

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1102 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

SHANABHAI MADHURBHAI KOLI PATEL

Versus

STATE OF GUJARAT

Appearance:

HL PATEL ADVOCATES for Appellant

MRS MANISHAL L SHAH, APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 27/06/2003

ORAL JUDGEMENT

1. This Appeal is preferred by accused of Session Case No. 69 of 1997 against the judgment and order of conviction passed by learned Sessions Judge, Panchmahals at Godhra, on 27.09.1999, convicting the present appellant for the charges levelled against him under

Section 376 of the Indian Penal Code and sentencing him for 5 years rigorous imprisonment and imposed fine of Rs. 500/-, in default, to undergo simple imprisonment of six months. The period of undertrial custody was ordered to be given set off to the accused. The accused - present appellant deposited the amount of fine and filed this Criminal Appeal on 16.10.1999. Bail was refused by this Court but the Appeal was expedited.

2. Brief facts of the case reveals that PW-1 Amriben Maganbhai, resident of village Uchawan, Tal. Devgad, Dist. Panchmahal, filed First Information Report on 12.12.1996 before Devgad Baria Police Station, and at the relevant time, PW-5 Dhanjibhai Lunjabhai was the Police Station Officer, who recorded complaint of Amriben produced on record at Exh.11. Accordingly, prosecutrix Amriben is a married woman having three children out of the wedlock. Amriben had two sons and a daughter. The incident in question for which the complaint came to be filed occurred on 10.12.1996 at 15.00 hours, and the First Information Report was given to the Police on 12.12.1996 at 19.15 hours. On the day of the incident, Amriben, her mother-in-law Samudiben had been to the town of Baria in the morning at about 9'0 clock. From the Government shop at Baria they purchased sugar. In the evening at about 14.00 hours after purchasing sugar, Amriben and her mother-in-law were returning to their village, while they were walking towards their village, her mother-in-law separated and thereafter Amriben was walking to her village alone. She reached upto the field of one Veera Nana. The way, on which Amriben was walking to her residence was passing near the boundaries of the field of Veera Nana. In the way there was a pavement. While she was walking through this pavement, the accused Shanabhai Madhubhai Koli Patel came near her and asked that where she had gone. She replied that she had been to purchase sugar. Thereafter, accused caught hold of her. Amriben attempted to escape but accused seized her and sugar was fallen down on the ground. She was forcibly made to sleep in the field of tuvar. After dragging her under the crop of tuvar, the accused, according to Amriben, committed rape on her. She was shouting. At that time, Shana Bijal on hearing of the shout, called Narvat, PW-2, son of Amriben at the scene of offence, and on seeing Narvat at the scene of offence, the accused appellant ran away. Amriben thereafter went to her home and talked about the incident to her sister-in-law Kokilaben. Kokilaben went to the house of Police Patel, from where husband of Amriben was informed about the incident, who was at Surat doing labour work on that day. On the next day, husband of Amriben PW-4

Maganbhai Bhulabhai came to the village and thereafter on 12.12.1996, complaint against the present appellant came to be filed by Amriben. On filing of the complaint, investigation was entrusted to PSI Himatsinh Gabhabhai Baria, who is examined as PW-10 by the prosecution at Exh. 22. After the investigation, a charge sheet for the offence punishable under Section 376 was submitted in the Court of Judicial Magistrate, First Class at Limkheda, who by order dated 13.5.1997 committed the case to the Court of Sessions, which was recorded as Session Case No. 69/97. Learned Sessions Judge, Panchamahals at Godhra, framed charge against the accused vide Exh. 2 who pleaded not guilty

3. Prosecution has chosen to examine 10 witnesses and submitted documentary evidence as well. After considering the explanation of the accused under Section 313 of the Criminal Procedure Code and after hearing the parties, learned Trial Judge came to the conclusion to convict the accused, as aforesaid.

4. Learned Advocate Mr. Vijay H. Patel for the appellant and learned APP Mrs. Manisha L. Shah for the respondent State were heard in detail.

