary*, (2019) 11 SCC 575 : [2018] 14 SCR 78; *Sham Singh v. State of Haryana*, (2018) 18 SCC 34 – relied on.
- E *Santosh Prasad v. State of Bihar*, (2020) 3 SCC 443 : [2020] 2 SCR 798; *State of H.P. v. Manga Singh*, (2019) 16 SCC 759 : [2018] 14 SCR 904 – referred to.

Case Law Reference

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| F | (2020) 10 SCC 573 | relied on | Para 4.2 |
| | [2020] 2 SCR 798 | referred to | Para 4.2 |
| | [2018] 14 SCR 904 | referred to | Para 4.2 |
| | [2018] 14 SCR 78 | relied on | Para 4.2 |
| G | (2018) 18 SCC 34 | relied on | Para 5.4 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1520 of 2021.

- H From the Judgment and Order dated 05.09.2019 of the High Court of Madhya Pradesh, Bench at Indore in Criminal Appeal No.875 of 2000.

Aditya Gaggar, Adv. for the Appellant.

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Abhay Prakash Sahay, AAG, Pashupathi Nath Razdan, Ms. Rashmi Singhanian, Prakhar Srivastav, Ms. Sneh Bairwa, Advs. for the Respondent.

The Judgment of the Court was delivered by

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M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.09.2019 passed by the High Court of Madhya Pradesh at Indore in Criminal Appeal No. 875/2000, by which the High Court has dismissed the said appeal preferred by the appellant-accused and has confirmed the judgment and order of conviction and sentence dated 31.07.2000 passed by the learned Sessions Judge, Dewas (hereinafter referred to as the learned 'trial Court') in Session Trial No. 05/2000 convicting the accused for the offence punishable under Section 376 IPC and sentencing him to undergo 7 years rigorous imprisonment with fine of Rs.500/- with default stipulation, the original accused has preferred the present appeal.

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2. As per the case of the prosecution, in the intervening night of 9th August, 1999 and when the husband of the victim/prosecutrix went to another village and she was alone and she was sleeping in her room, the accused jumped the wall and entered into the room of the prosecutrix. Seeing the accused the prosecutrix woke up and in the light of the bulb she identified the accused. Then the accused pressed the mouth of the prosecutrix and committed rape and thereafter he fled away by jumping the wall. As per the case of the prosecutrix, she narrated the incident to her sister-in-law (Jethani) and mother-in-law but they did not believe her. On the contrary, she was beaten. That thereafter the prosecutrix also told the incident to other family members of her matrimonial house but nobody took any action. The prosecutrix sent the information to her parental house. Thereafter, her uncle and others came to her matrimonial house and the prosecutrix told them about the incident. They took her to parental house. Thereafter, an FIR was lodged on 12.08.1999. She was sent for medical examination. After completion of the investigation, charge-sheet was filed against the accused for the offence punishable under Section 376 IPC. The case was committed to the learned Court of Sessions. Accused pleaded not guilty and therefore he came to be tried for the aforesaid offence.

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A 2.1 In order to prove the charge against the accused, prosecution
examined six witnesses including the doctor who examined the
prosecutrix on 12.08.1999, prosecutrix-PW3 and the Investigating
Officer-PW6. One of the witnesses Rajaram-PW2 did not support the
prosecution story and he was declared hostile. The accused took the
B plea of *alibi* and according to him he had gone to Indore on the day of
incident and he was not in the village on that day. He examined the
defence witness as DW1. The learned trial Court did not believe the
plea of *alibi* and DW1 by giving cogent reasons. That thereafter after
appreciating the evidence on record, by judgment and order dated
31.07.2000, the learned trial Court convicted the accused for the offence
C under Section 376 IPC and sentenced the appellant as mentioned
hereinabove.

2.2 Feeling aggrieved and dissatisfied with the judgment and order
of conviction and sentence passed by the learned trial Court, the appellant
herein-accused preferred an appeal before the High Court. By the
D impugned judgment and order, the High Court has dismissed the said
appeal. Hence, the present appeal is at the instance of the accused.

3. Shri Aditya Gaggar, learned Advocate appearing on behalf of
the accused has vehemently submitted that in the present case the medical
evidence does not support the case of the prosecutrix. It is submitted
E that the doctor in her deposition specifically stated that on examination it
was found that there were no external or internal injuries found in the
person of the prosecutrix.

3.1 It is further submitted that therefore the prosecution case rests
solely on the deposition of the prosecutrix only. It is submitted that no
F other independent witnesses have been examined and/or supported the
case of the prosecutrix.

3.2 It is further submitted that there was a delay in lodging the
FIR. It is submitted that the incident took place on 9.8.1999 and the FIR
was lodged on 12.08.1999, i.e., after a period of three days. It is submitted
G that therefore the prosecution story does not find any corroboration from
medical evidence and in the absence of any signs of injuries, it cannot be
ruled out that the physical intercourse even if assumed it had happened,
was entire consensual.

