

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ)No.1453 of 2007

Bhuchari Mandal	Appellant
Versus		
1.State of Jharkhand	
2.Sarswati Devi	Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant	: Mr. Vijay Kr. Roy, Advocate
For the State	: Mr. Prabir Kr. Chatterjee, Spl.PP

Judgment

10/Dated:16th February, 2024

This Criminal Appeal has been filed on behalf of the appellant challenging the judgment of conviction dated 20.09.2007 and sentence dated 24.09.2007 passed in S.T.No.323 of 2006 and T.R. No.55 of 2006 passed by Sri Kamalesh Mishra, learned Additional District & Sessions Judge FTC-VII, Giridih by which the appellant has been convicted for the offence under section 376 of the IPC and sentenced to undergo RI for a period of seven years and to pay fine of Rs.5,000/- and in default of payment of fine the appellant has been further sentenced to undergo RI for six months.

2. The prosecution case, in brief, is that informant of this case got her fardbeyan recorded at Whitty Bazaar, Giridih on 02.05.2006 at 11.15 p.m by S.I. R.K. Dubey O/C Giridih (M) P.S stating therein that in the night of 30.04.2006 while she was sleeping on her cot in her room at about 11.00 p.m and her Dewar Mantu Pandit aged about 10 years was also sleeping near her on a separate cot then at that time the accused Bhuchari Mandal entered into her room and committed rape upon her. On her protest, he closed her mouth and nose with his paws. On hue and cry of the informant her Dewar awoke and went out of the room and raised

alarm and then her father in-law and mother in-law came there and accused Bhuchari Mandal fled away. She has further stated that there was no door put in her room. Even on 01.05.2006 when she was coming to Police Station then accused Bhuchari Mandal threatened her and her mother-in-law and father-in-law that he shall also implicate them in a case. Therefore, on 02.05.2006 she came to police station for her fardbeyan. She has further stated that her husband is a Masson at Ranchi and the accused Bhuchari Mandal resides in front of the house of the Informant and he was having bad eyes towards her and he frequently used to make indecent gesture and in the night of 30.04.2006 he committed rape upon her.

3. Heard Sri Vijay Kumar Roy, learned counsel for the appellant and Mr. Prabir Kumar Chatterjee, Spl.PP for the State.

4. Learned counsel for the appellant has submitted that the impugned judgment of conviction dated 20.09.2007 and sentence dated 24.09.2007 are illegal and not sustainable in the eye of law. It is submitted that the appellant is innocent and has committed no offence and has been falsely implicated in this case by the prosecutrix at the instance of her in-law members and due to village politics. It is submitted that there are several contradiction in the evidence of the prosecution witnesses. It is submitted that the FIR lodged by the informant-prosecutrix is false and concocted and false allegation has been leveled against the appellant. It is submitted that no independent witness has been examined by the prosecution and only interested witness has been examined. It is submitted that there was previous enmity between the parties and previously wife of the accused-appellant had filed a complaint case against the father-in-law and others including the prosecutrix and as such the prosecutrix-informant has lodged this false and fabricated case against the appellant. It is submitted that the

evidence of P.W-3 i.e. the informant is not reliable and she has admitted during her cross-examination that she is also facing a case instituted by the wife of the appellant against her. It has been falsely alleged in the FIR and falsely stated during evidence by the prosecutrix that the appellant had given threatening to her for not lodging the FIR against him near the police station. It is submitted that the alleged occurrence is not possible because there is house of one Bajrangi Roy at a distance of 40-50 Yards from the house of the informant and on the date of occurrence Tilak ceremony was going on in the house of Bajrangi Roy who has been examined as D.W-1 and there was a huge crowd and several villagers had assembled there and as such it is not possible to commit rape upon the informant on such a busy occasion in presence of several nearby people.

It is further submitted that even P.W-1 i.e. the father-in-law of the informant has admitted during his examination that the wife of the appellant had instituted a case of Witch Craft against him and his family members prior to the occurrence. It is submitted that even P.W-1 has admitted during cross-examination that the case was instituted at the instance of Samdhi of P.W-1 who had acquaintance with the police. P.W-1 had himself admitted at para-9, 10 and 11 of his cross-examination that the house of the appellant and the informant was at a distance of 40 feet and around 100-150 people had assembled near the house of said Bihari Roy (it appears that due to mistake the learned trial court has mentioned the name of Bihari Roy instead of Bajrangi Roy). He has stated that he as well as Tora Mandal and Rohan Roy had seen the appellant fleeing away and even failed to say as to who had opened the hands of his daughter in-law. It is submitted that evidence of P.W-2 is also not reliable as she is the mother in-law of informant and she is an interested witness and she had merely seen the

appellant fleeing away. It is submitted that P.W-4 is the younger Dewar of the informant and he is a minor child, aged about 10 years on the date of occurrence and hence his evidence is also not reliable as he is a tutored witness.

It is submitted that P.W-5 is Doctor Manish Jalan and he has himself admitted and stated that possibility of rape cannot be ruled out and thus there is no clear-cut finding of doctor on the point of commission of rape upon the appellant. It is submitted that no spermatozoa was found by the doctor and P.W-5 i.e. the doctor had not noticed any semen marked in the Petticoat of the prosecutrix.

It is submitted that P.W-6 is the I.O of this case and has made improper investigation and has wrongly submitted charge sheet against the appellant. It is submitted that even P.W-6 i.e. the I.O has admitted that he has not examined R.K. Dubey, the then officer in-charge who had recorded fardbeyan of the prosecutrix. It is submitted that FIR was lodged after delay of more than two days of occurrence allegedly took place on 30.04.2006 at 11.00 p.m in the night and FIR was lodged on 02.05.2006 at 13.45 hours and thus there is delay of two days in lodging the FIR. It is submitted that I.O had himself admitted during his further cross-examination that he has not mentioned the name of nearby people of the place of occurrence although he had enquired from the village people. It is submitted that I.O has falsely shown ignorance about the presence of one Arjun Pandit of Markatha although he was well acquainted with said Arjun Pandit and lodged the FIR of the informant under the influence of said Arjun Pandit. It is submitted that I.O has also admitted during his further cross-examination that he has not written about the Gate of the room in question and he had also not tried to enquire the sign of forcible entry in the house of the prosecutrix. It is submitted that I.O has also admitted that he had called the Chowkidar of the village but he has not recorded his

entry in the case diary and has also not recorded the statement of Chowkidar in the case diary. It is submitted that I.O has also admitted that on the date of occurrence, a marriage ceremony was taking place in the house of one Bajrangi Roy (i.e. D.W-1) but he had not mentioned this fact in his case diary and he has also not mentioned the distance of the house of Bajrangi Roy @ Bihari Roy from the place of occurrence. Thus, the investigation of the I.O i.e. P.W-6 is improper and no reliance can be placed upon such investigation. It is submitted that P.W-1 and P.W-2 have also admitted that on the date of occurrence Tilak ceremony was going on for the son of Bihari Roy and generator and light were also on and P.W-2 further admitted that she could not hear the sign of alarm raised by the informant due to noise of generator and lighting.