5. Before going into the submissions of both the sides and entering into the appreciation of evidence, a careful examination of testimonial collections of evidence as well as documentary evidence is necessary.

PW-1 Amriben - Prosecutrix is examined at Exh.6. She has narrated the incidence as mentioned in the complaint filed before the Police, which is placed at Exh. 11. She has stated that while she was returning from Baria had been forcibly dragged in the field by the accused who committed the rape and on seeing his son PW-2 Narvat, the accused ran away. She also confirms that she had made the complaint before the police, she submitted herself to medical examination, her clothes were seized by police, and in her cross-examination, an attempt has been made to show that the prosecutrix has exaggerated the story and that in the field of Veera Nana where the incident took place some village people are residing with their families in the houses. She was confronted with her complaint, wherein she has stated that she had washed her clothes which she wore at the time of incident. She has admitted this fact. That PW-2 Narvat, son of prosecutrix, is examined at Exh.7. At the time of deposition, which has taken on 26.7.1999, the witness was aged 15 years. The Trial Judge has made inquiry as to whether the witness was aware about the sanctity of the

oath and after proper verification, the Trial Judge administered oath to this prosecution witness No.2. PW-2 happens to be an eye witness of the incident. He has stated that the incident took place three years before the deposition, and at that time, his father was at Surat because he was doing centering work. On the day of the incident, her mother prosecutrix had been to Bariya to purchase sugar. He was at home and thereafter he had been to graze his cattle. When he came home at about 4'0 clock in the evening, Shana Bijal informed him that her mother was shouting in the field of Veera Nana. According to the witness, he immediately ran to the field of Veera Nana where crop of tuvar was standing and his mother was shouting. He saw that the accused was mounting his mother and on seeing him the accused ran away leaving his mother. PW-2 further stated that thereafter along with his mother he came to their home and talked about the incident to his aunt (sister of father) Kokilaben. Kokilaben, in turn, informed to the uncle of the witness and after informing by phone his father was called from Surat, who come on the next day. The witness stated that he did not know about who made phone to his father. In his examination in cross, attempt is made to know the distance between the house of witness and the scene of offence. He has stated in the cross-examination that after he returned from grazing cattle, after half an hour, Shana Bijal came. The witness has admitted to answer by saying the distance that a field away the field of Veera Nana was situated from his house. He has admitted that Kanti Saiba, Rupsinh Saiba, Bugha Saiba and Beekha Saiba are residing in the field of Veera Nana with their families, and when he went to the scene of offence, these persons were in their house. An attempt was also made in examination in cross as to what clothes accused was wearing when he saw him at the place of incidence. The prosecution examined PW-3 Madhubhai Mohanbhai at Exh.8. The witness was at the relevant time Police Patel of village Uchawan. The witness is examined by the prosecution to prove that sister-in-law of the prosecutrix Amriben had been to Police Patel - Madhubhai Mohanbhai to inform husband of prosecutrix about the incident by phone. He has stated that at the instance of Kokilaben he went to Baria and informed husband of prosecutrix at Surat. He has stated that after coming of the husband, the persons of the village were gathered, but the same did not result into anything a complaint before the police was recorded. In examination in cross, the witness stated that Kokilaben had been to his house at about 10'0 clock in the morning and from Baria, Kokilaben made a phone call to his brother. He has stated that what was said by Kokilaben

