

Before S. P. Bangarh, J.

**ROHTASH SON OF PHOOL DASS
AND ANOTHER—Appellants**

versus

STATE OF HARYANA—Respondent

CRA No. 2088-SB of 2008

December 20, 2012

Indian Evidence Act, 1872 - S. 134 - Indian Penal Code, 1860 - S.376(2)(g) - Appeal against conviction - Prosecutrix was called upon by the wife of appellant to their house to make tea-after the wife left, she was raped by the appellants - Because of fear, she just disclosed that appellants had committed ched chad(outraging modesty) - Matter was compromised - FIR was lodged after one month - Medico - legal examination was conducted - No outer injury was found on her private parts - Held, as per S.134 of Indian Evidence Act, in cases of rape conviction can be based on the statement of prosecutrix alone - Some minor discrepancies are bound to occur in testimony of even truthful event after lapse of time-delay in lodging FIR cannot be fatal to the prosecution case as appellants had threatened the prosecutrix - No special reason exists to reduce the sentence - Appeal dismissed.

Held, that the evidence of a girl or woman, who complains of a rape or sexual molestation be not viewed with doubt, disbelief or suspicion. Evidence of victim of sexual assault stands almost at par, with evidence of an injured witness and to an extent even more reliable-just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be good witness in the sense that he is least likely to shield the real culprit, evidence of victim of sexual offence is entitled to great weight. It was also held that rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim. A rapist degrades the very soul of helpless female. Court should deal such a case with utmost sensitivity.

(Para 50)

Further held, that Hon'ble Supreme Court of India held that delay of 42 days in lodging the FIR was not fatal to the case. In that case, there was no eye witness. Even so, the accused were convicted and sentenced by holding that no self respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for.

(Para 53)

I that so, it follows that the respondent before the learned trial Court had been able to prove that the appellants committed gang rape upon the prosecutrix on 13.08.2006 in the house of appellant no.1 located in the area of village Bapoli. The learned trial Court rightly accepted the version of the respondent and rightly convicted and sentenced the appellants vide impugned judgment and order of sentence, which ought to be and are, hereby, upheld and affirmed.

(Para 55)

Further held, that keeping in view the allegations of gang rape against the appellants, no adequate or special reason exists to reduce the sentence from the minimum prescribed under Section 376 2(g)IPC.

(Para 56)

Jagjeet Beniwal, Advocate for appellant no.1.

KDS Hooda, Advocate for appellant no.2.

G.S.Sandhu, Asstt. Advocate General, Haryana, for respondent.

S.P. BANGARH, J.

(1) The appellants have assailed the judgment of conviction and order of sentence dated 29.08.2008, passed by the learned Additional Sessions Judge, Panipat, in Sessions Case No. 12 of 2008, instituted on 14.12.2006/03.06.2008, emanating from FIR No.77 dated 14.09.2006, under Section 376 of the Indian Penal Code ('IPC' for short) of Police Station, Bapoli, whereby, they were convicted for the commission of offence punishable under Section 376 [2(g)] IPC and sentenced to undergo imprisonment for a period of ten years each and to pay fine of '10,000/- each and in default, thereof, to further undergo rigorous imprisonment for one year each.

(2) Case of the prosecution is that on 13.08.2006 at 10:00 a.m., the prosecutrix (name kept concealed) was present in her out house (gher in local parlance), in the area of village Simla Gujran. Naresh wife of Rohtash appellant no.1 called her to her house and asked her to prepare tea for her uncle and to give it to him. Naresh herself went to the fields to bring fodder. When prosecutrix went in the room to deliver tea, she found Naazim appellant no.2 with Rohtash appellant no. 1. On her entry into the room, Rohtash appellant no.1 held her hand and Naazim appellant no.2 bolted room from inside. Both made her lie on the bed. Firstly, Rohtash and then Naazim committed rape on her. She started weeping. Thereupon, she was threatened by the appellants that if she made the incident public, then her brother Ompal, who was studying at Samalkha, will not return alive.

(3) When she was going back to her house while weeping, 2/3 persons passed nearby her. She did not tell the incident to any of her family members. She told those persons, who met her in the street, that appellants had committed CHEDCHAD (out raged her modesty). Those persons had told about this to her brother Som Pal. Naazim appellant no.2 fled away. Rohtash appellant no.1 was given beatings by her family members and villagers. The matter was later compromised. But when the appellant started defaming her, then she told her parents about the incident on 12.09.2006. Her brother Sompal got her admitted in the General Hospital, Panipat on 14.09.2006. From the hospital, ruqa Ex.PF was sent regarding commission of rape on the prosecutrix.