It has been alternatively submitted by the learned counsel for the appellant that the appellant has remained in custody for around three years and ten months and as such lenient view may be taken against him and the period undergone by the appellant in custody may be treated as period of sentence and hence the appeal may be allowed and the appellant may be acquitted.

5. On the other hand, learned Spl.P.P has submitted that the impugned judgment of conviction and sentence passed by the learned trial court are proper and no interference is required from this Court. It is submitted that the delay in lodging the FIR has been well explained by the prosecutrix-informant as it has been mentioned in the FIR that the appellant had threatened her on 01.05.2006 while she was going to police station. It is submitted that the learned trial court has discussed the entire evidence meticulously and has passed the impugned judgment and sentence.

It is submitted that P.W-1 i.e. Dhano Pandit and P.W-2 i.e. Kaushlaya Devi are the father in-law and the mother in-law of the

prosecutrix and they have fully supported the prosecution case and they had seen the appellant fleeing away just after the occurrence and they had informed about the occurrence by their daughter in-law Sarswati Devi.

It is submitted that P.W-3 is the prosecutrix and she has fully supported the prosecution case and has stated that the appellant Bhuchari Mandal had committed rape upon her while she was sleeping in her room and the occurrence was also seen by her younger Dewar who was sleeping nearby her on another cot. It is submitted that P.W-3 had also stated during her evidence that while she was going with her family to lodge the case against the appellant on the next day then the appellant threatened her of dire consequences and had threatened to kill her. It is submitted that the prosecutrix has fully stood the test of cross-examination and even she has stated that on the date of occurrence her husband was in Ranchi and she had informed her husband on the next day and she has lodged the case with her husband before the police station and thus the contradiction even, if any, is minor in nature.

It is submitted that P.W-4 is, Mantu Pandit who is the minor Devar of the informant-prosecutrix and has supported the prosecution case and the eye witness of the occurrence and had seen the occurrence of commission of rape upon the prosecutrix by the appellant-Bhuchari Mandal. It is submitted that due to age of the P.W-4 there may be some infirmity but the same are minor in nature.

It is submitted that P.W-5 is the Doctor who has found injury on the person of the prosecutrix-informant and has stated during evidence that marginal scratch mark was seen on the face and left arm with crust formation on the body of the prosecutrix. Thus P.W-5 has stated possibility of rape cannot be ruled out and he has proved the medical report marked as Exhibit-1. Thus, from the

evidence of P.W-5 commission of rape upon the informant by the appellant is fully proved.

It is submitted that P.W-6 is the I.O of this case and who has fully corroborated and supported the prosecution case. He has proved the formal FIR and fardbayan and endorsement of R.K. Dubey, Officer in-charge which have been marked as Exhibit-2, Exhibit-3 and Exhibit-3/1 respectively and he had recorded the statement of the prosecutrix-Sarswati Devi and had sent her for medical examination. He has further identified the document of Panchayati as Document-X for identification and he has also recorded the statement of several persons namely Subhash Yadav, Bhola and Premchand and has submitted charge sheet against the appellant. It is submitted that lapses on the part of the I.O for not mentioning the name of nearby people in the case diary will not disprove the prosecution case.

It is submitted that the statement of Chowkidar is not relevant and mere lapses on the part of the I.O for not seizing the Saree and Saya of the prosecutrix-informant is not a serious lacuna in view of the evidence of the P.W-3 i.e. the informant the case is fully proved and hence this Criminal Appeal is liable to be dismissed.

6. Perused the Lower Court Records and considered the submission of learned counsel for both the sides.

7. Now this Court has to consider as to whether judgment of conviction and order of sentence passed by the trial court is proper or not.

8. It transpires that the occurrence took place on 30.04.2006 at around 11.00 p.m in the night but the F.I.R was lodged by the prosecutrix-informant on 02.05.2006 when her fardbayan was recorded by one R.K. Dubey, Officer in-charge of Muffasil P.S.

It reveals from the F.I.R that on 30.04.2006 the appellant had forcibly committed rape upon her by closing her mouth and nose

while she was sleeping in her room on a cot and her Devar Mantu Pandit aged about 10 years at her nearby cot. She has also alleged that prior to lodging the FIR the appellant used to give her indecent proposal.

9. It transpires that the police, after investigation, had submitted charge sheet for the offence under section 376 IPC against the appellant on 17.07.2006.

Thereafter the learned CJM, Giridih has taken cognizance under section 376 of the IPC against the appellant.

10. After supplying the police papers to the accused-appellant, the charge was framed against the appellant under section 376 of the IPC on 31.08.2006 by Sri Sunil Kumar Singh, learned Additional Sessions Judge-VII, Fast Track Court, Giridih and to which the appellant pleaded not guilty and claimed to be tried.

11. It transpires that during trial the prosecution got examined six (06) witnesses, who are as follows:-

- (i) P.W-1 is Dhano Pandit i.e. father in-law of the prosecutrix-informant,
- (ii) P.W-2 is Kaushalya Devi i.e. mother in-law of the prosecutrix-informant,
- (iii) P.W-3 is the victim lady (the name of the victim lady is not being disclosed although it was mentioned by the learned court below),
- (iv) P.W-4 is Mantu Pandit i.e. Devar of the informant,
- (v) P.W-5 is Manish Jalan i.e. the Doctor and
- (vi) P.W-6 is Raghunandan Ram i.e. the I.O of this case.

12. The prosecution got marked the following documents as exhibits which are as follows:-

- (i) Exhibit-1 is the Medical Report,
- (ii) Exhibit-1/1 is the signature of Dr. Manish Jalan,
- (iii) Exhibit-1/2 is the Signature of Dr. Dolly Ranidhar,
- (iv) Exhibit-1/3 is signature of Dr. Sarjna Sharma,
- (v) Exhibit-2 is the formal FIR,
- (vi) Exhibit-3 is the Fardbayan,
- (vii) Exhibit-3/1 is endorsement on Fardbayan.

(viii) Exhibit-4 is the requisition of the I.O sent to the doctor for medical examination of the informant, which is proved on behalf of the defence.

13. The prosecution has also produced Document-X for identification:-

“Document marked-X for identification is photo copy of Panchayati dated 01.05.2006 between the appellant on the one hand and the villagers on other hand.”

14. Thereafter the appellant was examined under section 313 Cr.P.C by the learned court below on 25.05.2007 and he denied the circumstances put forth before him.

15. On the other hand the defence also got examined two (02) witnesses who are as follows:-

- (i) D.W-1 is Bajrangi Roy i.e. the local villager and
- (ii) D.W-2 is Chakni Devi i.e. the wife of appellant.