in phone could not be heard by him. In the cross-examination, Maganbhai Bhulabhai PW-4 at Exh. 9 stated that at the time of incident he was at Surat, and he told his employer that he was summoned at his house and therefore he had reached to his village on the next day. When he reached to his house, his wife prosecutrix informed him about the incident, and thereafter, along with his wife prosecutrix, he went to the police station for filing the complaint. In examination in cross, an attempt has been made that the appellant and the witness were working together as labourers. An attempt is also made that about the wages for the labour, he had a dispute with the accused. This fact has been denied by the witness. The prosecution has examined PW-5 Dhanjibhai Lunjabhai at Exh.10. He has deposed that in December, 1996 he was serving as Police Station Officer at Devgadh Police Station. On 12.12.1996, a woman of village Unchawan, had come to the Police Station and gave complaint about the rape. According to the witness, he recorded the complaint Exh.11. Complaint was shown to him and witness confirmed that, that was the same complaint made before him by the complainant. The witness has admitted that the complainant had subscribed her left hand thumb impression in his presence. He has also deposed that he has recorded the complaint as dictated by the complainant. He further deposed that after registering the offence, the investigation was entrusted to PSI Himatbhai Gamabhai and complainant was sent to hospital for medical examination by police yadi. In examination in cross, the witness stated that he could not remember the time at which the complaint was recorded, but the complainant came after 5'0 clock. He has admitted that there were five persons with the complainant and the complaint was recorded as per the say of those persons. Panchnama of scene of offence is produced at Exh. 12. The scene of offence was shown by PW-2 Narvat. The panchnama denotes that the surface of the land being hard, there was no marks of scuffle but the crop of tuvar was standing, which was of about 7 feet height. On the northern side of the scene of offence, there was a pavement in the direction of east to west. It appears that the scene of offence panchnama was admitted by the defence and, therefore, was exhibited. Prosecution examined Dr. Mohite Akbarali Maksud as PW-6 at Exh.13. According to him on 13.12.1996 at about 3.45 in the afternoon, he has examined the prosecutrix who had been to hospital with police yadi. She had old abrasion injuries on the back of the shoulder which were as old as five to six days. The other examination was carried by Dr. J.M. Shah, Gynaecologist, Civil Hospital, Godhra. Accordingly, there was no injuries on the private parts

of the prosecutrix. The certificate is produced at Exh.14. The Doctor is examined about the simple injuries sustained, and in cross, the witness has admitted that the injuries were as old as 5 to 6 days. The prosecution examined Chandrasinh Bodabhai as PW-7 Exh.15. The witness was panch of panchnama Exh.11, by which the clothes of the prosecutrix were seized by the police. This panchnama is at Exh.16 which was drawn on 13.12.1996 between 9.15. to 9.45 hours. The prosecution examined Magnaliben Chimanbhai as PW-8 at Exh. 17. She was also a panch witness of panchnama of Exh.18 drawn by the police on 14.12.1996 at about 10.00 to 10.10.30 hours about the injuries on the body of the prosecutrix. The witness admitted the panchnama at Exh. 18. The prosecution examined Kokilaben as PW-9 at Exh.20. She happened to be the sister of the husband of the prosecutrix. She has stated that the accident took place about 4 years back. She stated that prosecutrix, who was the wife of her brother, in the afternoon came to the house and informed that the accused had raped her near the field of Veera Nana. She stated that PW-2 Narvat was informed by Shana Bijal that her mother was shouting and, therefore Narvat, son of Amriben, went to the scene of offence and thereafter PW-2 Narvat and prosecutrix came to the house after coming to the house of prosecutrix. According to this witness the complainant informed her about the story. She stated that on the next day, she went to Police Patel Madhubhai Mohanbhai and thereafter they went to Baria and telephonically informed her brother about the incident. Next day his brother came to their village. In his examination in cross, an attempt is made to show that the house of the wetness and the house of the prosecutrix are at same distance. She admitted in examination cross that she herself did not inform to his brother on telephone. She was standing outside and what message was conveyed to her brother on phone was not known to her. She denied the allegation that before Holi a quarrel had taken place between the family of the prosecutrix and the family of the appellant. At Exh.22, the prosecution examined PW-10 Himatsinh Gabhabhai Baria, PI and the then Investigating Officer. He stated at Exh. 22 that in December 1996 he was working as PSI Devgadh Police Station. Investigation in the present offence was entrusted to him by PSO Dhanjibhai Lunjabhai. He investigated and filed chargesheet. Accused was arrested. He also produced a letter written to Forensic Science Laboratory, which is at Exh. 23. The receipt of having received mudammal by Forensic Science Laboratory is placed at Exh.24. The analysis of the opinion in respect of mudammal of Forensic Science Laboratory, Surat, was produced at

