

Presented on : 06.05.2011
Registered on: 06.05.2011
Decided on : 24.07.2018
Duration: 7-Y. 2-M. 18-D.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
AT : PUNE
(Presided over by Smt. R.V.Adone)

SESSIONS CASE NO.318/11

Exh.

The State of Maharashtra,
(Through Paud Police Station)

--Prosecution

Versus

Dharmendrakumar Rambabu Choudhary
alias Singh,
Age – 22 years, Occ-Service,
R/at Ambiu Valley, City Ambavane,
Tal-Mulshi, Dist-Pune.
Originally inhabitant of Nagla Choudhary,
Tal-Sadhabad, Post-Barami,
Dist-Hasar, Uttar Pradesh.

--Accused.

Appearances

APP Smt. Pathak for the State.
Advocate Shri. R.C.Jagtap for accused.

Offence punishable under sections
450,376,323,506 of the Indian Penal
Code.

JUDGMENT
(Delivered on 24th July, 2018)

1] Charge-sheet is filed against accused for the

offences punishable under sections 450,376,323,506 of the Indian Penal Code.

2] Facts in nutshell are as under -

First informant i.e. prosecutrix lodged report stating that in December-2010 she was working as Account Executive in Hindusthan Unilever Ltd. Company, Delhi Branch. On 09.12.2010 and 10.12.2010 their company arranged conference at Ambi Valley, Dist-Pune. Company ordered her to go at Corporate Hotel, Belapur, New Mumbai on 08.12.2010. At the relevant time she was residing at Delhi and her parents were residing at Mumbai. Therefore, with permission of company on 06.12.2010 she came to Mumbai and resided with her parents from 06.12.2010 to 08.12.2010. At night she went to corporate Hotel Belapur, New Mumbai. They started from Corporate Hotel Belapur on 09.12.2010 to Ambi Valley, Pune by bus arranged by company. They reached to Ambi Valley at 11.30 a.m. She was provided accommodation in Room no.367 and she was residing alone in that cottage.

3] It is further case of prosecution that on 09.12.2010 conference of company was going on at 11.30 p.m. to 12.00 midnight. She wore Kurti and Capri and slept. She kept two lights on in the room. While sleeping she learnt that somebody gagged her mouth, she opened her eyes and found that somebody was on her person and she tried to remove his hand and tried to shout but that

person gagged her mouth by one hand and another hand he placed one pointed article on her neck and threatened her in filthy language “चुप रहो नहीं तो मार डालुंगा”. He twisted her neck, she thought that person as thief and she asked him to take away whatever he want but he told “मुझे कुछ नहीं चाहिये मुझे तुम्हे ठोकने दो”. She tried to on light near her bed and tried to go near phone but said person had thrown her on bed, with the help of pillow gagged her mouth and threatened to kill her. He then took away her kurti up to neck, pressed her breast, bite at her breast, he then removed her kurti from her person. She requested to leave her but said person told that he would not assault her and also said “ एक बार मुझे करने दो पानी निकल जाएगा तो मैं चला जाऊंगा ”. She tried to shout but he pressed her neck. She thought that he would kill her. So due to fear she kept mum. Thereafter, he inserted his finger in her vulva, his another hand was on her mouth. She tried to resist him by scratching at his cheek. He gagged her mouth by other hand. He became angry and threatened her. He tried to insert his penis in her mouth and thereafter he committed forcibly sexual intercourse with her. He gave his penis in her hand and when she resisted he again committed forcible sexual intercourse with her. He then went away by wearing clothes. As lights were off and it was dark she could not see his face and was unable to tell description. She immediately made call on mobile of her friend Rajashri Datta. When her friend came she narrated incident to her. Prosecutrix was frightened and her mental condition was deteriorated. Therefore, she went to her

parents at Mumbai and narrated incident to them. Thereafter, her statement was recorded by police in presence of Trupti Panchal. It was explained her in Hindi and English language. On the basis of her statement First Information Report was filed.

4] After completion of investigation charge-sheet is filed against the accused. Concerned Judicial Magistrate First Class committed this case to the Court of Sessions since the offence punishable under section 450,376 of Indian Penal Code is exclusively triable by the Court of Sessions. Charge was framed against accused at Exh.6. He pleaded not guilty and claimed the trial.

5] In view of charge levelled against the accused, prosecution examined witnesses P.W.1 Narayan Sakharam Nyahalde at Exh.28, P.W.2 prosecutrix at Exh.49, P.W.3 Bikaschandra Bholanath Neogi at Exh.58, P.W.4 Rajeshree Datta at Exh.63, P.W.5 Dr. Ranjana Sadanand Thatte at Exh.67, P.W.6 Dr. Usha Bharat Sariya at Exh.73, P.W.7 Dr. Ravikant Rajanikant Salunkhe at Exh.85, P.W.8 Sachin Mallikarjun Kamble at Exh.88, P.W.9 Kishan Kumar Amilal Tawar at Exh.100, P.W.10 Mudassir Shafi Mujawar at Exh.104, P.W.11 Maqbool Hussain Sutar at Exh.106, P.W.12 Trupti Umesh Patil at Exh.112, P.W.13 Gaurav Ramchandra Raundale at Exh.120, P.W.14 Girish Anant Gharwad at Exh.138 and P.W.15 Investigating Officer A.P.I. Jitendra Haribhau Kadam at Exh.142.

A.P.P. filed evidence closed pursis Exh.170. The statement of accused under section 313 of Code of Criminal Procedure was recorded. His defence is of total denial. According to him he is falsely implicated in this matter.

6] Heard A.P.P. for State and Advocate of accused. Perused written notes of arguments at Exh.184 filed by original complainant.

7] In view of charge levelled against the accused following points arise for determination and findings for the same with reasons thereon are as follows -

Sr.no.	POINTS	FINDINGS
1]	Whether prosecution proves that on 10.12.2010 at about 00.00 to 3.50 hrs. or thereabout in Supreme Cottage no.367, Ambi Valley City, at Village Ambavane, Tal-Mujlshi, Dist-Pune accused committed house trespass by entering into the said cottage, used as human dwelling then in possession of first informant (prosecutrix) in order to commit the offence of rape on her and thereby committed an offence punishable under section 450 of Indian Penal Code ?	In the affirmative.
2]	Whether prosecution proves that on the aforesaid date, time and place and during the course of same transaction accused committed rape on first informant (prosecutrix) and thereby committed an offence punishable under section 376(1)	In the affirmative.

	of Indian Penal Code ?	
3]	Whether prosecution proves that on aforesaid date, time and place and during the course of same transaction accused voluntarily caused hurt to prosecutrix and thereby committed an offence punishable under section 323 of the Indian Penal Code ?	In the affirmative.
4]	Whether prosecution proves that on the aforesaid date, time and place and during the course of same transaction accused commit the offence of criminal intimidation by threatening prosecutrix with an intention to cause alarm and thereby committed an offence punishable under section 506(2) of the Indian Penal Code ?	In the affirmative.
5]	What order ?	As per final order.

REASONS

8] AS TO POINT NOS.1 TO 5 : In order to prove offence punishable under section 450 of Indian Penal Code it is for the prosecution to prove that accused committed house trespass by entering in the cottage used as human dwelling in possession of first informant in order to commit offence. For proof of offence punishable under section 376 of Indian Penal Code prosecution must establish that accused committed forcible sexual intercourse with prosecutrix. For offence punishable under section 323 and 506 of Indian Penal Code prosecution must show that accused voluntarily caused hurt to first informant and committed criminal intimidation by threatening her.

9] All points are interlinked with each other. So they are discussed together. As per section 228A of Indian Penal Code identity of prosecutrix is not disclosed. In cases of sexual offences, evidence of prosecutrix plays significant and vital role. Therefore, firstly it is necessary to discuss evidence of prosecutrix i.e. P.W.2. From her evidence First Information Report at Exh.50 is duly proved. She deposed consistently as per recitals in First Information Report. Her evidence i.e. Exh.49 shows that on 09.12.2010 and 10.12.2010 their company arranged conference at Amby Valley, Dist-Pune. Company ordered her to go at Corporate hotel, Belapur, New Mumbai on 08.12.2010. At the relevant time she was residing at Delhi and her parents were residing at Mumbai. Therefore, with permission of company on 06.12.2010 she came to Mumbai and resided with her parents from 06.12.2020 to 08.12.2010. at night she went to corporate Hotel Belapur, new Mumbai. They started from Corporate Hotel Belapur on 09.12.2010 to Ambi Valley, Pune by bus arranged by company. They reached to Ambi Valley at 11.30 a.m. She was provided accommodation in Room no.367 and she was residing alone in that cottage.