16. The defence proved the following documents as the exhibits which is as follows:-

- (i) Exhibit-A is the certified copy of the complaint Case No.537 of 2006 filed before the C.J.M, Giridih by Chakni Devi.

17. Thereafter the learned court below after hearing both the sides has convicted the appellant for the offence under section 376 of the IPC and sentenced him to undergo RI for seven years and pay the fine of Rs.5,000/-.

18. It transpires that the FIR was lodged on 02.05.2006 although the occurrence had taken place on 30.04.2006.

19. From perusal of the FIR, it transpires that while the informant was sleeping in her house on 30.04.2006 at 11.00 p.m. and her devar-Mantu Pandit, aged about 10 years was also sleeping beside her cot in the same room then suddenly his neighbour Bhuchari Mandal (i.e. the appellant) entered into her house and forcibly committed rape upon her and when she protested then he closed her mouth and nose but she raised alarm and her devar went outside the room and raised alarm then her father in-law, mother

in-law came and then the appellant fled away. She also stated that the door of her room was not locked and she was threatened on 01.05.2006 by the appellant while she was going to Police Station to lodge the FIR.

20. P.W-1 is Dhano Pandit i.e. father in-law of the informant and stated during his evidence that the occurrence took place in the month of '*Baisakh*' around six months ago at around 11.00 a.m in the night on Sunday. However, he has two houses and he lives in one house but making rooftop-tiles in another house and he was baking rooftop-tiles in his new house then the occurrence took place and at that time his wife Kaushalaya Devi was with him and her daughter in-law was also cooking food and his younger son Mantu was also present there then suddenly Mantu came to him and informed that Bhuchari Mandal had caught hold of his Bhabhi, Sarswati Devi and then the informant and his wife arrived there and had seen the appellant-Bhuchari Mandal fleeing away. When he asked then his daughter in-law Sarswati Devi informed him that Bhuchari Mandal had tied her hand and committed rape upon her. He also stated that on the date of occurrence a Tilak Ceremony was taking place for the son of Bihari Rai and light of generator was running. When he tried to go to the Police Station then the appellant-Bhuchari Mandal scolded him and a panchayati had taken place with regard to the occurrence and for which a paper was handed over to the police and the appellant-Bhuchari Mandal had admitted his guilt in the panchayati. Thereafter police has recorded the statement of his daughter in-law.

21. During cross-examination, he stated that there is a Chowkidar in his village and he is also acquainted with Chakni Devi, who is wife of Bhuchari i.e. the appellant and Chakni Devi had instituted a case upon them for '*Diaan Bisahi*' and for compelling her to drink bad soil. He also admitted the distance from his first house to the

second house is around 60-70 feet and he had got seen both the houses to the police and had got seen three rooms to the police. He also stated that the present case was instituted by him and his Samdhi Arjun Pandit who is living at village Markatha which is at a distance of seven (07) Kosh (Mile) and it takes around one hour for going from village Khawa to village Kabar and his Samdhi got his case instituted as he was acquainted with the police. He further stated that he had not gone to the Police Station with his daughter in-law. Later on he met with his Samdhi on the same day and the police arrived in the village on the same day.

22. He also stated that there is only one way of 10 feet width road for going from old house to new house and the house of Bihari Rai is situated at a distance of 40 feet from the place of occurrence and the house of Bhuchari (i.e. the appellant) will also be around 40 feet from the P.O. He admitted that around 100-150 persons were present in the house of Bihari Rai. He along with Toda Mandal, Rohan Rai had seen the appellant fleeing away but none of the villager had gone to the house of Bhuchari Mandal.

He admitted that he is not aware as to who had opened the hand of his daughter in-law. He also admitted that paper of panchayati was prepared before arrival of his Samdhi. He has denied the suggestion for instituting the case in connivance with Samdhi.

23. Thus, from scrutinizing the evidence of P.W-1 it is evident that they have developed a new story from the FIR, because in the FIR the victim lady has claimed that she was sleeping along with his Dewar in her house and her father in-law and mother in-law arrived only after the alarm raised by her Dewar but she has not disclosed the fact that her father in-law and mother in-law were living in the another house at a distance of about 60-70 feet. Even P.W-1 could not say as to who had opened/untied the hands of his

daughter in-law i.e. victim lady. He also admitted that the wife of the appellant had also instituted a case of Witch Craft against him and his family members prior to the occurrence and the case has been instituted at the instance of his Samdhi. Even no panchayati paper was produced at the time of his evidence before the Court below. Hence P.W-1 is a hearsay witness and he has not seen the occurrence and there is enmity between both the sides.

Thus, the evidence of P.W-1 is doubtful and is contradictory to the case of the informant as made out in the FIR and cannot be relied upon.

24. P.W-2 is Kaushalalya Devi, who is the mother in-law of the victim lady and who has stated during her evidence that while she was preparing pieces of tiles (*Khapra*) with her husband and her daughter in-law and her younger son were in the second house then her younger son came to her running and stated that the appellant-Bhuchari Mandal is committing rape upon the victim lady then both of them went there and saw that the appellant Bhuchari Mandal is fleeing away and her daughter in-law informed that the appellant had committed rape upon her by tiding her hands and legs and she could not hear the sound of alarm raised by her daughter in-law as there was noise due to generator on a Tilak Ceremony in the house of Bihari Rai. Next day when he went to Giridih for instituting the case but the appellant threatened her of dire consequences and a panchayati took place in the village where the appellant admitted his guilt.

25. During cross-examination, she showed ignorance about the family members of the wife of the appellant. She admitted that Pintu Pandit is her younger son and he was not unwell on the date of occurrence.

She had denied that she and her family members had compelled Chakni Devi i.e. the wife of the appellant to drink bad

soil and assaulted her by calling her '*Diaan*'. She further stated that she along with her daughter-in-law had gone to the Police Station on Tuesday and occurrence had taken place on Sunday and they had not handed over the clothes which were wore by the victim at the time of occurrence, to the police and the same are in her house and the information given by Mantu Pandit and she clarified that Pintu is named as Mantu, who is aged around 10-12 years. She has claimed to have seen the appellant-Bhuchari Mandal fleeing away from a distance of 10-15 feet. She stated that house of Bihari Rai is situated at a distance of 10-15 feet from her house but they had not informed any person and remained in the house whole night and had not informed the matter before the Chowkidar. She could not say as to when panchayati took place.