3.3 It is further submitted that both, the learned trial Court as well
H as the High Court have materially erred in not believing DW1, who

categorically stated that on the date/night of the alleged incident, the accused was not in the village and was at Indore along with DW1. A

3.4 Making the above submissions, it is prayed to allow the present appeal. In the alternative, it is prayed to reduce the sentence to the period already undergone by submitting that by now the accused has undergone two and half years of sentence against the seven years sentence imposed by the courts below. It is also prayed to convert the seven years rigorous imprisonment to seven years simple imprisonment. B

4. The present appeal is vehemently opposed by Shri Abhay Prakash Sahay, learned Additional Advocate General appearing on behalf of the respondent-State. C

4.1 It is submitted that in the present case both, the learned trial Court as well as the High Court have rightly convicted the accused for the offence under Section 376 IPC, relying upon the sole testimony of the prosecutrix/victim. It is submitted that as such there is no reason to doubt the credibility and trustworthiness of the prosecutrix. It is submitted that even no question was asked to the prosecutrix while cross-examining the prosecutrix that a false case was filed against the accused. D

4.2 It is submitted that once it is found that the prosecutrix is reliable and trustworthy, in that case, there can be a conviction for the offence of rape – Section 376 IPC, relying upon the deposition of the sole witness/victim. Reliance is placed on the decisions of this Court in the cases of *Ganesan v. State*, (2020) 10 SCC 573; *Santosh Prasad v. State of Bihar*, (2020) 3 SCC 443; *State of H.P. v. Manga Singh*, (2019) 16 SCC 759; and *State (NCT of Delhi) v. Pankaj Chaudhary*, (2019) 11 SCC 575. E

4.3 It is submitted that in the case of *Pankaj Chaudhary (supra)*, it is specifically observed and held by this Court that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence and that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. F

4.4 Now so far as the submission on behalf of the accused, relying upon the deposition of the doctor-PW1 that there were no external or internal injuries found in the person of the prosecutrix and therefore the prosecution case is not to be believed, as not supported by any corroborative evidence and/or that it is to be presumed that it was a case of consent is concerned, it is submitted that first of all the prosecutrix H

- A has been medically examined after three days of the incident. It is submitted that the prosecutrix is consistent in her evidence right from the very beginning and even in the cross-examination also she has stood by what she has stated and she has fully supported the case of the prosecution. It is submitted therefore that in the facts and circumstances of the case and even in the absence of any external or internal injuries in the person of the prosecutrix, the conviction can be sustained.

4.5 It is further submitted that even there is no suggestion in the cross-examination of the prosecutrix that it was a case of consent.

- 4.6 It is further submitted by the learned Additional Advocate General appearing on behalf of the State that in the present case on one hand the accused took the plea that it was a case of consent and on the other hand accused took the plea of *alibi* and that he was not in the village on the date/night of the incident. It is submitted that both are contradictory to each other. It is submitted that in any case cogent reasons have been given by the learned trial Court not to believe DW1 and it is specifically observed by the learned trial Court that deposition of DW1 does not inspire any confidence.

4.7 Making the above submissions and relying upon the aforesaid decisions, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length. We have gone through the judgment and order of conviction passed by the learned trial Court convicting the accused for the offence under Section 376 IPC and the impugned judgment and order passed by the High Court.

- 5.1 At the outset, it is required to be noted that in the present case, the prosecutrix has fully supported the case of the prosecution. She has been consistent right from the very beginning. Nothing has been specifically pointed out why the sole testimony of the prosecutrix should not be believed. Even after thorough cross-examination, she has stood by what she has stated and has fully supported the case of the prosecution. We see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. The submission on behalf of the accused that no other independent witnesses have been examined and/or supported the case of the prosecution and the conviction on the basis of the sole testimony of the prosecutrix cannot be sustained is concerned, the aforesaid has no substance.

5.2 In the case of *Ganesan (supra)*, this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paragraphs 10.1 to 10.3, it is observed and held as under:

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in *Vijay* [*Vijay v. State of M.P.*, (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

“9. In *State of Maharashtra v. Chandraprakash Kewalchand Jain* [*State of Maharashtra v. Chandraprakash Kewalchand Jain*, (1990) 1 SCC 550] 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 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

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- A 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.’
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- D 10. In *State of U.P. v. Pappu* [*State of U.P. v. Pappu*, (2005) 3 SCC 594] 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)
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- F ‘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.
- G 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.’
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11. In *State of Punjab v. Gurmit Singh* [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384], 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

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A 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. ...

B 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.'