10] Her evidence further shows that on 09.12.2010 conference of company was going on and she returned to her room at 11.30 p.m. to 12.00 midnight. She wore Kurti and Capri and slept. She kept two lights on in the room. While sleeping she learnt that somebody gagged her mouth, she opened her eyes and found

that some person bow down on her person and she tried to remove his hand and tried to shout but that person gagged her mouth by one hand and another hand he placed one pointed article on her neck and threatened her to kill by saying “चुप रहो नही तो मार डालुंगा”. He twisted her neck. She was under impression that he was thief and she asked him to take away whatever he wants, but he said “मुझे कुछ नही चाहिये मुझे तुम्हे ठोकने दो”. She tried to switch on light near her bed and tried to go near phone, but said person threw her on bed and gagged her mouth with the help of pillow and threatened to kill her. He then stripped her kurti up to neck, pressed her breast, took bite of her breast, he then removed her Capri from her person. She requested to leave her but said person told that he would not assault her and also said “ एक बार मुझे करने दो पानी निकल जाएगा तो मै चला जाउंगा ”. Her evidence further shows that she tried to shout but he pressed her neck. She thought that he would kill her, so due to fear she kept mum. Thereafter, he inserted his finger in her vulva, his another hand was on her mouth. She tried to resist him by scratching on his cheek and face. He gagged her mouth by other hand and threatened her. He tried to insert his penis in her mouth and thereafter he committed forcible sexual intercourse with her. He gave his penis in her hand and when she resisted he again committed forcible sexual intercourse with her. He then went away by wearing clothes.

11] As per version of P.W.2 she immediately called her friend Rajashri Datta and narrated entire incident to her when

she came. Further she was under severe fear and went to her parents at Mumbai, narrated incident to her parents. In this context evidence of P.W.4 and P.W.3 is relevant. P.W.4 Rajashri Datta deposed vide Exh.63 that prosecutrix is her colleague and she also attended conference of Unilever Company at Ambi Valley, Pune. On 09.12.2010 at night hours up to 12.00 midnight, they attended party and after taking dinner she returned to her cottage at 12.30 midnight. On 10.12.2010 at 4.00 a.m. she received call from prosecutrix and at that time prosecutrix was crying. So she asked whether there was any medical problem, but prosecutrix told her on cell phone that very very bad thing occurred to her and called her at her cottage immediately with some people. She then made phone call to her immediate boss and some colleagues. They went to cottage of prosecutrix and she alone went inside and found that prosecutrix was weeping, her position was helpless and prosecutrix told her that her life was spoiled.

12] Her evidence further shows that she had specifically narrated her that unknown person entered in her cottage and forcibly committed rape on her. Meantime prosecutrix's immediate lady boss and H.R. Lady Manager came and prosecutrix disclosed entire incident to them in specific manner. Upon inquiry with prosecutrix by P.W.4 she told that she had seen that person faintly and he was talking with Hindi language, threatened her in Hindi language and told that he was not thief, also said her that “मुझे

करने दो पानी निकल जाएगा तो मैं चला जाऊंगा". Said person committed rape on her for two times.

13] P.W.3 is father of prosecutrix who deposed vide Exh.58 that on 08.12.2010 prosecutrix went to Corporate Hotel, Belapur to attend conference and on 10.12.2010 at 8.00 a.m. She informed them on phone that she was not feeling well and had pain in chest, she was proceeding at Khandala by company vehicle at Summer Hill Resort and they would go there. He, his wife and son reached at Summer Hill Resort at 12.00 noon, prosecutrix, her company people and Dr. Ranjana Thatte were present. Upon asking prosecutrix specifically narrated entire incident to them and told that one person by giving threat, by pointing article on her neck, by biting her breast committed rape on her.

14] In addition to evidence of rape victim, medical evidence is relevant and important in cases of sexual assault. In this case firstly prosecutrix was immediately examined by Private Doctor out of that P.W.5 Dr. Ranjana Thatte deposed vide Exh.67 that she was serving as consultant doctor with Hindusthan Unilever Company since 2006. On 10.12.2010 at 8.30 a.m. she received phone call from Leena Nair of Hindusthan Unilever Company who told that at Ambi Valley in the conference of company some mishap was occurred with one lady staff and she was man handled, she told her name of prosecutrix and fact that prosecutrix was brought at

Khandala Summer Hill Resort from Ambi Valley. As per their request she went to Khandala at Summer Hill Resort at 11.30 a.m., talked with prosecutrix who gave history of incident by specific narration and told that by giving threat to her, using force one unknown person committed sexual intercourse with her.

15] P.W.5 took prosecutrix to Lady Doctor Usha Sarraiya who checked her clinically by doing internal examination. She obtained vaginal swab sample. She took her and sample to Cumbala Hospital and gave written report to Dr. Usha Sarraiya about incident. On 10.12.2010 when she had gone to Summer Hill Resort at Khandala she clinically examined prosecutrix and found that prosecutrix was mentally disturbed, gave a history of sexual assault which took place at Ambi Valley resort around 3.30 to 4.00 a.m. On examination, marks of assault were seen by nails on her person on her neck, chin, cheek and left forearm, there was small cut on her inner surface of upper lip, both breast were badly bruised and mark (tooth) were seen on the right breast, pulse rate of 76 and it was good volume. Vaginal examination was carried by Dr. Usha Saraiya Gynecologist at 4.30 p.m. on the same day at her consulting room in Mumbai in her presence. Gynecologist examination revealed ulcer at vaginal orifice. Pelvic examination was normal, swab was taken and given to examination (culture and sensitively examination as well) at Cumbala Hill Hospital.

16] From her evidence her original report is proved at Eh.66/1 and 68. Prescription given by her along with list is at Exh.67 and 69. She opined that injuries on breast which are noted in Exh.68 are probable by forceful sexual assault. Similarly, vaginal injury noted in Exh.68 is possible by forceful sexual intercourse. Upon asking P.W.5 stated that after one intercourse person can do sexual intercourse with same lady within 5 to 10 minutes and it depends upon excitement of that person. Within span of 5 to 10 minutes there can be erection again. P.W.5 then deposed about treatment and medicine given to prosecutrix. Her cross-examination shows that no semen was detected in sample of prosecutrix. Further she denied that semens sperms can remain in vaginal swab for period of 48 hours. Except this nothing material has come on record during her cross-examination.

17] In this context P.W.6 Medical Practitioner Dr. Usha Sarraiya deposed vice Exh.73 that on 10.12.2010 prosecutrix was dropped to her clinic by Dr. Ranjana Thatte and her mother Mrs. Krushna. Prosecutrix gave history of sexual assault. Upon medical examination she observed that there were some injury marks on chin, cheek, neck, internal surface of upper lip, both breasts. Mark of tooth bite was found on left breast. After examining prosecutrix internally she found ulcer on orifice of opening of vagina. Hymen was not intact. She obtained samples like vagina swabs, cervix and advised treatment. She also found injury on her private part and it

was suggestive of penetrative sexual intercourse. In her opinion it was a forcible sexual assault on her. Accordingly, she gave medical certificate dated 15.12.2010 which is proved at Exh.74.

18] P.W.6 suggested some investigation to prosecutrix by issuing letter at Exh.75 and 76. Prescription given by her is at Exh.77. According to her possibility of report of swab as negative in case of prosecutrix is due to fact that prosecutrix took bath and washed private part thoroughly. Her cross-examination shows that while giving history prosecutrix did not name any person. Evidence of P.W.6 shows that after incident on 10.12.2010 prosecutrix was immediately examined and injuries on her person revealed forcible sexual assault on her. It is also clear that due to fact that victim took bath, washed private part thoroughly. There is possibility of report in respect of swab as negative. Moreover, except denials nothing fruitful has come out in cross-examination of P.W.6 and there is no reason to disbelieve her evidence.