26. Thus, from scrutinizing the evidence of P.W-2, it is evident that she has further developed a new story different from the FIR and also from the evidence of P.W-1-her husband because P.W-1 has stated that his wife (i.e. P.W-2) was cooking food whereas P.W-2 has stated that she was preparing tiles (Khapra) and they had not informed the matter even to the police and even to Bihari Rai, who is her neighbour. She also stated that appellant had tied the hands and legs of the victim lady but she could not say as to who had opened/untied the hands and legs of her daughter in-law. On the other hand, she admitted that Chakni Devi who is the wife of the appellant-Bhuchari Mandal, was compelled to drink bad soil by her and her family members by treating her as Diann Bisahi. Therefore, P.W-2 is also a hearsay witness as she had merely claimed to have seen the appellant fleeing away.

Thus, P.W-2 is also an interested witness.

27. P.W-3 is the victim lady said to be aged around 17 years at the time occurrence and stated during evidence that while she was sleeping at her house at around 11.00 a.m and her Devar Mantu

was also sleeping then the appellant-Bhuchari Mandal came there and tied her mouth by his hands, and removed her Sari and had committed rape upon her. Thereafter her Devar Mantu Pandit had raised alarm and had informed her father in-law and mother in-law, who were doing the work of preparing tiles (*Khapra me Aawa*) and her father in-law and mother in-law came there and seen the appellant fleeing away then she informed about the occurrence to them. Next day they went to the Police Station then the appellant threatened them of dire consequences and on the next day (i.e. on Tuesday) while she was going to the Police Station then she met Daroga Ji in Gupti Bazar and she informed him about the occurrence and at that time her father in-law and mother in-law were also present and then her *Beyan* was recorded and she had put her LTI and her father had also put his LTI. Thereafter she was treated by the doctor in Sadar Hospital and she was medically examined by the doctor. She further stated that at the time of occurrence her husband was in Ranchi and who was doing there the work of Mason.

28. During Cross-examination, she stated that there are three rooms in her house and one of the door is in east, the door of the other is in west and the third door is in south and there is a courtyard among the three rooms and she was sleeping in the room of western door whereas her mother in-law and father in-law were doing the work of preparing tiles (*Khapra me Aawa*) and the second house is situated at the other side of the road.

She admitted that there is house of Bihari Rai besides her house and there is attached house of one Sita Ram Pandit to her house and even the house of Chintaman Pandit and Kamal Pandit. She admitted that despite raising alarm of her and her Devar, none came from their house. Even after the alarm raised by her father in-

law and mother in-law in the village with regard to the incident, none came from the village.

She also stated that her husband had gone to Ranchi one day prior to the occurrence and her husband came on Wednesday whereas the occurrence had taken place on Sunday.

29. She further stated that she along with her husband had gone to the Police Station and she was enquired by the police but no enquiry was made from the husband and police has written as per her version and then she had put her thumb impression. Thereafter they went to hospital with her husband from there i.e. Police Station.

She further stated that her Devar Mantu was sleeping in her room on another cot and both the cots were attached with each other. She further admitted that there are three houses of Gotia and Kamal Pandit, Kochan Pandit and Chunouti Pandit etc. are Gotia but they had neither arrived at the time of occurrence nor arrived after the occurrence. Next day her father in-law went to the Police Station with her but they were threatened by the appellant on the door of Police Station. She also stated to have gone to the Police Station along with her mother in-law and again she stated that both his father in-law and mother in-law had gone to the Police Station. She has denied the suggestion that the wife of Bhuchari has instituted a case of Witch Craft upon her family members and denied the suggestion for instituting false case at the instance of her husband.

30. Thus, from scrutinizing the evidence of P.W-3 who is the victim lady, it is evident that her evidence is contradicted from the evidence of P.W-1 and P.W-2 as they have stated that the appellant had tied the hand and leg of the victim lady at the time of rape but the victim lady has merely stated that her mouth was closed by hands by the appellant. Apart from this, she has given incorrect

statement by stating that she is not aware of the case of Witch Craft instituted by wife of the appellant-Bhuchari Mandal upon her father in-law and mother in-law for compelling her to drink bad soil.

The evidence of P.W-3 will be again seen after the evidence of the I.O.

31. P.W-4 is Mantu Pandit, who is Devar of the informant and aged about 11 years and is a child witness. He has stated during his evidence that while he and his Bhabhi was sleeping in the same room then the appellant came there and committed rape upon her Bhabhi and she started raising alarm and he had seen in the torch light that Bhuchari Mandal had climbed upon his Bhabhi then he went to other house where his father and mother were present and when they came here then his Bhabhi informed the matter to his mother. He also stated that a Tilak Ceremony was going on in the house of one Bihari Rai and the Generator was also running.

32. During cross-examination, he stated that he came to the Court along with his father and his father had taken him before the Government Lawyer in the morning but he was not tutored anything neither by the Government Lawyer nor by his father. He met the police on Monday after the occurrence and his statement was recorded at his house although he could not say the time when his statement was recorded. However, he admitted during his further cross-examination that he had not stated before the police that he had identified the appellant-Bhuchari Mandal in the torch light and he had not handed over torch to Daroga Ji.

He also could not say distance between his house and the appellant-Bhuchari Mandal. He also stated that villagers came to his house on the alarm raised by him but he cannot say the name of any person and cannot say the number of persons. He also admitted that he had not gone to the house of Bihari Rai in the Tilak

Ceremony and he is not aware of crowd at the door of Bihari Rai. He has shown ignorance about the dispute between his father and the appellant.

33. On being further cross-examination, he could not say about the months in Hindi and he could not as to when Durga Puja was performed and he could not say as to whether occurrence took place before Durga Puja or after Durga Puja. He also could not say about the colour of Sari wore by the victim lady.

34. Thus, from scrutinizing the evidence of P.W-4, it is evident that he is a child witness and he is a tutored witness and he has been set up by the victim lady-prosecutrix and his father and mother namely Dhano Pandit and Kaushlaya Devi (i.e. P.W-1 and P.W-2) as a witness of rape.

There are contradiction in his evidence as he introduced the story seeing the occurrence of rape in the torch light which was neither stated by the P.W-1 and P.W-2 and even the victim lady i.e. P.W-3 and even the said ‘Torch’ was not handed over to the police by P.W-4. He has not even been tested by the Trial Judge before recording his evidence as he is child witness and said to be aged around 10 years at the time of occurrence on the date of giving his evidence. Apart from this, his evidence is contradicted on the point of arrival of villagers as he stated that villagers had arrived on alarm raised by them whereas P.W-1, P.W-2 and P.W-3 have stated that neither the villagers nor anyone from the house of Bihari Rai came to his house. Thus, the evidence of P.W-4 is not reliable.

35. P.W-5 is Doctor Manish Jalan, who is Medical Officer, Sadar Giridih. He has examined the victim lady along with Dr. Dolly Rani Dhar and Dr. Sarjana Sharma as a member of Medical Board and they had found the following on her person as follows:-

“On examination:

1. Auxiliary hair present.

2. Pubic hair present.
3. Breast well developed.
4. Multiple scratch mark seen on face and left arm without formation.

Examination on Private Parts

1. Hymen old torn,
2. Vagina easily admits two fingers,
3. No bleeding P/U.,
4. No foreign hair or semen.

Investigation

X-ray pelvic- Plate no.R-278 dt. 3.5.06 shows iliac crest not fused. X-ray Wrist Plate No.R-278 dt. 3.5.06 shows epiphysis of lower end of radius and ulna fused.