(4) Thereupon, Krishan Kumar, ASI, went to General Hospital, Panipat, where, he moved an application Ex.PF before the Medical Officer, to know about the fitness of prosecutrix to make her statement. Doctor vide endorsement Ex.PF/1 on application Ex.PF, declared prosecutrix fit to make statement. Thereafter, Krishan Kumar, SI recorded statement Ex.PA of the prosecutrix, wherein, she narrated the allegations mentioned in the preceding paragraphs. She signed the statement Ex.PA after admitting the genuineness and correctness thereof. Krishan Kumar, ASI also made note Ex.PA/2, which was signed by Sanjay. Krishan Kumar, ASI also made his endorsement Ex.PA/3 on Ex./PA and sent the same to police station through Parvinder Singh Constable and that formed the basis of formal FIR Ex.PD, which was recorded by Jai Bhagwan ASI, who made endorsement Ex.PA/1 on Ex.PA.

(5) Prosecutrix also handed over her medicolegal report to Krishan Kumar, ASI. On 15.09.2006, Krishan Kumar, ASI alongwith Dharambir Singh SI/SIHO went to General Hospital, Panipat, where Dr. Ritu Garg handed over one parcel of underwear, one parcel of slides and swabs, one envelop having seal of RM and those were seized vide recovery memo Ex.PG. On 11.10.2006, Sanjay Kumar witness produced school certificate Ex.PJ of the prosecutrix before Dharambir SI/SIHO and that was taken into possession vide recovery memo Ex.PH.

(6) On 27.09.2006, Rohtash appellant no.1 was arrested by Dharambir Singh, SI. On 28.09.2006, he was got medicolegally examined by moving application Ex.PL in this regard before the Medical Officer. On 29.09.2006, prosecutrix was produced in the Court and her statement under Section 164 Cr. P.C was got recorded. On 03.10.2006, Naazim appellant no.2 was arrested. He was also got medicolegally examined from Medical Officer by moving application Ex.PM in this regard by Dharambir Singh, SI. He also got prepared scaled site plan on 06.10.2006 from Jagbir Singh Constable.

(7) After the receipt of the report of the Forensic Science Laboratory Ex.PQ and after completion of investigation, Station House Officer of Police Station Bapoli, filed police report under Section 173 of the Code of Criminal Procedure ('Cr.P.C' for short) before the learned Illaqa Magistrate to the effect that it appeared that the appellants had committed offence punishable under Section 376 2(g) IPC.

(8) On presentation of police report, copies of documents, as required under Section 207 Cr.P.C were furnished to the appellants and the case was committed to the Court of Session for trial, which was entrusted to learned Additional Sessions Judge, Panipat, who, on receipt of the Sessions case, framed charge under Section 376(2)(g) IPC against both the appellants, whereto, they pleaded not guilty and claimed trial. Consequently, prosecution evidence was summoned.

(9) At the trial, prosecution examined Prosecutrix as PW1, Jagbir Singh, Constable as PW2, Ravinder Kumar, IIC as PW3, Jai Bhagwan, ASI as PW4, Satish Kumar, Constable No. 816 as PW5, Satish Kumar, Constable No.940 as PW6, Krishan Kumar, ASI as PW7, Sunder Singh,

Principal as PW8, Dharambir Singh, SI as PW9, Dr.Dalip Singh, Medical Officer as PW10, Sompal as PW11, Dr.Ritu Gupta as PW12 and Ms. Rajni Yadav, JMIC, Panipat as PW13 and closed the evidence later after tendering report of Forensic Science Laboratory Ex.PQ.

(10) After the closure of the prosecution evidence, appellants were examined under Section 313 Cr.P.C, wherein, they denied the allegations of the prosecution, pleaded innocence and false implication in the case. They were called upon to enter in defence and they examined Raj PalArya, SA as DW1, Rajesh Kumar, Constable as DW2, Pritpal Singh, MHC as DW3, Hari Singh as DW4, Roshan Lal,Reader as DW5, Hari Kishan, Record Keeper as DW6, MHC Brijpal Singh as DW7 and Inder Singh as DW8 and closed the defence evidence, later.