19] After lodging report about the incident prosecutrix was sent to Sasoon Hospital for medical examination and in that regard P.W.7 Medical Practitioner Ravikant Rajanikant Salunke deposed vide Exh.85 that on 12.12.2010 prosecutrix was admitted in Sasoon Hospital and gave history. Her age was 29 years old. On 13.12.2010 at about 1.00 a.m. she was examined and she had multiple injuries on her person namely two small abrasions of 5x2

cm each on left side of chest, one abrasion of 1 cm x 2 cm below chin, 2 mm x 1 cm abrasion on lower part of neck centrally, 2 mm x 3 mm abrasion below right ear, on right breast 2 contusions 1 cm x 1 cm, on left breast 2 contusions 5 cm x 5 cm and 3 cm x 2 cm with human teeth mark.

20] Accordingly, he issued medical certificate which is at Exh.86. He stated that injuries were 2 to 3 days back and simple in nature. List of the injuries is at Exh.86A. Injuries nos.1 to 4 mentioned in certificate are blunt injuries and possible by nail of human being. Injuries nos.5 and 6 are possible by teeth bite. As per his opinion there are findings suggestive of penetrative sexual vaginal intercourse. Said injuries are possible in case of resistance or struggle by prosecutrix lady. P.W.7 admitted that victim gave history about rape committed by unknown person and she could not identify offender due to dark. However, she gave history that she identified voice of offender. Therefore, from cross-examination of P.W.7, it is clear that prosecutrix was able to identify voice of offender. Most importantly from evidence of P.W.2 it has come on record that unknown person talked with her in Hindi language. He talked with her about three sentences in Hindi language. Said fact is sufficient to show that as she heard voice of that unknown person, she was able to identify the same.

21] It is submitted on behalf of accused that he is not

concerned with incident of rape on prosecutrix. He pointed out that there are discrepancies in evidence of prosecutrix and First Information Report, history given to medical officers and medical practitioners. Advocate of accused gave much emphasis on the point that First Information Report is lodged against unknown person. In First Information Report nowhere name of accused, his description was narrated. Per contra in First Information Report prosecutrix stated that as there were no lights and due to dark she could not see face of that unknown person. Moreover, in that regard supplementary statement of prosecutrix is not recorded.

22] On the point of First Information Report against unknown person it is also brought on record by Advocate of accused during cross-examination of P.W.3 that prosecutrix did not disclose him description of person who raped her and he never inquired with her about description of that person. So far as P.W.4 is concerned, it is submitted by Advocate of accused that police never recorded her statement about the incident. Most importantly during cross-examination prosecutrix admitted that she stated before doctor that due to dark she could not see accused. Moreover, police took her to Ambi Vally Resort and called all security person of Ambi Valley Resort, asked her to identify whether anybody was culprit from those security people. However, it has not come on record when exactly she was taken to Ambi Valley Resort. Moreover, P.W.7 during cross-examination admitted that prosecutrix gave history

about rape committed on her by unknown person and specifically stated that she could not identify offender since it was dark.

23] On the basis of evidence of prosecutrix, medical evidence, it is clear that on 09.12.2010 at midnight of 10.12.2010 incident of forceful sexual intercourse took place with prosecutrix in room no.367 of Ambi Valley Resort. Medical reports and her oral version are sufficient to show that act was forceful. Medical evidence shows various injuries on person of prosecutrix which are indicative of forceful sexual intercourse. Most importantly, prosecutrix immediately narrated about the incident to P.W.4 and P.W.3 who are her friend and father. During cross-examination of P.W.3 and P.W.4 no material has come on record to disbelieve their version. Immediately narration of incident by prosecutrix to her friend and father is relevant and admissible evidence. Evidence of P.W.3 and P.W.4 is corroborative in nature. Only fact that statement of P.W.4 was not recorded under section 161 of Code of Criminal Procedure is not sufficient to discard her evidence.

24] However, First Information Report is filed against unknown person and description of that person is nowhere mentioned in her statement by prosecutrix. In such a background case of prosecution is based on circumstantial evidence. It is settled principle of law that as per section 3 of Indian Evidence Act circumstances from which conclusion of guilt is to be drawn should

be fully established and circumstances should be of conclusive nature and tendency. There must be chain of evidence. Therefore, it is necessary to discuss about circumstantial evidence brought before the court.

25] From evidence of prosecutrix it has further come on record that on 13.12.2010 i.e. after lodging report police asked her how that person was looking and what was his description, whether she had seen that person, she told police that she had seen that person and how he was looking, then police prepared sketch of person in her presence which she identified before court at Exh.51. Advocate of accused submitted that there is discrepancy in the evidence because P.W.2 stated about drawing of sketch by police. However, as per prosecution case sketch is drawn by P.W.14 Sketch Artist.

26] In this regard there is evidence of P.W.14 Girish Anant Charwad who deposed vide Exh.138 that he was working as Professor in Fine Art College, Bharati Vidyapeeth and used to draw sketch of suspects to assist police in investigation. Whenever eye witnesses disclosed about detail description of culprit, he used to draw sketch accordingly. On 13.12.2010 he was called in Paud Police Station where prosecutrix disclosed detail description of face of culprit. He had drawn sketch of culprit and showed it to prosecutrix. He asked how much percentage sketch was matching

with actual Culprit. Prosecutrix told that sketch match up to extent of 80%. He was shown sketch drawn by him at Exh.51 and same bears his signature. Moreover, after arresting accused by police, police showed him photograph of accused and same matched with sketch drawn by him. During his cross-examination he admitted that Exh.51 does not bear signature of prosecutrix. Moreover, his statement was recorded on 26.01.2011. From evidence of P.W.14 it is clear that as per described by prosecutrix he had drawn the sketch which is duly proved and same was matched to the extent of 80%. Fact that statement of this witness was recorded after more than one month is itself not sufficient to discard his evidence as nothing fruitful has come out to disbelieve his version. Drawing sketch of a Culprit at the instance of prosecutrix and fact that it matched with accused up to 80% is important circumstance against accused.

27] The another circumstantial evidence is in respect of identification of voice of accused by prosecutrix. As per prosecution case and from evidence of P.W.2 prosecutrix it has come on record that on 13.01.2011 police called prosecutrix for voice identification. Police have obtained voice recording of four persons and allowed her to hear those persons voice recording. She identified one voice out of that four voice recording. She identified said voice as that voice was heard by her on the day of incident and was remembered by her definitely. In this context CDs were prepared about voice testing by preparing panchanama. For that

purpose panch witnesses were called.

28] Out of that P.W.8 Sachin Mallikarjun Kamble deposed vide Exh.88 that on 13.01.2011 he was called in A.C.P. office to work as panch where another panch was present. Police said them that rape has been committed on one girl and voice of four suspected accused was to be recorded before them. Names of those suspected accused were Kishankumar Tavar, Santosh Malavi, Sarprakash Dube and Dharmendrasing Chaudhary. Those four suspected persons were given one script to read it one by one. They all read the contents of that chit and it was recorded by police in their presence. C.Ds were prepared of voice recording and signatures of panch witnesses, police were obtained on C.Ds. Police seized all C.Ds. and accordingly panchanama Exh.89 was prepared by Investigating Officer P.W.15 A.P.I. Kadam. Perusal of panchanama at Exh.89 shows what script was given to four persons to read. In re-examination of this witness labels on envelopes were showed to him having signatures of panch witnesses and those envelopes with labels including CDs were marked at Exh.94 to 97. During cross-examination he admitted that he did not see prosecutrix girl in Police Station. Police did not show them identity cards of four suspects. He denied that whenever voice of four suspects was recorded, they were telling their names first. However, he admitted that there is mention of names of suspects on C.Ds.

29] In respect of identification of voice in above C.Ds there is evidence of P.W.10 panch witness Mudassir Shafi Mujawar and Investigating Officer P.W.15. P.W.10 deposed vide Exh.104 that on same day i.e. 13.01.2011 he was called in Crime Branch office where another panch Anwar Sayyad was present. There was one prosecutrix girl in rape case in Police Station. Police told them that there were four audio CDs which were to be heard by them. Lady Police Officer was present. Police told them that voice recorded in CDs was of Kishankumar Tavar, Santosh Malavi, Sarprakash Dube and and Dharmendrasing Chaudhary. CDs were played in their presence and in presence of prosecutrix girl. She heard voice in CDs and again requested police to replay CDs. Four CDs were played again. Thereafter, one of CD was again played as per request of prosecutrix and she identified voice of person who entered into her cottage. On that CD name Dharmendrakumar Chaudhary was written. Those CDs were seized by police, wrapped and sealed which are already at Exh.94 to 97. This witness identified his signature on labels affixed to CDs. Accordingly, police prepared panchanama in their presence which is proved at Exh.105.