Pathological report of vaginal swab shows dead spermatozoa found.

Opinion: on the basis of physical examination, radiologically and as per dental surgeon, the age of victim is between 17-18 years.

Possibility of rape cannot be ruled out. This report is prepared by me and also signed by Dr. Dolly Rani Dhar and Sarjana Sharma in my presence whom I am identifying.

The medical report of the victim girl is marked as Exhibit-1 and signature of Dr. Manish Jalan, Dr. Dolly Rani Dhar and Dr. Sarjana Sharma have been marked as Exhibit-1/1, Exhibit-1/2 and Exhibit-1/3 respectively.

36. During cross-examination he stated that Dr. Kameshwar Prasad was the Pathologist and the report of Dr. Kameshwar Prasad is lying in the Gynecologist Department of Sadar Hospital, Giridih in the register of this case. He also stated that the X-ray report is also lying in the Gynecologist Department. However, he stated that the spermatozoa even alive in the vaginal swab for about 72 hours and he had not noticed any semen mark in the petticoat.

37. Thus, from scrutinizing the evidence of P.W-5 i.e. the Doctor, it would appear that he was a member of medical team consisting of three doctors namely, Dr. Manish Jalan, Dr. Dolly Rani Dhar and Dr. Sarjana Sharma and stated that Pathological report of the vaginal report show "dead spermatozoa found". Although the doctor has stated that possibility of rape cannot be

rulled out but he had also observed that hymen is old torn and no foreign hair was seen.

38. Apart from this the Pathological report of Dr. Kameshwar Prasad and X-ray report have not been produced before the Court below during examination of the doctor as well as the I.O by the prosecution and as such merely stating about commission of rape and presence of dead spermatozoa does not appear to be credible and it was necessary for the prosecution to produce the X-ray plate as well as the X-ray report and also the Pathological report of Dr. Kameshwar Prasad to show the finding of the Medical Board in the medical examination of the victim-prosecutrix marked as Exhibit-1. In absence of the same the finding of the Medical Board appears to be doubtful as neither the X-ray report nor the Pathological report were brought on record which are said to be in the Register of Hospital of the Gynecologist Department.

39. P.W-6 is Raghu Nandan Ram i.e. the I.O. of this case and has stated during his evidence that he was handed over investigation of this case by the Officer In-charge, R.K. Dubey. He has proved the formal FIR marked as Exhibit-2 and he has further proved the fardbeyan and endorsement on the fardbeyan of R.K. Dubey as Exhibit-3 and Exhibit-3/1 respectively. Thereafter he had recorded the subsequent statement of victim lady and had furnished requisition for medical test in his writing and signature which is marked as Exhibit-4. Thereafter he had sent the victim lady for medical examination and inspected the P.O. Thereafter recorded the statement of Mantu Pandit and further recorded the statement of Kaushalya, Subhash Baran Bhokta and obtained the injury report of the injured and also recorded the statement of the accused and had submitted charge sheet under Section 376 of the IPC against the appellant.

40. During cross-examination, he stated that he had not recorded the statement of Officer In-charge, R.K. Dubey and he had received investigation of the case on 02.05.2006 and at that time informant was in the Police Station and at that time his subsequent statement was recorded and she was sent to hospital with Chowkidarni by the requisition marked as Exhibit-4. However, he had not seized the Sari, Saya and clothes etc. of the prosecutrix and on that day he arrived at village Rani Khawa and learnt the occurrence from the prosecutrix in the Police Station and the prosecutrix had not gone to village Rani Khawa with him. He also enquired from the villagers regarding the occurrence at the place of occurrence but he has not mentioned their names in the case diary. Thereafter he had not met the informant. he stated that name of Arjun Pandit of village Markatha is not placed before him during investigation and he has denied his acquaintance with said Arjun Pandit. He had not prepared the details of the place of occurrence. He has not mentioned as to whether there was lock in the room or not and has not mentioned this fact in the case diary. He had not tried to investigate for forcibly entering in the house of place of occurrence.

41. He admitted to have to gone to village Rani Khawa in another case and said village Rani Khawa village is a big *Basti* and he had called for Chowkidar of the said village but he had not entered in his case diary and he has also not recorded the statement of Chowkidar.

He admitted that a marriage ceremony was taking place in the house of Bihari Rai but he has not mentioned this fact in his case diary. He also admitted for not writing the distance of Bajrangi or Bihari Rai from the place of occurrence in his case diary. However, when he arrived at the P.O then there was no Band sound. He stated that the bed of the prosecutrix was not

found at the place of occurrence and after enquiring regarding her husband he learnt that her husband was not in the house and he also learnt that her husband had gone outside two months ago but he does not remember as to which witness has stated this fact. He admitted to have written that prosecutrix had disclosed him that her husband is doing work of Raj Mistri in Ranchi. He admitted that the appellant has surrendered and had met him in jail on the same day and the appellant has stated that he is innocent but his statement of innocence was not recorded by him.

42. Thus, it is surprising from the evidence of I.O (i.e P.W-6) that on the one hand he is stating that the name of Arjun Pandit (i.e. the father of the prosecutrix) has not surfaced or cropped up during his investigation but it is clear from the FIR and fardbeyan that Arjun Pandit has put his thumb impression on the fardbeyan of the informant which was recorded by R.K. Dubey, Officer In-charge and even the said Arjun Pandit has not been examined and charge sheeted as a witness by the police and has also not been examined during trial by the learned Court below.

43. From scrutinizing the evidence of P.W-6 (i.e. the I.O), it would appear that he had taken investigation of the said case on the same day from the Officer-in-charge, R.K Dubey in the Police Station and had also recorded the statement of the informant in the Police Station and had taken her subsequent statement also in the Police Station but he had not recorded the statement of Arjun Pandit who is the father of the prosecutrix. He admitted to have not seized the Saya, Sari and clothes of the prosecutrix although it was available to him which was being wore by the prosecutrix-informant and which is also a lacuna on the part of the I.O. He also admitted to have not investigated as to whether there was any sign of forcible entry in the house.

44. It also transpires that I.O has proved one document for identification as 'X' which is said to be photo copy of *Panchnama* containing the statement of the appellant and signature of the villagers but the witnesses of said document 'X' have not been examined by the I.O under Section 161 Cr.P.C, although it contains the signature of one Rituraj, Subhash Yadav, Premchand Pandit of village Khawa, Giridih and Bhola Pandit of village Markatha. But, none of the said witnesses were even named in the charge sheet submitted by the same I.O and it contains the LTI of the appellant-Bhuchari Mandal. Therefore, document marked 'X' for identification is not reliable piece of document. Even the I.O has not examined the door to the effect that whether it can be locked from inside or not. It is also improbable that a person may be sleeping in his/her house without locking the door after taking meal.