(11) After hearing both the sides, the learned trial Court vide impugned judgment and order of sentence, convicted and sentenced the appellants as described in the first paragraph of this judgment. Aggrieved, thereagainst, the appellants, who were accused before the learned trial Court, have filed this appeal with a prayer for acceptance, thereof, and for their acquittal of the charge framed against them.

(12) Learned counsel for the appellants and learned Assistant Advocate General for the respondent have been heard and record of the learned trial Court perused with their assistance.

(13) First of all, it is to be seen as to what the prosecution witnesses have deposed against the appellants:-

(14) PW1 deposed that both the appellants are known to her being of her village and on 13.08.2006, at about 10:00 a.m, wife of Rohtash appellant no.1 namely Naresh called her to her house, while she was in her gher and she asked her to prepare tea and she also asked asked her to take the tea for Rohtash appellant no.1, who was present in the room. She further deposed that she took the tea into the room where Rohtash appellant no.1 and Naazim appellant no.2 were present in that room and when she went into the room, Rohtash appellant no.1 caught hold of her hand and Naazim appellant no.2 bolted the room from inside and they threw her on the bed and firstly Rohtash and later Naazim appellants nos.1 and 2 respectively committed rape on her and she started weeping and shouting.

She further deposed that both the appellants threatened that if she made this incident public, her brother Ompal, who was studying at Samalkha, shall be done to death.

(15) She further deposed that both the appellants accompanied her to the main door of their house, from where she went to her house; due to the threat given by the appellants, she did not tell anyone about the incident. She further deposed that on 13.09.2006, she narrated the incident of rape to her parents and brother Ompal, who brought her to Courts at Panipat and on 14.09.2006, her brother Sompal took her to the Government Hospital, Panipat, where she was medicolegally examined. She further deposed that police came to her in the hospital and she got recorded her statement Ex.PA. She further testified that doctor medicolegally examined her and took her underwear in possession. She further deposed that on 29.09.2006, she was taken to Court where her statement Ex.PB was recorded by the Judge.

(16) PW2 deposed that on 6.10.2006, he prepared a scaled site plan Ex.PC on the demarcation of the prosecutrix.

(17) PW3 Ravinder Kumar, HC deposed that on 15.09.2006, Dharambir Singh, SI/SHO deposited with him, one parcel of the slide and swab, one parcel of underwear, one envelop and on 09.10.2006, he handed over the aforementioned articles to Satish Kumar, Constable for deposit, thereof, in the Forensic Science Laboratory at Madhuban. He further deposed that on the same day, Satish Kumar, Consable handed over him the receipt after depositing the case property with Forensic Science Laboratory at Madhuban.

(18) PW4 Jai Bhagwan, ASI deposed that on 14.09.2006, he received ruqa Ex.PA and on the basis, thereof, he recorded formal FIR Ex.PD. He also testified that he made endorsement Ex.PA/1, thereon, and sent the copy of the FIR through Satish Kumar, Constable.

(19) PW5 Satish Kumar, Constable No. 816 deposed that on 14.09.2006. Jai Bhagwan, ASI handed over to him special report of this case, which was delivered by him to the Illaqua Magistrate, SP and DSP without any delay from his side.

(20) PW6 Satish Kumar, Constable No.940 deposed that on Ravinder Kumar, MHC handed over to him, the case property of the case and deposited the same in Forensic Science Laboratory, Madhuban and he handed over the receipt to Ravinder Kumar, MHC. He also deposed that, so long as, the case property remained with him, no one tampered with it.

(21) PW7 Krishan Kumar, ASI deposed that on 14.09.2006, he received a message from the police post, Bus stand, Panipat about the admission of prosecutrix in General Hospital, Panipat in a rape case and, thereupon, he along with police officials reached General Hospital, Panipat and moved an application Ex.PF before the medical officer, whereon, latter made endorsement Ex.PF/1 to the effect that the patient was fit to make statement and, thereupon, he recorded the statement of the prosecutrix Ex.PA in the presence of Sanjay Kumar He further deposed that he made endorsement Ex.PA/3 and sent Statement Ex.PA to Police Station through Ravinder Kumar, Constable. He also deposed that prosecutrix handed over to him her medicolegal report. He further deposed that on 15.09.2006, he along with Dharambir SI/SHO went to General Hospital, Panipat, where Dr. Ritu Gupta handed over one parcel of underwear, one parcel of slides and swabs, one envelop having seal of RM to Dharambir Singh, SHO, that was seized vide recovery memo Ex.PG. He further deposed that on 11.10.2006, Sanjay Kumar produced school certificate Ex.PJ of the prosecutrix, that was seized vide memo Ex.PH in his presence by Dharambir Singh SI/SHO.