30] During cross-examination he admitted that when he saw CDs in Police Station, names of persons were already written on them. But he denied that when CDs were played initially they heard names of accused. According to Advocate of accused initially prosecutrix never stated that she can identify voice of that unknown

person. For that purpose he is relying on cross-examination of Investigating officer who admitted that in supplementary statement prosecutrix did not state that she can identify voice of accused. Before voice verification of accused prosecutrix did not state before him that she can identify voice of accused. Till filing of charge-sheet no supplementary statement of prosecutrix was recorded in respect of fact that she can identify voice of accused. If statement of prosecutrix Exh.50 is perused then she never stated before police that she was able to identify voice of that unknown person. Recitals in First Information Report specifically shows what that unknown person said to prosecutrix in Hindi language. Moreover, though it has come on record that supplementary statement of prosecutrix was recorded there is nothing on record to show that for what purpose it was recorded. However, it is not much disputed that supplementary statement of prosecutrix was recorded. Most importantly from her oral version and First Information Report it can be gathered that as unknown person talked with her in Hindi language about 2 to 3 sentences, her evidence that she identified voice recording of accused is admissible. It is but natural on her part to identify said voice because heinous and grave incident took place with her and it was not possible for her to forget that voice.

31] Evidence of P.W.2 prosecutrix shows that during her evidence CDs were played in laptop to recognize voice. Four CDs were produced. CD which was placed in laptop was marked at

Art-A. It was played and after hearing CD played on laptop prosecutrix told that it was not voice of accused. When second CD as V.P.R. no.24/11 was placed in laptop and played prosecutrix said that voice belonged to accused and it was marked at Art-B. Other CDs played of which voice was not of accused as per prosecutrix and those were marked at Art-C and D. Thereafter, V.P.R. no.127/11 was brought in the court in which there were four sealed packets of original CDs. Those packets were opened and again original CDs were played in court in laptop. Prosecutrix heard voice in CDs and in respect of first CD at Art-A she stated that it was not voice of accused. When second CD marked at Art-B was played in laptop prosecutrix heard the voice and said that this was voice of accused. Said CD was at Sr.no.2. Afterwards, CDs Articles-C and D were played but prosecutrix told that it was not voice of accused.

32] Some discrepancies are brought on record by Advocate of accused from evidence of above witnesses but those are minor discrepancies. Most importantly prosecutrix identified voice of accused played in CD in open court. Authenticity of CD and accuracy of voice is not challenged by Advocate of accused by raising technical points and defects. Moreover, accused in his statement under section 313 of Code of Criminal Procedure stated that he does not know about his voice recording. It means that he has not denied taking of his voice sample in clear terms. If there is any lacuna in respect of proof of CD on technical point, want of

certificate same is mistake of Investigating Officer. It is settled principle of law that prosecutrix should not suffer due to lacunas or defects in investigation. Therefore, identification of voice of accused by prosecutrix is most relevant circumstance against him.

33] Most importantly P.W.2 prosecutrix identified accused before the court and same is substantive, important piece of evidence. During cross-examination she denied that she identified accused falsely at the instance of police. She was not acquainted with accused previous to incident. There are no enmical terms between her and accused on any ground. Therefore, her substantive evidence about identification of accused before the court is important and admissible. It is her evidence that she came to know his name as Dharmendrasingh at the time of identification parade. As already discussed in First Information Report and medical reports prosecutrix did not give description of unknown person. But during her cross-examination it has come on record that it did not happen that when assailant entered in her room, lights were not on. It did not happen that as lights were not on, she had not seen face of that person and cannot give his description. It is material to note that First Information Report is not substantive piece of evidence to discredit testimony of prosecutrix. First Information Report is given to set criminal law in motion. It need not contain all minor details and encyclopedia of evidence. It need not disclose all facts and details relating to offence. Non disclosure of name in First

Information Report is not fatal and due to this fact it is not proper to discard evidence of prosecutrix before Court which is substantive piece of evidence.

34] Prosecutrix admitted that prior to identification parade she was aware that police arrested assailant person but she denied that when police met her outside jail at the time of identification parade, she had talked with inspector. She specifically denied that her legal team asked her to go inside jail for identification parade and identified accused Dharmandrasingh Chaudhary. In this matter identification parade is conducted by Nayab Tahsildar Trupti Umesh Patil whose evidence at Exh.112 shows that since June-2010 she was working as residential Nayab Tahsildar at Mulshi. She received letter dated 21.01.2011 from Paud Police Station in C.R. no.178/10 for purpose of conducting test identification parade. On 03.02.2011 she gave letter to police and informed that identification parade would be conducted on 10.02.2011 in Central Prison, Yerawada, Pune. On 10.02.2011 prosecutrix was brought by police, she called one panch Aditya Kiran Bundamantri. They went inside jail for test identification parade.

35] Her evidence further shows that police brought six dummy persons who disclosed their names. All stood serially. Thereafter, accused Dharmendra kumarsingh was called in room.

Upon asking he refused to change clothes and he stood between dummy no.5 and 6. She told panch to bring prosecutrix and asked her to identify accused. Prosecutrix identified accused Dharmendrakumar by touching to his body and thereafter, she effected panchanama in presence of panch witness. Identification parade memorandum is proved at Exh.52 which bears signature of one panch and P.W.12. During cross-examination P.W.12 admitted that two independent panch witnesses are required for conducting identification parade and no police from Police Station or outside is allowed to help during test identification parade. But she denied that accused was brought by Police Head Constable Jagtap of Paud Police Station and she denied that identification parade was not conducted as per rules in Criminal Manual.

36] It is main defence of accused that First Information Report is filed against unknown person as prosecutrix specifically narrated in it that she could not see face of person who committed act of sexual intercourse. She did not tell his identification to Medical Officer while giving history or to her parents. Moreover, at the time of identification parade only one panch witness was present. Therefore, entire evidence against the accused is doubtful and cannot be accepted.

37] Though it is brought on record that only panch witness was present at the time of identification parade and it was

carried out after delay of about two months, the procedure prescribed for taking identification parade is followed. There is no reason to disbelieve the same on technical grounds. On its basis it is clear that though First Information Report is filed against unknown person, prosecutrix identified accused in test identification parade which is relevant circumstantial evidence.

38] It is submitted by A.P.P. for State that identification of accused by prosecutrix before Court is substantive piece of evidence and it has to be accepted. Evidence of P.W.2 clearly shows that she identified accused before Court. Her oral version shows that she gave description of accused to police and sketch writer. During cross-examination P.W.2 denied that as lights were not on, she had not seen face of that person and cannot give his description. Moreover, evidence of P.W.4 shows that prosecutrix told her that she had seen the person faintly.

39] In this context A.P.P. for State relied on authorities cited in -

i] ***Satish Raju Waman Koli and others Vs. State of Maharashtra reported in 2010 Cri.L.J. 4247***, in which it is observed that identification of accused by witness before Court is substantive piece of evidence. While identification of accused during test identification parade is only a corroborative piece of evidence.

ii] ***Prithi Chand Vs. State of Himachal Pradesh***

reported in AIR 1989 Supreme Court 702, in which it is held that in offence of rape, prosecutrix and her parents would not allow real culprit to escape and falsely involve innocent person in commission of crime.

40] As against this Advocate of accused relied on authorities cited in -

i] *Suresh S/o Govinda Nagdeve and another Vs. State of Maharashtra reported in 2008 ALL MR (Cri) 648*, in which it is observed that suspicion how so ever strong cannot take place of proof and no judicial decision can rest on mere suspicion. It is duty of State to see that no innocent person is required to face criminal trial, at the same time no guilty should escape punishment. It would be detrimental to law and order and also cause a slur on law implementing agencies and consequently on State administration.

ii] *Ravindra @ Ravi Bansi Gohar Vs. State of Maharashtra reported in AIR 1998 Supreme Court 3031*, in which it is observed that police showing photographs of accused to witness before identification parade, fact that witness was attached to Police Station where the accused was in lock-up for some time prior to incident in question, would not establish probability of witnesses knowing accused persons. Conviction of accused on basis of sole identification of such witnesses not sustainable.