45. P.W-6 has got marked one document 'X' for identification which is said to be extra-judicial confession of the appellant in presence of villagers namely one Rituraj, Subhash Yadav, Premchand Pandit of village Khawa, Giridih and Bhola Pandit of village Markatha. However, the said document cannot be relied upon as the said villagers namely Rituraj, Subhash Yadav, Premchand Pandit of village Khawa, Giridih and Bhola Pandit of village Markatha were neither shown in the charge sheet by the I.O and nor were examined during the Trial by the learned Court below and thus the document appears to be doubtful.

46. The non-examination of Arjun Pandit, who is the father of the prosecutrix is another lacunae in the prosecution case, as it was specific defence of the appellant that the case has been instituted at the instance of the father of the prosecutrix and even it is admitted by the P.W-1-Dhano Pandit during his evidence at para-7.

47. The appellant has examined two witnesses in support of his case. D.W-1 is Bajrangi Devi, who stated during her evidence that Bihari Rai is her elder brother and a Tilak Ceremony was taking place in the month of *Baisakh* in his house and there was no sound of Baja nor generator and only gas light was burning in the house of Bihari and her house is adjacent to each other and even the house of Sukhdeo Pandit is at a distance of 50 Yard. However, she had not heard any occurrence with the wife of Sukhdeo Pandit. She has also stated that she had not heard any *Hulla* or alarm from the house of Sukhdeo Pandit and she is not aware as to any person has stated anything against the appellant Bhuchari Mandal and also she is not aware as to any quarrel took place on the next date of Tilak Ceremony.

During cross-examination, she stated that though she is not aware of the date of Tilak on 30.04.2006 but they were engaged in a Tilak Ceremony in a house and hence she cannot say as to what happened in the village.

Thus, D.W-1-Bajrangi Devi has supported the case of the appellant and she has denied the assertion that neither Band Party nor the Generator was making any noise.

48. D.W-2 is Chakni Devi who stated during her evidence that while she was going to the house of Bajrangi in the evening on Sunday at 6.00 p.m. then she was caught hold of by Dhano and Sukhdeo, who caught hold of her hand and leg and poured bad soil and urine in her mouth and she was saved by her family members and the informant has filed this false case upon her husband to save herself and after being well conscious she has instituted this case.

During cross-examination, she stated that the appellant namely Bhuchari Mandal is her husband and Dhano Pandit, Kaushalya and the victim lady-prosecutrix had given evidence against her husband. However, she had not gone to the Police

Station with her husband for the occurrence taking place, although earlier she stated that she had gone to the Police Station with regard to the occurrence taking place with her and Daroga Ji had taken her statement. She again herself say that she had not informed the police but when the case was instituted against her husband then she has instituted this case.

Thus, from scrutinizing the evidence of D.W-2 it would appear that the Complaint Case No.537/06 was lodged by her after institution of FIR against her husband.

49. Exhibit-A is the certified copy of Complaint Case No.537/06 instituted by Chakni Devi against the prosecutrix and Sukhdeo Mandal and Dhano Mandal i.e. father in-law and mother of the prosecutrix and Arjun Pandit-father of the prosecutrix and Mukhdeo Pandit-husband of the prosecutrix.

50. Although the evidence of D.W-2 is not significant but the evidence of D.W-1 (i.e. Bajrangi) is significant as she happens to be the sister of Bihari Rai and was in the house of her brother Bihari Rai when a Tilak Ceremony was going on in the house of Bihari Rai and which was being attended by not less than 100-150 persons and which has even admitted by P.W-1-Dhano Pandit (i.e. the father in-law of victim lady) in para-10 of his cross-examination and P.W-2-Kaushalaya Devi in para-1 of her examination in-chief. Even P.W-4 has stated in para-5 of his cross-examination that he is not aware of crowd at the door of Bihar Rai on the date of occurrence. Surprisingly even the I.O has not examined this aspect on the point of Tilak Ceremony in the house of Bihari Rai.

51. It has been held by Hon'ble Supreme Court in the case of *Narender Kumar v. State (NCT of Delhi)*, reported in (2012) 7 SCC 171 at paragraph 21 and 22 as follows:-

“Para-21:- A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial (sic circumstantial), which may lend assurance to her testimony. (Vide Vimal Suresh Kamble v. Chaluverapinake Apal S.P. [(2003) 3 SCC 175 : 2003 SCC (Cri) 596 : AIR 2003 SC 818] and Vishnu v. State of Maharashtra [(2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217 : AIR 2006 SC 508].)

Para-22:- Where evidence of the prosecutrix is found suffering from serious infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement 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. (Vide Suresh N. Bhusare v. State of Maharashtra [(1999) 1 SCC 220 : 1998 SCC (Cri) 1595].

52. It has been held by Hon’ble Supreme Court in the case of **Dola Alias Dolagobinda Pradhan and Anr. vs. State of Odisha** reported in **(2018) 18 SCC 695** at paragraph 15, 16, 19, 35, 36 as follows:

“Para-15:- Curiously, the victim has not sustained any injury except some bruises on her cheeks. Her clothes were not even soiled with mud. In her cross-examination, she admitted that there was a tussle at the time of the alleged incident, and that she tried to save herself. She also stated that both the accused persons physically lifted her from the spot, and her bangles had been broken, by which she had sustained bleeding injuries on her hands. Furthermore, she said that she also sustained marks of violence on her hands. She did not sustain any injury on her knee, breasts and buttocks. She stated that she has no acquaintance with the accused persons and she did not have any kind of dealings with them. She further admitted that she had worn eight bangles on each of her hands and all her bangles on the right hand were broken and only one bangle of the left hand remained unbroken, and that all the bangles were broken at the spot of offence.

Para-16:- Although the prosecutrix admitted that she sustained bleeding injuries on her hand because of the shattering of eight bangles worn by her on her right hand and seven bangles on her left hand, and had marks of violence present on her body, the medical records do not support the said version. The report of the medical examination is at Ext. 4. It is clearly mentioned in the said report that there is a bruise mark measuring half a centimetre, which can be caused by a hard and sharp object, on the right cheek. No other mark of injury was seen anywhere on the body. There is no injury on the breasts, there is no internal injury on any part of the body and no injury was found on the vulva, pelvis and vagina. There are no signs of injury on the thighs as well. Except for one bruise on cheek which measures half a centimetre, no other injury was found on the victim and the same is clear from the medical report (Ext. 4).