(22) PW8 brought the certificate Ex.PJ dated 15.08.2006 issued by her, as per record of the prosecutrix.

(23) PW9 conducted the part of investigation and deposed on the lines of investigation conducted by him which has been reproduced in the earlier parts of this judgment.

(24) PW10 conducted medicolegal examination upon Rohtash appellant no.1 and opined that there was nothing to suggest that he was incapable of performing the sexual intercourse. He proved police request Ex.PL and he also proved his report Ex.PL/1. He also deposed that on 03.10.2006, he medicolegally examined Nzaazim appellant no.2 and on

physical examination, nothing was found suggestive that he was incapable of performing the sexual inter-course. He further testified that on police request, Ex.PM, he made report Ex.PM/1.

(25) PW11 deposed that on 12.09.2006, his sister (prosecutrix) told him and his mother Vanti Devi that on 13.08.2006, she was present at her out house, where Naresh wife of Rohtash appellant no.1 came and took her to her house saying that she was to prepare tea for her uncle Rohtash and thereafter, she went to the house of Naresh and prepared tea for him and went inside the room to serve the tea to latter and Naresh herself left for fields. She further told that Naazim appellant was also present in the room and when she entered into the room. Appellant no.2 Naazim caught hold of her hand and she tried to raise alarm, but she was threatened with death and she was made to lie on the bed and Naazim appellant no.2 bolted the door from inside and firstly Rohtash appellant no.1 and then Naazim appellant no.2 committed rape on her. He further deposed that when she started weeping, she was threatened that she and her brother would be done to death and she was coming weeping out of the house of Rohtash; 2/3 persons met her on the way and inquired from her about the cause of weeping and she replied that both the appellants had misbehaved with her. He further deposed that on 13.09.2006, they went to the Court, but did not find Sub Divisional Magistrate, Panipat there and, thereafter, they met him on 14.09.2006 and the latter ordered medicolegal examination of his sister and she was medicolegally examined at General Hospital, Panipat. He further deposed that he and his brother Sanjay were present in the hospital and the police came there, where his statement, as also, of prosecutrix was recorded.

(26) PW12 deposed that she medicolegally examined prosecutrix and she proved the copy of medicolegal report Ex.PN. She deposed that she found no external mark of injury anywhere on the body of the patient, as also, on her private parts like labia majora, labia minora, inner side of the thighs and breast. She further deposed that she handed over to the police sample seal, copy of MLR, a packet having three seals containing two swabs, underwear and an envelope bearing letter sample seal. PW12 further deposed that she referred the patient for the radiological examination for determination of her age. She also deposed that in her opinion, possibility of sexual assault with the patient cannot be ruled out.

(27) PW13 deposed that on 29.09.2006, Dharambir Singh SI/ SIO of Police Station, Bapoli produced the prosecutrix before her and she recorded her statement Ex.PB under Section 164 Cr.P.C. She further deposed that she passed zimni order Ex.PB/1 before recording the statement and another zimni order Ex.PB/2 after recording the statement Ex.PB of the prosecutrix.

(28) DW1 deposed that as per record at serial no.10 , the date of birth of the prosecutrix is shown as 21.05.1989 and Ex.D1 is the correct certificate issued by their office.

(29) DW2 deposed that Ex.D1 Is the photocopy of the DDR No. 11 dated 15.06.2008 and Ex.DB is the photocopy of the register.

(30) DW3 proved the entries of the DDR register from 15.07.2006 to 20.08.2006 mark B and photocopy of the complaint mark A. He further deposed that original is not available in the record of Police Station Bapoli.

(31) DW4 Hari Singh deposed that he got effected compromise between the parties, as he was appointed mediator by both the parties and he reduced the compromise into writing, photocopy of which is mark B. He also deposed that he appended his signatures at DDR No. 11 dated 10.08.2006. He also deposed that girl side levelled allegations against four boys regarding Cher Char with the girl and the allegations of the second party was that there was a dispute regarding raising the level of street and both sides moved their respective applications before the Station House Officer. He further deposed that in the compromise, both the parties agreed to withdraw their respective applications and will not raise any dispute in future. He further deposed that written compromise was handed over to Station House Officer of Police Station Bapoli.