Exhibits 25 and 26. Serological examination results were produced at Exh. 27. Witness in cross-examination admitted that in the field of Veera Nana, where the offence took place, residence of Kanti Saiba, Rupsinh Saiba, Bugha Saiba and Beekha Saiba were situated. At the time, when the incident took place, they were staying in their houses. He admitted that the shouts from the place of incident could be heard by them. He admitted that no statement under Section 161 was recorded of any of the persons residing in the field of Veera Nana. He was asked about whether the clothes of the accused appellant were seized which witness denied. He denied the allegation that he had not recorded the statement of the witness as per the say of the witnesses.

6. After this prosecution evidence was recorded, the accused were asked to explain about the prosecution evidence. The case of the accused in his statement under Section 313 of the Criminal Procedure Code is of total denial. So far as the result of the Serological Department of Forensic Science Laboratory is concerned vide Exhibits 26 and 27, samples No. 3, 6 & 8 were found as "not conclusive" while the blood group of prosecutrix and the accused is of "A". Sample No. 7 was the blood of the accused and group was identified to be "A" while on samples No. 1 and 2 clothes of the prosecutrix, group "A" was identified.

7. Having gone through carefully the prosecution evidence oral as well as documentary evidence, learned Advocate Mr. Patel urged on behalf of the appellant and attacked the prosecution case on probability. It was urged that it has come in evidence that near to the scene of offence, at least four families were residing. According to learned Advocate, PW-2 Narvat, PW-1 Amriben as well as Investigating Officer have admitted that four families as named by them in the evidence were residing in the field of Nana Veera, and their houses were open during the period the incident took place, however, no statement of any of them was recorded residing in the field of Veera Nana. It was urged that it is not the prosecution case that on hearing shouts from the prosecutrix any of the persons from those four houses came to the scene of offence, which would according to learned Advocate for the appellant is not ordinary nature of human conduct. It was urged that as admitted by the Investigating Officer, the statement of none of the residents of these houses has been recorded by him. It is urged that the prosecution story about offence having been committed by the appellant is highly improbable. It was urged that this is more so because prosecutrix in her

examination in cross admitted that she was injured in the back during the commission of the offence, while Dr. Mohite Akbarali Maksud, PW-6 Exh. 14 categorically states that these injuries were as old as four to five days, and hence according to learned Advocate for the appellant the story of the prosecutrix cannot be believed. It is further urged on probability that the witnesses do not disclose the distance between the house and the scene of offence and in these circumstances the story as to Shana Bijal ran to the house of the prosecutrix informed PW-2 Narvat who came to the incident and saw the accused at the scene of offence is highly improbable. According to learned Advocate for the appellant, witness Shana Bijal is very important eye witness to the incident and independent witness. The prosecution, according to learned Advocate for the appellant, has chosen not to examine him which damages the story of the prosecution on probability. Learned Advocate also argued that it was the allegation of the defence that there was previous enmity between the appellant and family of the prosecutrix and the husband of the prosecutrix and the appellant was working as labourer. The attention of this Court was drawn to the deposition of PW-5 Exh.10 Dhanjibhai Lunjabhai, PW-3 Exh.8 Mathurbhai Mohanbhai, Police Patel and PW-4 Exh.9 Maganbhai Bulabhai, husband of the prosecutrix, wherein they stated that before filing of the complaint, the residents of the village were asked to take up the matter. This fact is also, according to learned Advocate for the appellant, confirmed by prosecutrix. It was, therefore, argued that when there is positive evidence of the witnesses that the matter could not be finalized by village people, the complaint came to be lodged, denotes that there was something fishy about the incident, and that the evidence of prosecutrix was tutored by which the appellant is entitled to benefit of doubt. It was urged that again more so because PW-5 Exh.10 Dhanjibhai Lunjabhai, Police Station Officer, who recorded the complaint, in examination in cross, admitted that he recorded the complaint as per the say of other 4/5 persons, who accompanied the prosecutrix at the Police Station. It was finally urged that PW-2 Narvat is a child witness and it was very easy to tutor PW-2. It was urged that the case of the prosecution or recording of the evidence is found with above said incurable defects, the accused was required to be acquitted at least on benefit of doubt. Alternatively, it was urged that the sentence for the reasons mentioned in the judgment be reduced to the extent of already undergone, which approximately comes to about 3 years and 9 to 10 months.