(emphasis in original)

E 12. In *State of Orissa v. Thakara Besra* [*State of Orissa v. Thakara Besra*, (2002) 9 SCC 86], this Court held that rape is not mere 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.

G 13. In *State of H.P. v. Raghbir Singh* [*State of H.P. v. Raghbir Singh*, (1993) 2 SCC 622], this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there

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is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* [*Wahid Khan v. State of M.P.*, (2010) 2 SCC 9] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [*Rameshwar v. State of Rajasthan*, AIR 1952 SC 54].

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.”

10.2. In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in *Rai Sandeep v. State (NCT of Delhi)* [*Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21]. In para 22, it is observed and held as under: (SCC p. 29)

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever

- A strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”
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5.3 In the case of *Pankaj Chaudhary (supra)*, it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

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- G “29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [*Vishnu v. State of Maharashtra* [*Vishnu v. State of Maharashtra*, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the
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“probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30].”

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5.4 In the case of *Sham Singh v. State of Haryana*, (2018) 18 SCC 34, it is observed that testimony of the victim 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 the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

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“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. 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 the 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 court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab v. Gurmit Singh* [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] (SCC p. 403, para 21).]

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7. It is also by now well settled that 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

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A 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. (See *Ranjit Hazarika v. State of Assam* [*Ranjit Hazarika v. State of Assam*, (1998) 8 SCC 635].)”

D 6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

F 7. Now so far as the submission on behalf of the accused that as there were no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent is concerned, the aforesaid has no substance at all. No such question was asked, even remotely, to the prosecutrix in her cross-examination. Therefore, the aforesaid submission is to be rejected outright.

G 8. Now so far as the submission on behalf of the accused that the learned trial Court erred in not believing DW1 and erred in not believing the defence and the plea of *alibi* that on the night of the incident he had gone to Indore and was not present in the village is concerned, at the outset, it is required to be noted that cogent reasons have been given by the learned trial Court not to believe DW1 and not to believe the plea of *alibi* raised by the accused. DW1 belongs to the same village of the accused. The reason to go to Indore has been disbelieved by the court. H It was the case on behalf of the accused and the defence that as one

Babulal had met with an accident, DW1 and the accused had gone to Indore taking Babulal and they had stayed at Indore on that night. However, it was found that Babulal had an injury before two months. Defence had not produced the record of the hospital or examined doctor or employee of the hospital where the said Babulal was taken for treatment. According to the defence, they had stayed in the house of Tulsiram at Indore but the said Tulsiram has not been examined. Even the Babulal has also not been examined. Under the circumstances, the learned trial Court has rightly disbelieved the plea of *alibi* raised by the accused and has rightly disbelieved DW1. On appreciation of evidence, the learned trial Court has specifically observed that the deposition of DW1 does not inspire any confidence.

9. Now so far as the submission on behalf of the accused that there was a delay of three days in lodging the FIR is concerned, at the outset, it is required to be noted that it was the specific and consistent case on behalf of the prosecutrix that immediately on the occurrence of the incident, she narrated the incident to her sister-in-law (Jethani) and mother-in-law but they did not believe the prosecutrix. On the contrary, they beat her. Even no other family members in her matrimonial home supported the prosecutrix and therefore she sent message to her parental house and thereafter she was taken to her parental house and FIR was lodged. It is very unfortunate that in this case the sister-in-law and mother-in-law though being women did not support the prosecutrix. On the contrary, she was compelled to go to her parental house and thereafter the FIR was lodged. Being women at least the sister-in-law and mother-in-law ought to have supported the prosecutrix, rather than beating her and not believing the prosecutrix. Therefore, when in such a situation, the delay has taken place in lodging the FIR, the benefit of such delay cannot be given to the accused who as such was the relative.

10. Now so far as the prayer on behalf of the accused to reduce the sentence considering the proviso to Section 376 IPC is concerned, as per section 376 IPC pre-amendment, the minimum punishment shall be seven years. However, as per the proviso, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. No exceptional and/or special reasons are made out to impose the sentence of imprisonment for a term of less than seven years. On the contrary and in the facts and circumstances of the case, it can be said that accused

- A has been dealt with lightly by imposing the minimum sentence of seven years rigorous imprisonment only. The victim was the relative. Nobody in the family at matrimonial home supported her and she suffered the trauma. She was compelled to go to her parental house and thereafter she was able to lodge the FIR. The accused has come out with a false case/plea of *alibi*, which is not accepted by the courts below. Under the
- B circumstances, the prayer of the appellant to reduce the sentence and/or to convert the sentence from seven years rigorous imprisonment to seven years simple imprisonment is not accepted and it is rejected.

- C 11. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. The conviction and sentence awarded to the accused – appellant herein for the offence under Section 376 IPC is hereby confirmed.

Ankit Gyan

Appeal dismissed.