41] Ratios laid down in above cited rulings are noted. In case in hand photograph of accused was never shown to prosecutrix at the time of identification parade. Evidence of prosecutrix coupled with circumstantial evidence regarding voice recording, drawing of sketch, identification of accused during identification parade is sufficient to prove that accused was the same person who committed act of forcible sexual intercourse with prosecutrix.

42] From evidence of first Investigating Officer P.W.1 Police Inspector Narayan Sakharam Nyahalde situation and circumstances at the spot are brought on record. Evidence of P.W.1 shows that on 10.12.2010 he received message on telephone about assault on one person at Supreme Cottage, Ambi Valley. He took note of this in station diary and visited spot. One Mr. Bhattacharya took him to room no.367 and it was informed that one lady stayed in that cottage in night hours was assaulted at night hours. Bed sheet and pillow in that room was in disorderly condition. Pillow cover was having stains of blood and bed sheet was having stains of mud. He took photographs at the scene of incident . He called dog unit and staff of finger print bureau. In presence of two panch witnesses Vikram Khanna and Pandit Patil he prepared panchanama of spot i .e. room no.367.

43] His evidence further shows that room was

admeasuring 17x19 ft. Bed sheet and quilt on cot were stained with mud. There were four pillows in the room and two pillow covers were having stains of blood. There were two long hair on pillow cover and six short hair on bed sheet. He cut pillow covers so as to separate blood stained portion from it. He seized portion of pillow cover containing blood stains, pillow covers, bed sheet, quilt, hair found on the spot. On eastern side of wooden cot in room there was light on wall. Accordingly, he prepared panchanama Exh.29 and seized above muddemal from the room and he identified same which are at Art-1 to 6. He also prepared map of Ambi Valley and produced along with charge-sheet.

44] Spot panchanama Exh.29 and evidence of P.W.1 shows that room no.367 is at the end of Ambi Valley Resort. It has come on record that prosecutrix alone was residing in that cottage which was at the end of Ambi Valley Resort. First Information Report shows that when unknown person went outside the room immediately lights were on. This is relevant circumstance because only staff members in Ambi Valley Resort were knowing the system of light. There is nothing on record to show that anyone else including her colleagues was found going towards cottage of prosecutrix at midnight. These circumstances can be accepted in the light of guilty intention, motive and preparation of accused behind the act. Most importantly, the circumstances at the spot again supports prosecution case of forcible sexual assault.

45] It is undisputed fact that prosecutrix was residing alone in Cottage no.367 of Ambi Valley Resort. P.W.1 was informed by Mr. Pradhan that mental condition of lady was not proper and she was not willing to come forward. Accordingly, entry was taken in station diary which is at Exh.30. He then deposited muddemal to muddemal clerk and sent A.P.I. Ranmale with lady constable for recording report of prosecutrix. On 12.12.2010 A.P.I. Ranmale submitted report of prosecutrix and on its basis First Information Report was registered against unknown person and entry was taken in station diary. As per his request prosecutrix came to Police Station on 12.12.2010 and brought clothes wore by her at the time of incident. In this context P.W.2 prosecutrix stated that police obtained her Capri and Kurti wore at the time of incident. P.W.1 seized clothes of prosecutrix and accordingly, prepared seizure panchanama Exh.31. P.W.1 and P.W.2 identified said clothes which are at Art-9 and 10.

46] During cross-examination he admitted that prosecutrix stated that when she went to her room at night, person namely Jayant, Rajesh and one officer from her company went to their respective rooms but their statements are not recorded. Moreover, prosecutrix did not give detail description of the face, height in her supplementary statement. But in the light of above discussion certain minor discrepancies in the evidence are not sufficient to discard entire version of prosecutrix.

47] It is not much disputed that accused was working as Security Guard in Ambi Valley on relevant day. During statement of accused under section 313 of Code of Criminal Procedure he admitted that he was working as Security Guard in Ambi Valley and was on duty at relevant day. In order to show conduct, behaviour of accused on the day of incident, subsequently during investigation there is evidence of witness no.9,11 and Investigating Officer. P.W.9 Kishnakumar Anglal Tawar deposed vide Exh.100 that on 09.12.2010 he was working as Security Guard in Ambi Valley, Ambawane. He was working in two shifts i.e. 7.00 a.m. to 7.00 p.m. and 7.00 p.m. to 7.00 a.m. on next day. On 09.12.2010 he was on night duty from 7.00 p.m. At 6.45 p.m. he went to control room of their office and then attended his duty. He was allotted duty in Supreme Cottage, Ambi Valley and he reached at 7.50 p.m. He identified accused before the court as Security Guard in Ambi Valley. According to him accused and one son Santosh Bhalvi were on duty at Supreme Cottage. Their Security Supervisor came and gave instruction of the work.

48] His evidence further shows that accused was allotted area of Cottage no.301 to 336. P.W.9 was given parking, reception area and room no.348 to 361. Santosh Bhalvi was given area from Cottage no.362 to 374. They all went to respective sites. At 11.00 to 11.30 p.m. one person came to Supreme Cottage reception for giving tea. Accused, Santosh gathered there. He and

Santosh had cup of tea but accused did not have cup of tea. Supervisor Balvinder reached there and took 7 to 8 empty disposable cups. Then they went to their respective sites. In between 3.00 to 3.30 a.m. again person came with tea, he and Santosh had cup of tea and accused left the spot without taking tea. At 3.30 a.m. Supervisor Sutar came and checked the things. Thereafter, left the spot. Next day morning at 6.30 a.m. on 10.12.2010 he, accused gathered at reception counter after duty hours. At about 10.00 a.m. they were called again in control room and upon inquiry they said that they did not know anything about the incident. During his cross-examination it has come on record that if security guard of room no.301 to 336 goes to cottage no.367, he has to pass through reception room only and such person is visible from reception room. Most importantly, he admitted that after 2 to 3 days of incident police came with prosecutrix at Ambi Valley, they were shown to prosecutrix girl but she did not identify any of them. But before this incident accused was already in custody of police for four days.

49] P.W.11 Makbul Husain Sutar was working as security officer in Ambi Valley and his evidence at Exh.106 shows that accused was working as a Security Guard at Supreme Cottage, Zone no.4. Duty of P.W.11 was to supervise working of Security Guard and on 09.12.2010 he was given additional duty to supervise working of Security Guard in Zone no.4. He resumed his duty at 7.00 p.m. and had three rounds in Zone no.3. He went to Zone no.4

at 4.00 a.m. On next day he did not see accused at reception counter at 5.00 a.m. Only security guards Sangosh Bhalvi and Kishan Kumar were present at reception counter. His cross-examination shows that at 5.00 a.m. accused was on duty at place which was allotted to him. These witnesses are colleagues of accused and they have no reason to tell false against him . From evidence of these witnesses behaviour of accused on relevant day can be gathered and it is clear that he was on duty in Ambi Valley Resort on relevant day.

50] So far as subsequent conduct of the accused is concerned, P.W.15 Investigating Officer Jitendra Kadam deposed that on 24.12.2010 he visited Sahara City, Supremo Cottage, Reception Center for inquiring with suspects. When he was inquiring, besides accused 7 to 8 staff members were present. When he started inquiring, accused told that he was vomiting. Balwantsingh gave water to accused for drinking but accused broke bottle and assaulted himself on his person at stomach. Sunil Margale and his other staff members obstructed accused. Sunil Margale sustained injuries while taking bottle from accused. He took broken bottle from accused and took accused to hospital at Sahara City as he sustained injury to abdomen. Accused was then brought in Civil Hospital, Paud for further treatment.

51] From evidence of P.W.15 First Information Report

in separate crime registered against accused under section 309 of Indian Penal Code is proved at Exh.144. On its basis entry was taken in Station diary and relevant extract is at Exh.145. He also collected injury certificate of accused issued by Medical Officer. During investigation he recorded statements of witnesses, sent collected samples of prosecutrix and accused to Chemical Analysis Laboratory. He sent seized knife to Chemical Analysis Laboratory with letters. During cross-examination it is suggested to P.W.15 that on 24.12.2010 accused was physically tortured for confessing guilt and was injured but same is denied by him. No evidence is adduced on behalf of accused in support of his defence. There is no material to prove that accused was forced by police to admit his guilt and therefore, he tried to commit suicide. Therefore, mere suggestions in cross-examination of P.W.15 are not sufficient to prove that fact. There is no substance in this defence.