(32) DW5 deposed that as per report , FIR No. 84 dated 28.09.2006 under Sections 325, 342/34 IPC and 506 IPC was got registered in police station Bapoli regarding the occurrence at 04:30 pm (Sunday). He further deposed that this FIR was got registered by Rohtash (appellant no. 1, herein) against Sanjay, Ompal and Sompal both sons of Subey Singh and Subey Singh son of Sumer Singh.

(33) DW6 brought the summoned file of anticipatory bail application no.159 of 2006 decided on 19.09.2006, by the then Additional Sessions Judge, Panipat Sh.S.C.Goel, in case titled Sompal and another v. state of Haryana. He deposed that he had seen the certified copy of the reply filed by the prosecution in the bail application and that the certified copy Ex.DC is the true copy, as per original in the file.

(34) DW7 deposed that as per summoned register at serial No.127- D dated 14.08.2006, a complaint was made by Sanjay against Rohtash appellant no.1, Naazim appellant no.2 and Hasham regarding outraging the modesty of girl and against this copy of the complaint mark DD, name of Assistant Sub Inspector Jai Bhagwan has been mentioned and original of the complaint received in the police station was handed over to the Investigating Officer Jai Bhagwan against entry no.127-D.

(35) DW8 Inder Singh deposed that he had seen the photocopy of the panchayati compromise; he had also seen the original in the summoned record. He further deposed that photocopy of the compromise is Ex.DD.

(36) Learned Assistant Advocate General for the respondent contended that the statement of prosecutrix (PW1) and her brother Som Pal (PW11), to whom she narrated the entire occurrence, cannot be dis believed. He further contended that in the beginning, the prosecutrix felt shy of reporting the matter to the police and even effort was made to compromise the matter, but ultimately the prosecutrix took up the courage to expose the appellants. He contended that the wife of Rohtash appellant no.1 called the prosecutrix to her house for preparing tea for Rohtash appellant no.1, to whom the prosecutrix used to call uncle and she herself went to the fields to collect fodder and in her absence, both the appellants committed rape upon the prosecutrix and no motive can be ascribed to latter to implicate them falsely. He further contended that the version could be held to be doubtful, if wife of the appellant no.1 had been present in the house, but she was not present in her house, when the occurrence took place. He further contended that the fight which took place between Rohtash appellant no.1 and the brothers and father of the prosecutrix was sequel to the occurrence in question and that occurrence has been proved to have taken place, as the brothers and father of the appellants have been convicted and sentenced for that occurrence. He further contended that the impugned judgment and order of sentence are liable to be up held and affirmed.

(37) On the other hand, learned counsel for the appellants contended that the things have been blown out of proportion and only a case of misbehaviour (cher char) has been converted into a case of rape by the police against the appellants. Learned counsel for the appellants also contended that there is delay of one month in registration of the FIR and that one month had been used by the prosecutrix and her family members to make a false case against the appellants, as there was a dispute of levelling of street between appellant no. 1 Rohtash and family members of the prosecutrix. It has, however, been admitted that FIR under Sections 325, 342/34 and 506 IPC bearing No. 84 dated 28.09.2006 was got registered by appellant no. 1, against Sanjay, Sompal and Ompal both sons of Subey Singh and Subey Singh. It was also contended that they have been convicted and sentenced in this case and due to registration of this case, the present false case was got registered by the prosecutrix against the appellants. Learned counsel for appellants also contended that both the parties had entered into a compromise Ex.DD on 15.08.2006 and, albeit, compromise, the false case has been registered against the appellants.

(38) Thoughtful consideration has been given to the contentions raised on behalf of both the parties and the case of the prosecution cannot be said to be without merit, as contended on behalf of the appellants, prosecutrix (PW1) in candid words deposed that she was called by the wife of appellants no. 1 to her house for preparing tea for appellant no. 1, who was uncle to her. When she reached in the house of appellant no. 1, wife of the latter namely Naresh left for fields to fetch fodder. When the prosecutrix entered into the room where appellant no. 1 was present to serve tea to him, Nizzam appellant no. 2 was also seen by her sitting inside the room. Thereupon, appellant no. 1 caught hold of the prosecutrix, Nizzam appellant no. 2 bolted the door of the room from inside. Later, both had thrown her on the bed and committed rape on her.