11. On the other hand, learned APP Mrs. Manisha L. Shah, on behalf of the respondent State, urged that the prosecutrix is rustic, illiterate and residing in most backward area of the country. Her evidence is required to be appreciated having regard to her social situation. It has not come in the evidence that the prosecutrix was of a woman of easy virtue nor the case of consent was pleaded by the defence. There are no contradictions or major discrepancies found from the evidence of the prosecutrix so as to render her evidence not creditworthy. The delay in filing the FIR has been explained in the evidence that an attempt was made to persuade the accused by the village people. There is nothing in the evidence of PW-2, according to APP, which renders his evidence unreliable. The evidence of PW-2 according to APP appears to be quite natural and inspires confidence. Learned APP relied upon the decision of the Apex Court in the matter of BHARWADA BHOGINBHAI HIRJIBHAI vs. STATE OF GUJARAT, reported in AIR 1983 SC 753; in the matter of STATE OF RAJASTHAN vs. OM PRAKASH, reported in (2002) 5 SCC 745 and in the matter of STATE OF ORISSA vs. THAKARA BESRA AND ANR., reported in (2002) 9 SCC 86. It was urged that the Appeal deserves to be dismissed.

12. Considering the rival contentions and on careful scanning of the evidence, it transpires that, the testimony of the prosecutrix inspires confidence. To appreciate the testimony of victim, in case of sexual offences, unless there are compelling circumstances, which necessitates looking for the corroboration of a statement, the court should not find any difficulty to act on testimony of prosecutrix alone, to convict the accused where the deposition of prosecutrix inspires confidence and it is found reliable. To discredit the testimony of the prosecutrix on trivial grounds would amount to add insult to the injury already caused to her. There is no reason that the say of a woman who complains about rape should be viewed with doubt, disbelieve or suspicion unless a gross adverse circumstances are brought by the defence on which any person of reasonable prudence would tend to rely. There cannot be therefore a requirement of law that there should be corroboration of a statement of prosecutrix. This is more so, having regard to social background of this country and the situation of females, it cannot be believed that the prosecutrix would concoct a false case of sexual assault against the accused, which would stand a reputation lower in the society nor it could be believed that the prosecutrix would allow the real culprit to go scot-free and fabricate a false case against the accused. The rape is a crime destroys entire psychology of a woman and

pushes her into deep emotional cries. We all are aware that when the fact of rape having been committed on a woman is known to the society all would look upon her with contempt and, hence, the version of prosecutrix in such offences cannot be brushed aside lightly, and corroborative evidence is not an imperative component of judicial prudence in every case of rape, where victim is subjected to sexual assault and is not an accomplice to the crime, but is a victim of another person's lust, and it would be improper, unrealistic and undesirable to test her evidence with a certain amount of suspicion and seek corroboration when judicial prudence would not so demand. In the same way, justice cannot be made casualty in the name of minor contradictions either in the evidence of the prosecution or defects in the investigation at the hands of the Investigating Agency. If judicial conscience is satisfied as to the credibility of the deposition and the say of the prosecutrix, then a fossil formula of insisting upon corroboration to the say of the prosecutrix would be unnecessary impediment in dispensation of justice.