52] As per version of prosecutrix when unknown person entered in her room he gagged her mouth by one hand and by another hand he placed one pointed article to her neck and threatened her in Hindi language. As per prosecution case pointed article was knife and same is recovered at the instance of accused. For that purpose prosecution is relying on evidence of P.W.13 Gaurav Ramchandra Raundale i.e. panch witness and evidence of Investigating Officer P.W.15. Their evidence shows that on 17.01.2014 while in police custody accused wished to give

memorandum statement about concealment of knife. He stated that he was ready to produce it and his statement was accordingly reduced in writing in presence of panch witnesses. Thereafter, as per instance of accused, accused, police, panch witnesses went in police jeep in Ambi Valley. There was statue of Bharat Mata. There were five tin sheds out of which one shed was shown by the accused. They went inside shed. There were four cupboards at right side and one loft on the cupboard. There was mazenine floor and from mazenine floor accused took out one knife, it was wrapped and sealed in presence of panch witnesses.

53] P.W.13 further deposed that accordingly, memorandum cum seizure panchanama was prepared in presence of panch witnesses and police, same is proved at Exh.121. P.W.13 identified muddemal knife before court and described it that it was having yellow colour handle with small hole. According to P.W.15 knife was 24 cm. in length having yellow colour handle. It is at Art-E. P.W.13 identified accused before the court and during his cross-examination except denial nothing has come on record. There is no reason to disbelieve recovery of knife at the instance of accused. It is also not proved that statement was not given voluntarily by accused.

54] According to Advocate of accused said recovery at the instance of accused is doubtful and in that context he relied on authority cited in *Ananda Genu Rajapure Vs. State of*

Maharashtra reported in 2010 All MR (Cri.) 2445, in which it is observed that recovery at instance of accused is not admissible, because information was very much within knowledge of police. Section 27 of Evidence Act contemplates, information should not be within knowledge of police and it should be disclosed and known to police through accused only.

55] Ratio laid down in above cited ruling is noted. It has not come on the record that the information was within knowledge of police but about the same disclosure is made by accused. Due to minor discrepancies about exact place, it is not proper to discard this evidence entirely. Recovery of pointed article at the instance of accused is relevant circumstance against him .

56] It has come on record that entire muddemal was sent to Chemical Analysis Laboratory by Investigating Officer along with letter at Exh.139 and Chemical Analysis Reports, DNA reports are obtained, same are produced with Charge-sheet. Out of that Exh.152 is Chemical Analysis Report of semen of accused. However, result shows that blood group cannot be determined as results are inconclusive. Exh.153 is examination report of bed sheet, bed cover, pillow cover and other articles found in the room, clothes of prosecutrix and samples obtained from Sasoon Hospital of prosecutrix. It shows that pillow cover has few brushed blood stains at places. Pieces of cloth i.e. pieces of pillow cover is stained with

blood. Exh.6 i.e. pillow cover has three blood stains of about 0.2 cm in diameter on one side. Exh.1 i.e. bed sheet has one semen stains of 0.2 cm. in diameter at one end and two semen stains of about 2 cm in diameter near middle. Exh.3 i.e. pillow cover has one semen stain of about 2 cm. in diameter at opening end.

57] Said report shows that blood stains on Exh.3,5,6 are referred to DNA analysis. Semen stains detected on Exh.1 and 3 are referred to DNA analysis and Exh.7,8,11,12 and 13 are referred to DNA analysis. Exh.175 is examination report of blood of prosecutrix which shows that blood contained no ethyl alcohol. Exh.174 is examination report of bed sheet, pillow cover, pieces of cloth which shows that earth collected from Exh.1 tallies with earth collected from Exh.2 in respect of hue and physico chemical characteristics. Cloth pieces in Exh.3,4 and 5 tally among themselves in respect of hue and physico textile characteristics. Exh.176 is examination report of blood, pubic hair, scalp hair of accused which shows that Exh.1 is of blood group 'O', Exh.3 is control scalp hair. Neither semen nor vaginal fluid is detected on Exh.2.

58] Exh.40 is DNA report and result of analysis is no male DNA is detected in Exh.2 Nail clippings, Exh.3 pubic hair, Exh.4 vaginal swab, Exh.5 vaginal smear of prosecutrix of F.S.L.M.L. Case no. DNA-845/10 and Exh.11 Vaginal swab, Exh.12 Vaginal

Swab, Exh.13 Vaginal smear of prosecutrix of F.S.L.M.L. Case no. DNA 21/11 and interpretation is DNA profile of semen detected on Exh.1 bed sheet, Exh.3 pillow cover of F.S.L.M.L. Case no. DNA 21/11 and blood sample of Dharmendrakumar Rambabu Chaudhary of F.S.L.M.L. Case no. DNA362/11 are not identical and not from one and same source of male origin. DNA profiles do not match with the maternal and paternal alleles in the source of blood.

59] Exh.41 is DNA report and interpretation is 1] the mixed DNA profile of blood detected on Exh.3 pillow cover of F.S.L.M.L. Case no.DNA 21/11 and blood sample of prosecutrix are identical and from one and same source of female origin DNA profiles match with the maternal and paternal alleles in the source of blood. To that extent only DNA report supports prosecution case. Said report further shows 2] The mixed DNA profile of blood detected on Exh.3 pillow cover of F.S.L.M.L. Case no. DNA 21/11 and blood sample of Dharmendrakumar Rambabu Chauhan of F.S.L.M.L. Case no.DNA 361/11 are not identical and not from one and same source of male origin DNA profiles do not match with the maternal and paternal alleles in the source of blood. 3] The DNA profile of blood detected on Exh.5 piece of cloth, Exh.6 pillow cover from scene of crime of F.S.L.M.L. Case no. DNA 21/11 and blood sample of Dharmendrakumar Rambabu Chaudhari of F.S.L.M.L. Case no.362/11 are not identical and not from one and same source of male origin DNA profiles do not match with the maternal and

paternal alleles in the source of blood. 4] The DNA profile of blood detected on Exh.5 piece of cloth, Exh.6 pillow cover from scene of crime of F.S.L.M.L. Case no.DNA 21/11 and blood sample of prosecutrix are not identical and not from one and same source of origin. DNA profiles do not match with the maternal and paternal alleles in the source of blood.

60] Exh.42 is DNA report and interpretation is DNA profile of Exh.7 Hair, Exh.8 hair from scene of crime of F.S.L.M.L. Case no.DNA 21/11 and blood sample of prosecutrix are identical and from one and same source of female origin DNA profiles match with the maternal and paternal alleles in the source of blood. In this regard also DNA report supports prosecution case. Exh.43 is DNA report of knife and result of analysis is non interpretable DNA profiling results are obtained from Exh.1.

61] Advocate of accused gave much emphasis on the point that Chemical analysis Report, DNA report shows inconclusive results, DNA reports are not matching to accused. Therefore, said evidence is not helpful to prosecution to prove charges against accused. It is also submitted that no investigation is conducted in respect of fact that prosecutrix tried to resist the act and there were injuries of nail on person of accused. In this context Advocate of accused relied on authorities cited in -

i] *Dilip Purushottamrao Pathak Vs. State of*

Maharashtra reported in 2008 All MR(Cri.) 3414, in which it is observed that D.N.A. reports also falsifies version of respondent no.2. Therefore, no purpose would be served in making petitioner undergo rigor of trial.

ii] *The State of Maharashtra Vs. Parashuram Vishwanath Hule reported in 2015 ALL MR (Cri) 1905*, in which it is observed that C.A. Report reflected that no stains of semen were found on seized petticoat of prosecutrix. Stain of blood found on dhoti of accused was of prosecutrix, not proved. As such, forensic evidence did not support case of prosecution. Hence, acquittal of accused is proper.

iii] *Anil Motibaba Barokar Vs. State of Maharashtra reported in 1996 Cri. L.J. 494*, in which it is observed that circumstantial evidence, medical evidence revealed that accused had injuries on his person caused by finger nails, nail clippings of deceased prosecutrix stained with blood but not of blood group to which accused belonged, clothes which deceased was wearing of relevant time also had blood stains but not of blood group to which accused belonged. Fact that stone recovered at instance of accused was already lying there, highly probable, vital links of chain to hold accused guilty, missing. Fact that gang rape and murder of insane woman is gruesome crime, it is not sufficient to convict accused therefore, accused given benefit of doubt.