Para-19:- The samples of semen and saliva including the petticoat (saya) of the victim were sent to the Forensic Science Laboratory (for short "FSL") for examination. The FSL's report disclosed that semen was not detected on the saya (petticoat). All other exhibits collected and sent to the FSL i.e. the samples of saliva and semen collected for testing purposes from the two accused and the prosecutrix's husband, were unsuitable for serological examination. Since the saya (petticoat) did not contain any seminal stain, it would be hard for the Court to believe that sexual assault had taken place on the victim, more particularly when the other material does not support the case of the prosecution, and when it is not the case of the prosecution that the victim has changed her dress or that she had washed her clothes, etc. Per contra, the evidence on record discloses that the victim stayed in her house all night and thereafter, leisurely at 11.00 a.m. the next day, she went to the police station and lodged the FIR, after which she was taken for medical examination. If the offence of rape had really taken place, and her saya was in fact stained with semen, the same would have been depicted in the FSL Report.

Para-35:- The courts have accepted the voluntary statement of the victim while discarding various other probabilities. The alleged scene of offence could hardly be described as a deserted place or a secluded place for the commission of such a ghastly crime. The spot where the alleged rape was committed is practically near the market, and near the main road wherein vehicles frequently ply

and more particularly when the day of the incident was a market day which used to be busy up to 10.00 p.m. All the attending glaring inconsistencies and improbabilities as also the other evidence on record which demolishes the version of the victim are conveniently ignored by the trial court and the High Court. The police have failed to recover the napkin which was used for gagging the mouth of the victim. So also the knife allegedly used by the accused Akshya Pradhan for threatening the victim was not recovered. The knife would have contained the fingerprints of the accused if it was really used by the accused. A careful reading of the evidence of the prosecutrix and her husband (PW 3) therefore leads us to the conclusion that the case as made out by the prosecution appears to be concocted. It cannot be said that the offence of rape has been proved beyond reasonable doubt.

Para-36:- *In our considered opinion, the trial court as well as the High Court have convicted the appellants without considering the aforementioned factors in their proper perspective. The testimony of the victim is full of inconsistencies and does not find support from any other evidence whatsoever. Moreover, the evidence of the informant/victim is inconsistent and self-destructive at different places. It is noticeable that the medical record and the doctor's evidence do not specify whether there were any signs of forcible sexual intercourse. It seems that the first information report was lodged with false allegations to extract revenge from the appellants, who had uncovered the theft of forest produce by the informant and her husband. The High Court has, in our considered opinion, brushed aside the various inconsistencies pointed out by us only on the ground that the victim could not have deposed falsely before the Court. The High Court has proceeded on the basis of assumptions, conjectures and surmises, inasmuch as such assumptions are not corroborated by any reliable evidence. The medical evidence does not support the case of the prosecution relating to the offence of rape.”*

53. It has been held in the case of *State of Karnataka vs. F. Nataraj* reported in **2015(4) JBCJ 397 (SC)** at Para 11, 14 and 16 as follows:

“Para-11:- *The medical examination of the prosecutrix took place on 16.11.2003 and she was examined by Dr. M. Latha*

(PW-5) who was the Lady Medical Officer at the Government Hospital, Hiryur. Her deposition was that upon examination, no injury was found on the private parts of the prosecutrix and her hymen was intact. She also stated that there were no signs of recent sexual intercourse as the prosecutrix was not subjected to sexual intercourse during the past seven days from the date of her medical examination and she issued a certificate Ext.P-7 to this effect. But she could not say clearly as to whether the prosecutrix was subjected to sexual intercourse previously or not.

Para-14:- Learned counsel for the respondent relied upon the case of **Radhu vs. State of M.P.**, (2007) 12 SCC 57, wherein this Court had laid down the principle that a conviction of rape can be based on the uncorroborated testimony of the prosecutrix and even the absence of injuries on the private parts of the victim will not falsify the case of rape, but at the same time, the Courts must bear in mind that the question whether there was rape or not would depend ultimately on the facts and circumstances of each case.

Para-16:- In the present case, the gaps in the evidences of the prosecutrix and the medical officer make it highly improbable that sexual intercourse took place. It would be erroneous to rely upon such discrepant testimonies and convict the accused. It can thus be stated with certitude that the solitary evidence of the prosecutrix, in absence of any corroboration by the medical evidence, is not of such quality which can be relied upon. The accused-respondent is, therefore, entitled to benefit of doubt.”

54. It has been held in the case of **Rabi Kumar & Anr. vs. State of Jharkhand** reported in 2015 (4) JBCJ 537 [HC] at Para 20 to 27 as follows:

“Para-20:- It is also well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of the prosecutrix is more reliable than that of any injured witness. The testimony of the victim of sexual assault is vital, unless there are compelling reasons, which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting on the testimony of the victim of sexual assault alone to convict the accused, where her testimony inspires confidence and is found to be reliable. It is also well settled principle of law that 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 the given circumstances. The evidence of

the prosecutrix is more reliable than that of the injured witness. Even minor contradiction of insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out, and otherwise, reliable for prosecution case.

Para-21:- *We are examining the present case on the anvil of aforesaid principles. Let us scan the evidence of the prosecutrix to form an opinion, whether she is a sterling witness on whose evidence the conviction of both the accused for such a serious charge can be maintained or it is suffering from certain inherent infirmities, which knock at the bottom of the case so as to dislodge the case of the prosecution in its totality. It is unfortunate that the prosecutrix has failed to pass the tests mentioned above. Her statement, when rescanned very minutely vis-à-vis the grave charge of gang rape slapped upon both the accused, we are of the view that it is not free from doubt as she, for the reasons best known to her, made an attempt to improve upon her case when stepped into the witness box. When her evidence is appreciated along with the evidence of P.W.Navin Das, who happens to be her relative also and the pradhan of the village, it appears that the very case set up by the prosecutrix is not the true account of the occurrence, rather there is tinge of very vital improvement made during the trial inasmuch as the prosecutrix made an attempt to develop a story of her choice to make her case more weighty stating that her clothes got blood stained on account of bad act committed upon her by both the accused, which fact is totally washed away in the light of the evidence available on record. Not only that, the case set up by her is falsified by the medical evidence. Admittedly, immediately after the occurrence, she was with the police till she was examined by the P.W.- Doctor Mita Singh, therefore, there could not be any occasion for her to even wash her genitals. In this eventuality, the histopathological examination would have supported her version, whereas contrary to it, it indicates that no spermatozoa was found either alive or dead. P.W.Doctor Mita Singh, has also stated that there appears to be no history of recent past sexual intercourse with the prosecutrix. Even if we give some margin to the case of the prosecutrix, she being a married lady, but the fact of the matter is that she is a widow and that her medical examination should have given some indications of sexual intercourse, which fact is conspicuously missing in the*

case on hand, if one examines the medical evidence available on record.