13. In the present case, the prosecutrix is an illiterate, rustic, residing in most backward area of this country, and her evidence is required to be appreciated with this background. The prosecutrix is consistent in her deposition and corroborates what she stated before the police in complaint at Exh.8. She is further corroborated by her own son PW-2 Exh.7 Narvat Magan. Nothing could be shown by the defence as to why the say of the prosecutrix, as supported by PW-7 Narvat, should not be believed by the Court. The contention raised on behalf of the appellant about probability of the case must not gain any ground in favour of the accused. When we appreciate the say of the witness, who is victim of sexual assault, reality of life and social structure of her society must be taken into consideration. In *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat*, reported in AIR 1983 SC 753; in the matter of *State of Punjab vs. Gurmit Singh and Others*, reported in 1996 (2) SCC 384 and in the matter of *Karnel Singh vs. State of M.P.*, reported in AIR 1995 SC 2472, the Apex Court has laid down guidance for appreciating the evidence of prosecutrix. In the first place, it is very difficult to believe that the prosecutrix falsely implicate the accused in such a crime in which her reputation and chastely is likely to be affected. Either from the evidence of the prosecution nor otherwise, the defence could show any probability of accused having roped falsely in this heinous crime for any malicious reasons. The evidence of prosecutrix can be accepted

even without corroboration in this case though there is supporting evidence PW-7 Narvat. Neither contradictions or discrepancies to disbelieve these two witnesses could be brought about nor much importance cannot be given to minor discrepancies, which do not go to the root of the matter and shake the basic version of the witnesses.

14. It has been vehemently advanced that Shana Bijal who heard the shouts of prosecutrix and called for PW-7 Narvat has not been examined by the prosecution as a witness. It is very difficult to believe that only because Shana Bijal is not examined, the say of the prosecutrix which otherwise inspires confidence cannot be believed. The evidence of prosecutrix in this case needs no corroboration. Examining Shana Bijal is totally insignificant. Secondly, Shana Bijal, as per the prosecution story, was not an eye witness. At the most it could be said that she was a supporting witness, who has called PW-7 Narvat and informed that her mother was shouting in the field of Nana Veera. This fact is amply proved by the evidence of prosecutrix as well as by Narvat. In these circumstances, non-examination of Shana Bijal as witness by the prosecution is not fatal.

15. It was thereafter vehemently urged that the prosecution establishes that some persons were staying in four houses situated in the field of Nana Veera. It was urged that, had the incident occurred, in all probabilities, persons residing in those houses, must have heard and reached to the scene of offence. Prosecution, however, according to learned Advocate for the appellant failed to examine any person from those houses. It was urged that, therefore, the version of the prosecution and the story appears to be improbable. To consider this contention of the appellant, it is suffice to say that the probability of the prosecution case in cases of sexual assault requires to be examined from the version of the prosecutrix. As said above, the rule of law is, if the evidence of prosecutrix is creditworthy, no corroboration is required. Once it is established that there are no loopholes in the say of the prosecutrix, the probability of the prosecution case alleged on account of corroboration by other witnesses, must be discarded. Corroboration is rule of prudence and not rule of law. The persons residing on those houses might have heard of those shouts and might have choosen not to reach to the scene of incident. They might have reached to the scene of offence, but have chosen to remain silent. It all depends upon the conduct of individual human being. No set conduct of human behaviour in certain circumstances can be inferred and

further even if such persons might have heard the shouts of the prosecutrix, the Investigating Officer might not taken care to record the statement. It is defect in the investigation, for which prosecutrix cannot be made to suffer. Be it noted that it is not the case of the defence that those witnesses were examined by the Investigating Agency and not examined by the prosecution because they did not support the prosecution case. There is no substance at all in this contention that the persons who are residing in the houses situated in the field where the offence took place have not been examined by the prosecution and, therefore, the version of prosecutrix of having been raped by the accused be not believed.