62] As against this APP for State relied on authorities

cited in -

i] *Sunil Vs. State of Madhya Pradesh reported in 2017 All SCR (Cri.) 1017, Sunil Vs. State of Madhya Pradesh reported in 2017(4) SCC 393*, in which it is observed that in rape case, medical examination of accused, non fulfillment of requirement of Section-53A, effect, mere failure to prove report of DNA profiling, not fatal to prosecution case, weight of other material and evidence on record have to be considered.

ii] *B.C.Deva @ Dyava Vs. State of Karnataka reported in AIR 2007 SC (Supp.) 678*, in which it is observed that absence of seminal stains on clothes of prosecutrix could be explained as they might have washed away in water.

63] Ratios laid down in above cited rulings are noted. If entire evidence and version of prosecutrix is considered, in the light of circumstances brought on record, evidence of prosecutrix is inspiring confidence and it has to be accepted, believed. It is undisputed fact that accused is arrested after about one month of incident. Therefore, there cannot be injuries of nail on person of accused. Therefore, though there is no investigation on that point, same is not fatal to prosecution case.

64] The material defence raised by Advocate of accused is that there is delay in lodging report which is not satisfactorily explained by prosecution witnesses. Therefore, delay of

about two days in lodging report is definitely fatal to prosecution case. A.P.P. for State submitted that delay is caused due to mental condition of prosecutrix and shock sustained by her. Moreover, family members informed about the incident to her would be husband and same is probable explanation. In this regard A.P.P. for State relied on authorities cited in -

i] ***Bansari Lal Vs. State of Himachal Pradesh reported in 2017 ALL MR(Cri.) Journal 361***, in which it is held that if testimony of prosecutrix is found to be convincing, then evidence in absence of any corroborative medical evidence conviction would be sustainable. Delay of 6 days in lodging First Information Report, prosecutrix disclosed incident to her sister who further informed same to elders in the family, however, prosecutrix was asked to remain silent, when nothing was done by elders, prosecutrix reported same to her mother on telephone who lodged First Information Report thereafter. Thus, it is held that there was no delay in lodging First Information Report.

It is further observed that no contradiction found in testimonies of prosecution witnesses who were prosecutrix herself and her mother and sister, testimony of prosecutrix also found reliable and inspiring confidence, therefore, non association of independent witnesses would not render testimony of prosecution witnesses to be doubtful.

ii] ***State of Himachal Pradesh Vs. Shree Kant Shekari reported in AIR 2004 Supreme Court 4404***, in which it is

observed that delay in lodging First Information Report, prosecution not only explaining reasons for delay but also giving cogent evidence to substantiate the stand, delay in lodging First Information Report per se is not a mitigating circumstance for accused when there was accusation of rape, mere delay in lodging First Information Report does not render prosecution version brittle.

iii] *Ram Naresh and others Vs. State of Chhattisgarh reported in 2012 All SCR 1005*, in which it is observed that if delay in lodging First Information Report is explained it is not fatal to prosecution case.

iv] *State of Punjab Vs. Gurmit Singh and others reported in AIR 1996 Supreme Court 1393*, in which it is observed that in sexual offences delay in the lodging of the First Information Report can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. Even if there is some delay in lodging First Information Report in respect of offence of rape, if it is properly explained and the explanation is natural in the facts and circumstances of the case, such delay would not matter.

65] Ratios laid down in above cited rulings are noted. In case in hand evidence of Proecutrix shows that after incident she

was mentally disturbed and was not willing to come forward. She immediately went to Mumbai to her parents house. From evidence of P.W.4 i.e. friend of prosecutrix mental and physical condition of prosecutrix after incident can be gathered. It is but natural on part of prosecutrix to immediately disclose incident to her parents. P.W.3 i.e. father of prosecutrix deposed that after narration of incident by prosecutrix they discussed on the topic. He made phone call to proposed husband of prosecutrix who is resident of Delhi. He came to Mumbai and then entire incident was narrated to him. As prosecutrix sustained mental shock it was necessary for them to intimate incident of rape to her proposed husband. They have to consider about honour and reputation of the family. Hence, there is delay in lodging report. During cross-examination of P.W.2,3 and 4 nothing fruitful has come on record on the point of delay. Therefore, said evidence is to be accepted. Considering nature, gravity of offence and mental condition of the prosecutrix it is but natural on her part not to immediately lodge First Information Report without disclosing this fact to her near ones. From evidence on record delay in lodging First Information Report is explained satisfactorily and delay is not at all fatal to prosecution case.

66] As per prosecution case there is ample corroboration to version of prosecutrix. Most importantly being victim her evidence has to be assessed bearing in mind fact that she is not accomplice. It is material to note that evidence on record is

not showing consent of prosecutrix because she tried to resist the act. There are injuries on her person which shows act was forceful. Therefore, her evidence is acceptable and reliable. In this context APP for State relied on authorities cited in -

i] ***Ganga Singh Vs. State of Madhya Pradesh reported in 2013 All MR(Cri.) 3020***, in which it is observed that prosecution case that appellant came and caught hold of prosecutrix and fell her down, gagged her mouth, lifted her petticoat and committed rape, testimony of prosecutrix is trustworthy and corroborated by evidence of her mother-in-law before whom she narrated about crime soon after incident. Testimony of prosecutrix also corroborated by First Information Report.

ii] ***Aslam Vs. State of Uttar Pradesh reported in 2013 ALL MR(Cri.) 1894 (S.C.)***, in which it is held that prosecution case that accused persons upon finding prosecutrix working alone in field had gagged her and committed rape on her in turns, evidence of prosecutrix is not only reliable but also trustworthy. Necessity of corroboration of her evidence may be excluded, conviction of accused persons for offence under section 376 is proper.

iii] ***Radhakrishna Nagesh Vs. State of Andhra Pradesh reported in 2013 All MR(Cri.) 711 (S.C.)***, in which it is observed that testimony of prosecutrix reliable, no material on record showing that statement of prosecutrix is either unreliable or untrustworthy, statement of prosecutrix on contrary is credible, truthful and thus reliable. Same by itself is sufficient to convict

accused.

iv] *Madho Ram and another Vs. The State of U.P. reported in AIR 1973 Supreme Court 469, State of Maharashtra Vs. Chandraprakash Kewalchand Jain reported in AIR 1990 Supreme Court 658 and Ramjit Hazarika Vs. State of Assam reported in 1996 Supreme Court 480*, in which it is held that the prosecutrix cannot be considered to be an accomplice, courts should normally look for some corroboration of her testimony in order to satisfy that the prosecutrix is telling the truth and that a person, accused of abduction or rape, has not been falsely implicated. The only rule of law is the rule of prudence, namely, the advisability of corroboration should be present in the mind of the judge or the jury as the case may be. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

v] *Moti Lal Vs. State of M.P. reported in 2008 Cri.L.J. 3543*, in which it is held that the physical scar on a rape prosecutrix may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, evidence even if taken as a whole, the case spoken to by the prosecutrix strikes a judicial mind as probable.

It is further observed that in the Indian setting refusal to act on the testimony of the prosecutrix of sexual assault in the

absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a prosecutrix of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case.

67] Ratios laid down in above cited rulings are noted. In case in hand there is ample corroborative evidence to the version of prosecutrix and same is to be accepted and believable. Most importantly while trying accused on charge of rape court must show great sensitivity and should examine broader probabilities and not get swayed by minor contradictions and discrepancies in the evidence of witnesses.

68] A.P.P. for State submitted that there are no material contradictions or omission in the evidence of prosecution

witnesses. It is necessary to note that no strong and positive defence is raised by the accused. No witnesses are examined on behalf of accused. Most importantly there is no previous enmity between prosecutrix and accused and prosecutrix has no reason to falsely implicate accused in this matter. It has come on the record that she was not previously acquainted with accused though she visited Ambi Valley Resort prior to incident. She had no reason to falsely implicate accused. Moreover, if there are certain defects in investigation, it is not proper to discard entire evidence and to disbelieve version of prosecutrix.