Para-22:- *What disturbs us in this case is that there is also no evidence available with regard to the medical examination of both the accused so as to say that they were physically fit to perform sexual intercourse. Although, we do find the medical slip available on the trial court record with regard to the medical examination of both the accused, but the doctor, who medically examined the accused for that purpose, has not stepped into the witness box. Not only that, his name does not figure in the list of witnesses. Undoubtedly, there appears to be a lapse on the part of the Investigating Officer in this regard as he should have taken the pain to show him in the list of witnesses. Equally, the Additional Public prosecutor has also been casual about it, otherwise, he could file an application before the trial court under Section 311 Cr. P.C for examining the doctor, being an important witness. Be that as it may, the fact of the matter is that the medical examination of the accused is not available on record. This aspect, in any case, would also be a ground to be taken in favour of the accused and no latitude can be shown to the prosecution, where the accused are facing such a serious charge. We may state here that had the Investigating Officer bothered to go in for DNA test in this case of the prosecutrix as well as of the accused, as is now the requirement after incorporation of Sections 53-A and 164-A of the Code of Criminal Procedure with effect from 23.06.2006, it would have really facilitated the prosecution to prove its case to a great extent, if the accused were actually involved in the commission of offence.*

Para-23:- *What appears to the Court, while examining the entire prosecution case, is that the witnesses, who have been declared hostile, in this case, were the witnesses of corroboration. The weak evidence of the prosecutrix when not getting any corroboration from any source, makes it further weak so as to place reliance on the same. As stated above, the evidence of Navin Das, the pradhan of the village, which is in the shape of hear-say evidence, is also not convincing, which would lend any support to the case of the prosecutrix as his name does not figure in the initial complaint lodged by the prosecutrix with the police, whereas he projects himself to be there at place of occurrence with the prosecutrix as the villagers called him immediately after the occurrence. The witnesses, who were immediately informed of the occurrence, have been*

declared hostile. Even otherwise, the evidence of P.W.-Navin Das is at variance with the evidence of the prosecutrix, therefore, no credence can be attached to his evidence.

Para-24:- *In the decision rendered in case of Krishan Kumar Malik Vs State of Haryana, reported in (2011) 7 SCC 130, in respect of offence of gang rape under Section 376 (2)(g) IPC, in para-31, it has been held as under :*

“31. No doubt, it is true 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. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences.”

Para-25:- *As a sequel to the aforesaid discussion, we find that the solitary version of the prosecutrix cannot be taken as a gospel truth in the absence of any other supporting evidence, rather the medical evidence, on the other hand, demolishes her case in totality. Viewed thus, there is no scope to sustain the conviction. In our considered view, the prosecution has miserably failed to establish the guilt of gang rape falling within the mischief of Section 376(2)(g) IPC against the present two accused. They deserve acquittal.*

Para-26:- *The appeal, on hand, thus, stands allowed and the judgment of conviction and order of sentence dated 21st January, 2015 and 22nd January, 2015, respectively, passed by learned 1st Additional Sessions Judge, Seraikella in Sessions Trial No.173 of 2011, are, hereby set aside.*

Para-27:- *Both the appellants, named above, are acquitted of the charges. They shall be set at liberty forthwith, if not required in any other case.”*

55. It has been held in the case of **Kunu Biriwala @ Kunu Munda vs. State of Jharkhand** reported in (2020) 3 JLJR 77 at Para 5 and 8 as follows:

“Para-5. *An accused facing the charge of rape can be convicted on the basis of testimony of the prosecutrix alone and there is no universal rule that before conviction of an accused is recorded under section 376 of the Indian Penal Code the court must insist on corroboration by other*

independent evidence. Under section 134 of the Indian Evidence Act, 1872 no particular number of witnesses is required for the proof of any fact. Indeed the criminal law in India does not recognize multiple witnesses and conviction of an accused can be recorded on the basis of testimony of a solitary eye-witness, provided his evidence inspires confidence. A rape case is no different from other criminal cases except those in which a statutory presumption in law is raised against the accused. Normally, a woman would not falsely implicate someone for the offence of rape for the simple reason that the incident would bring stigma to the woman but testimony of a rape victim which is treated at par with an injured witness is not like a gospel truth. It has to be examined on the anvil of normal human conduct and the intrinsic probability/improbability in her testimony. It is true that absence of spermatozoa is not a conclusive factor and penetration is not sine qua non to complete the offence under section 376 of the Indian Penal Code but what has been observed by the Supreme Court in “State (Govt. of NCT of Delhi) Vs. Pankaj Chaudhary” reported in 2018 SCC OnLine SC 2256, has always to be kept in mind. In the said case, the Supreme Court has observed as under:

“26. 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 alias Undrya 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 ‘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 v. N.K. The accused (2000) 5 SCC 30].

Para-8:- *In “A Textbook of Medical Jurisprudence and Toxicology” by Modi, 26th Edition, it is observed that in case of sexual offence external genital area and perineum is observed carefully for evidence of injury, seminal stains and stray pubic hair; pubic hair is examined for any seminal deposits/stray hair, and combing is done to pick up any stray hair or foreign material and sample of pubic hair and matted public hair is taken and preserved. It is observed in this book that presence of spermatozoa can be*

identified for 72 hours after assault and clothes of the survivor which she was wearing at the time of sexual violence may provide evidence of sexual assault. It is also mentioned that if there is struggle during the sexual violence with the accused and survivor, epithelial cells of one may be present in the nails of both. For the ultimate analysis, however, each case has to be decided on the facts and its own circumstances and normally how the things have to be perceived is that: during the clinical examination if injury on the private part of the prosecutrix is not detected and there was no sign of physical violence then sexual violence should not be inferred. But in a case like the present one in which presence of physical violence has been seen but any characteristics indicative of sexual violence has not been found and, that too, when the prosecutrix is firm and very sure that two persons have sexually ravished her, a serious doubt is raised on her testimony and in such a case sub-section (1) to section 375 of the Indian Penal Code would not come in aid of the prosecution.”

56. It transpires that there are several contradictions and inconsistencies in the evidence of prosecution witnesses and the evidence of the victim lady and the prosecution witnesses are not reliable.

57. In view of the discussions made above and the judgment laid down by the Hon'ble Supreme Court, the judgment of conviction dated 20.09.2007 and order of sentence dated 24.09.2007 passed in S.T.No.323 of 2006 and T.R. No.55 of 2006 by Sri Kamlesh Mishra, learned Additional & Sessions Judge FTC-VII, Giridih, are set aside and the appellant-Bhuchari Mandal is acquitted for the offences under Sections 376 of the I.P.C and the appellant-Bhuchari Mandal is discharged from the liability of bail bonds.

58. Thus, the Criminal Appeal (SJ) No.1453 of 2007 is allowed.

(Sanjay Prasad, J.)