(39) It is, no doubt, true that when prosecutrix was going to her house after the incident, some passers by met her and she told them that the appellants misbehaved (cher char) with her. She was shy and modest and that with frankness, she could not converse with the people about the incident of rape. She kept the things close to her, as her own honour and reputation were at risk. She kept silence about the incident of rape for a period of one month simply that her reputation will be lowered in the society and she admitted the incident of rape as cher char.

(40) Only, she was the best person to tell as to whether simple misbehaviour with her took place or she was raped. This incident, which was initially described as chher char (misbehaviour) by the appellants resulted into assault upon Rohitash appellant no.1, who was beaten up by the brothers and father of the prosecutrix. If this incident had not taken place, the fight between the appellant no.1 on the one hand and the brothers and father of the prosecutrix on the other hand would not have taken place. Even this case, FIR No.84 dated 28.09.2006, under Sections 325, 342/34 and 506 IPC, which was got registered by appellant no.1 against the brothers and father of the prosecutrix resulted into conviction of the latter.

(41) Even, the matter was endeavoured to be compromised and the prosecutrix explained that even after the compromise, appellants were not behaving rightly and, therefore, she disclosed the incident of rape to her family members and the case was got registered.

(42) PW1 herself was present at the spot and only she could alone tell what had happened with her inside the room at the house of appellant no.1 Naresh wife of appellant no.1 was not present at the time of occurrence. She had gone to fetch fodder from the fields. She had to take help from the prosecutrix for preparing tea for appellant no.1 who was being treated as uncle by the prosecutrix. If Naresh would have been present at that time at her house, then incident would not have taken place. If the prosecutrix had alleged that wife of appellant no.1 was present in the house and the incident of rape took place in her presence, then it could be held to be unbelievable.

(43) No cogent evidence has come on the record about the enmity between the family members of the prosecutrix with the appellant no.1 over the street. It is arduous to believe that the alleged dispute of street would have been blown by the family members of the prosecutrix out of proportion by implicating the appellants falsely in this case. No motive can be ascribed to the prosecutrix (PW1) and her brother PW11 to testify falsely in this case. She narrated the incident to his family members including PW11 and the latter also corroborated the testimony of PW1. Both were subjected to searching cross examination by the learned counsel for the appellants before the learned trial Court, but long cross examination failed to elicit anything worth the name which could possibly cause any dent in their testimony.

(44) Learned Assistant Advocate General rightly contended that the family of the prosecutrix, who are having 12 acres of land cannot be expected to level false allegations against the appellants by putting the prestige of their daughter at stake.

(45) Even the earlier case, which was got registered by appellant no.1 against the family members of the prosecutrix, wherein, the latter have been convicted cannot make the present case against appellants doubtful. Rather, that incident confirms the incident of rape. If this incident alleged against the appellants had not taken place, then the brothers and father of the prosecutrix would not have beaten appellant no.1. The incident of rape had taken place at 13.08.2006 on 10:00 a.m, while the occurrence, wherein, the appellant no.1 was beaten by the family members of the prosecutrix took place in the evening of 13.08.2006. Even, no effort was made by the appellants to examine any Sarpanch or Panch in defence to prove the construction of the street, which has been allegedly described as motive of registration of this case.

(46) As per Section 134 of the Indian Evidence Act, no particular number of witnesses is required to prove a fact. Conviction can be based upon the accused in such like cases of rape on the statement of prosecutrix alone. Prosecutrix (PW1) narrated the incident to PW11.

(47) Statement of PW1 and PW11 cannot be rejected. Some minor discrepancies and contradictions are bound to occur in the testimony of even truthful witnesses after lapse of time, as human memory is fallible and erodes with the passage of time.