69] In this context A.P.P. for State relied on following authorities -

i] *Kundlik Vs. State of Maharashtra reported in 1980 Cri.L.J.* in which it is observed that if there was no previous enmity between the parties, the false implication of the accused was therefore, out of question.

ii] *Gita Ram Vs. State of Himachal Pradesh reported in 2002 Cri.L.J. 3832*, in which it is observed that it is settled position of law that that in cases of defective investigation, the Court has to be circumspect in evaluating the evidence but it would not be correct to acquit the accused solely on account of defect in investigation.

iii] *Madan Lal Vs. State of Jammu and Kashmir reported in AIR 1998 Supreme Court 386*, in which it is observed

that statement of mother of prosecutrix that prosecutrix narrated entire episode immediately when she arrived at home can also be held to be a corroborative piece of evidence.

iv] ***Om Prakash Vs. State of Uttar Pradesh reported in 2006 Cri.L.J. 2913***, in which it is observed that there was no apparent reason for prosecutrix, a married woman to falsely implicate accused after scattering her own prestige and honour, plea of false implication is not tenable.

70] As against this Advocate of accused relied on authority cited in ***Arun Kumar Mahatha Vs. State of Bihar reported in 2007 Cri.L.J. 447***, in which it is observed that evidence of prosecutrix not corroborated by any of witnesses and not supported even by medical evidence, defence plea of false implication appears to be quite probable. Appellant deserves benefit of doubt. Conviction set aside.

71] Ratios laid down in above cited rulings are noted. In the light of above discussion it is clear that accused was working as Security Guard in Ambi Valley Resort and on the day of incident he was on duty in the area Cottage no.301 to 336. It is proved that prosecutrix was residing in Cottage no.367 of Ambi Valley Resort and was alone in the room. Her evidence along with medical evidence shows that accused forcibly committed sexual intercourse with her and Exh.86A shows injuries sustained by prosecutrix. Her

version is sufficient to prove that she was threatened to kill by showing pointed article. She admitted that to her room lock of knob system was provided, she pushed knob and closed the door, latched the door from inside. Such system is within knowledge of staff of Ambi Valley Resort. Therefore, entire circumstances on record are connecting the prosecution case and chain of evidence is proved. Prosecutrix not only identified accused before Court but also during identification parade and also identified his voice. In such circumstances, case of prosecution cannot solely based on First Information Report which is not substantive piece of evidence. Any omission or contradiction in First Information Report has to be considered along with other evidence to determine whether fact so omitted never happened at all.

72] Therefore, there is direct evidence as well as circumstantial evidence to prove the guilt of accused. Considering entire evidence before the court, circumstances which have come before the Court connecting the accused are sufficient to prove that accused committed house trespass by entering into cottage used as human dwelling in order to commit offence. By entering into that cottage he forcibly committed sexual intercourse with prosecutrix and while doing that act he caused hurt to prosecutrix by showing knife and also gave threats to kill her with intention to cause alarm. Therefore, ingredients of offence punishable under section 450, 376(1), 323, 506 of Indian Penal Code are proved against accused

beyond reasonable doubt. Hence, points nos.1 to 4 are answered in the affirmative.

Pune.

(R.V.Adone)

Date – 24.07.2018.

Addl.Sessions Judge, Pune.

73] Heard accused on the point of sentence. Sufficient hearing is given to accused on the point of sentence. He submitted that he is only earning member of family and he has just 24 days baby. His parents, brother, sister, wife and child is depending on him. He belongs to poor family. In view of all above facts and considering dependency on him he prayed to show leniency and impose minimum punishment. Heard Advocate of Accused Shri. Jagtrap who submitted to show leniency to accused considering dependency of family members on him .

74] Heard A.P.P. Smt. Pathak for State. She submitted that accused was working as Security Guard at relevant time and he was supposed to protect people who went in Ambi Valley Resort for their work or attending conference. Considering gravity of the offence, she prayed to impose maximum punishment. Perused written submissions filed by original complainant which shows that it is duty of security person to protect customers visiting resort. In spite of protecting prosecutrix who went to Ambi Valley Resort for attending conference, heinous offence of rape was committed on her. Therefore, protector himself has become violator. Hence, it is

proper to impose maximum punishment .

75] It is proved on record that accused was working as Security Guard on the day of incident and by entering into cottage no.367 he committed offence of forcible sexual intercourse on prosecutrix in inhuman and grave manner. Admittedly, his duty was to protect people visiting resort and to secure the premises where his duty was. In stead of doing his duty, heinous act of committing rape on helpless prosecutrix is done by him. It has also come on record that there were various injuries to the prosecutrix while committing the act which again shows its gravity . Therefore, the act committed by accused is severe and in aggravative form.

76] At the same time it is necessary to consider that small child of accused and his all family members including parents are depending on him. He was doing job therefore, he was earning member of family and also belongs to poor family. Moreover, his age is also to be taken into consideration. In view of above discussion, considering mitigating and aggravating circumstances, punishment is to be imposed. Offence is of grave nature against the society. Such type of offences are increasing day-by-day and protector on whom trust was imposed, himself did the act of violation of the law.

77] Most importantly, victim not only suffers physical injuries but mental trauma which cannot be forgotten by her. In

cases of sexual offences rapist not only assault prosecutrix by physical injury but also prosecutrix has to suffer mental trauma, agony and stigma. In such circumstances, punishment is to be imposed not too harsh and not too lenient. For mental trauma suffered by prosecutrix it is necessary to award some amount as a token towards compensation. Considering nature of offence, it is not proper to impose only minimum sentence but the sentence which is appropriate compared to gravity of offence is to be imposed. Therefore, point no.5 is answered accordingly and following order is passed -

ORDER

- 1] Accused **Dharmendrakumar Rambabu Choudhary alias Singh** is convicted for the offences under sections 450, 376(1), 323, 506(2) of the Indian Penal Code vide section 235(2) of Code of Criminal Procedure.
- 2] Accused **Dharmendrakumar Rambabu Choudhary alias Singh** is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 3,000/- (Rs. Three thousand only) for offence punishable under section 450 of Indian Penal Code. In default of payment of fine accused is sentenced to suffer simple imprisonment for three months.
- 3] Accused **Dharmendrakumar Rambabu Choudhary alias Singh** is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 7,000/- (Rs. Seven Thousand only) for offence punishable under section 376(1) of Indian Penal Code. In default of payment of fine accused is sentenced to suffer simple imprisonment for six months.
- 4] Accused **Dharmendrakumar Rambabu Choudhary alias Singh** is sentenced to suffer rigorous imprisonment for three

months and to pay fine of Rs. 500/- (Rs. Five Hundred only) for offence punishable under section 323 of Indian Penal Code. In default of payment of fine accused is sentenced to suffer simple imprisonment for fifteen days.

- 5] Accused **Dharmendrakumar Rambabu Choudhary alias Singh** is sentenced to suffer rigorous imprisonment for three months and to pay fine of Rs.500/- (Rs. Five Hundred only) for offence punishable under section 506(2) of Indian Penal Code. In default of payment of fine accused is sentenced to suffer simple imprisonment for fifteen days.
- 6] All substantive sentences to run concurrently.
- 7] Accused to surrender his bail bond.
- 8] Seized muddemal i.e. bed-sheet, bed cover, three pillow covers, pieces of pillow cover, hair, clothes of first informant i.e. pant (Capri), Kurta and knife be destroyed as per rules after appeal period is over.
- 9] Accused was in jail since 14.01.2011 till 15.04.2011. Therefore, period of detention undergone by accused during investigation, inquiry or trial be set off against sentence of imprisonment imposed on him as per Section 428 of Code of Criminal Procedure.
- 10] Out of fine amount, amount of Rs.7,000/- be paid to the prosecutrix as a compensation under section 357(1) of Code of Criminal Procedure.
- 11] Judgment dictated and declared in open court.
- 12] Copy of Judgment be given to accused free of costs.

Pune.
Date -24.07.2018.

(R.V.Adone)
Addl. Sessions Judge,Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno - S.V.Thakar,
Court Name - Smt. R.V.Adone, Addl.Sessions Judge,Pune.
Date of Judgment - 24.07.2018
Judgment signed by P.O. - 24.07.2018
Judgment uploaded on - 14.08.2019.