(48) Prosecutrix made statement Ex.PA before the police regarding the incident. Later, she made statement Ex.PB under Section 164 Cr.P.C before the Judicial Magistrate Ist Class, Panipat (PW13). Evidence of PW1 and PW11 has been corroborated by Dr.Ritu Gupta (PW11) who medicolegally examined prosecutrix vide MLR Ex.PN. It is no doubt true that there was no external mark of injury on the person of the prosecutrix, but that cannot be made a ground for rejection of her version, as the medicolegal examination on the prosecutrix was conducted after one month of the incident and that being so, the external injuries on the private parts of her body could not be found. It is not always essential that injuries could

occur in such like cases. It was a case of gang rape. The number of accused was two who would have frightened the prosecutrix and she succumbed to the pressure created by the appellants in a closed room. She could be held to be consenting party, if she had gone to the house of appellant no. 1 at her own. As already held, she was called to the house by the wife of appellant no. 1. If she would not have called to the house of appellant no. 1 by his wife, then she would not have gone there.

(49) There is nothing on the record that she earlier had sexual intercourse with the appellants. Even PW12 deposed that in her opinion possibility of sexual assault with the prosecutrix cannot be ruled out. This evidence could not be shattered in the cross examination and that leads to inevitable conclusion that the rape was committed upon the prosecutrix.

(50) Both the appellants were medicolegally examined and they were found to be fit for performance of sexual inter course. So, it cannot be held that the appellants were incapable of performing sexual inter course.

(51) Delay in lodging the FIR cannot be held to be fatal to the prosecution case, as in the sexual assault cases, it could be due to variety of reasons, particularly reluctance of the prosecutrix or family members to approach the police and lodge complaint about the incident which concerns the honour of family and the victim, as held by Hon'ble Apex Court in *State of Punjab versus Gurmeet Singh (1)*, wherein, it was further held that the evidence of a girl or woman, who complains of a rape or sexual molestation be not viewed with doubt, disbelief or suspicion. Evidence of victim of sexual assault stands almost at par, with evidence of an injured witness and to an extent even more reliable-just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be good witness in the sense that he is least likely to shield the real culprit, evidence of victim of sexual offence is entitled to great weight. It was also held that rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim. A rapist degrades the very soul of helpless female. Court should deal such a case with utmost sensitivity.

(52) Regarding delay of one month, in this case, suffice it to say that the appellants had threatened the prosecutrix that she and her brother Som Pal will be killed if she made the incident public. So, due to this fear, she kept the incident secret and when she reconciled this fear, she disclosed to the police about the incident of rape. It has been held in ***Kala @ Kala Ram versus State of Haryana (2)***, that delay in such like cases is immaterial, as reputation of the family is at stake. In this case, there was delay of 17 days in lodging the FIR.

(53) Naresh wife of Rohtash appellant no.1 was sought to be tried along with the appellants, but the application under Section 319 Cr.P.C of the respondent was dismissed by the learned trial Court, as she was not present at the time of incident. Rather, the incident could be averted, if she would have been present in her house on the date of incident. As already held, it is on her calling, prosecutrix went to prepare tea for appellant no.1, when appellant no.2 was also present in the house. Date of birth of the prosecutrix has been held to be 21.05.1989 by the learned trial Court It is not a case where the prosecutrix was consenting party. That being so, the fact that the prosecutrix was above the age of 16 years, is inconsequential to the appellants.

(54) In ***Santosh Moolya and Another versus State of Karnataka (3)***, Hon'ble Supreme Court of India held that delay of 42 days in lodging the FIR was not fatal to the case. In that case, there was no eye witness. Even so, the accused were convicted and sentenced by holding that no self respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for.

(55) Hon'ble Supreme Court of India in ***Bharwada Bhoginbhai Girjibhai versus State of Gujrat (4)***, held that eye witness account in sex offences cannot be expected. Corroboration is not sine qua non for conviction of accused in rape case. When a charge of rape is brought by a women/ girl then there is in built assurance that charge is genuine.

(2) 2004(3) R.C.R (CrI.) 420

(3) 2010(91) AIC 178

(4) 1983(2) R.C.R (Cl.) 192

(56) So, it follows that the respondent before the learned trial Court had been able to prove that the appellants committed gang rape upon the prosecutrix on 13.08.2006 in the house of appellant no. 1 located in the area of village Bapoli. The learned trial Court rightly accepted the version of the respondent and rightly convicted and sentenced the appellants vide impugned judgment and order of sentence, which ought to be and are, hereby, upheld and affirmed.

(57) Keeping in view the allegations of gang rape against the appellants, no adequate or special reason exists to reduce the sentence from the minimum prescribed under Section 376 2(g)IPC.

Resultantly, the appeal fails and is, hereby, dismissed.

A. Aggarwal