16. In the matter of STATE OF ORISSA vs. THAKARA BESRA AND ANOTHER, reported in (2002) SCC 86, the Apex Court ruled that non-examination of one of the neighbours who had rushed towards her house after a call by her is also not a serious infirmity in the prosecution case as he was not the witness of the commission of the offence. In that case the testimony of the prosecutrix appeared truthful and trustworthy and without any embellishments and exaggerations. In that case Apex Court found that prosecutrix was corroborated by her immediate and subsequent conduct as also by the medical evidence. In this case also Shana Bijal nor the persons residing in the houses situated in the field where the offence took place were alleged to be eye witnesses. On testing the probability of the prosecution case, the version of the prosecutrix is found creditworthy, and in these circumstances, non-examination of either of Shana Bijal or residents of the houses situated in the field where the offence took place, is not fatal to the prosecution case. The evidence which is recorded by the prosecution is required to be examined on touchstone of its truthfulness. When it is found that the evidence which is recorded is truthful, examination of this witness and that witness loses its importance in criminal trial and these are principles laid down by the Apex Court to appreciate evidence in criminal trials.

17. In the matter of KRISHNA MOCHI AND OTHERS vs. STATE OF BIHAR, reported in (2002) 6 SCc 81, with reference to appreciation of evidence and the present state of affairs, the Supreme Court observed that in recent times there is a sharp decline of ethical values in public life even in developed countries much less a developing one, like ours, where the ratio of decline is higher. Even in ordinary cases, witnesses are not inclined to depose or their evidence is not found to be

credible by courts for manifold reasons. Such circumstances are also in India where the witness is not inclined to depose because in the prevailing social structure he wants to remain indifferent. The court while appreciating the case should not lose sight of those realities of life and cannot afford to take an unrealistic approach by sitting in an ivory tower. It is always easy to pass an order of acquittal on the basis of minor points raised in the case by a short judgment so as to achieve the yardstick of disposal. The discrepancies which do not affect the core of prosecution case, must not weigh with the court.

18. In the case of *INDER SINGH AND ANR. vs. THE STATE (DELHI ADMINISTRATION)*, reported in (1978) 4 SCC 161, the Apex Court observed that proof beyond reasonable doubt is the guideline, not a fetish and guilty men cannot get away with it because truth suffers from infirmity when projected through some human processes. Therefore, the version of the prosecutrix is found creditworthy, the minor discrepancies projected to show probability of the prosecution case must be ignored. Keeping in mind realistic manners of appreciation of evidence, by no stretch of reasoning, it could be said that the prosecution was not able to prove the case beyond reasonable doubt through the testimony of the prosecutrix and through the testimony of PW-7 Narvat Magan.

19. On the contrary, the prosecution case finds support from the fact that a panch was gathered of the residents of the village to resolve the issue. This is not the infirmity in a prosecution case. It has come in evidence that the accused ran away and did not present himself before the panch and next day the complaint came to be filed. These circumstances do not necessitate inference that some amount was to be extorted from the accused and which was not given, the complaint came to be filed and for that reason, the complainant was tempted, instigated and tutored to file complaint. On the contrary, it appears that to save further injuries to the reputation of the prosecutrix, panch was gathered to scold the accused. Above all, the gathering of panch in this respect and evidence to that effect necessarily indicate that the offence had taken place, in which the accused was involved, more so when, as said above, nothing could be brought to the notice of the court that there was enmity to the extreme extent, and the surrounding circumstances were so grave in nature, which compelled a woman having three children to file a false complaint against a person for sexual assault and rape.

20. Initially, in the examination-in-chief PW-5 Exh.10 deposed that complainant gave the complaint and he recorded the same as per the say of prosecutrix. In cross a question was put to this witness that some other persons accompanied with the prosecutrix upto the Police Station and Police Station Officer Dhanjibhai Lunjabhai stated in the examination in cross that the persons accompanied with the prosecutrix dictated the complaint. The contention is that the prosecutrix was a tutored witness as per the say of PW-5 PSO. This fact cannot be appreciated in isolation. The evidence of a witness is always required to be appreciated as a whole. In criminal trial prosecution faces so many hurdles. Even expert and seasoned witnesses having not correctly understood the question put by skilfully cross-examiner may reply differently. Therefore, a sentence from here and a sentence from there, from the deposition of the witness cannot be considered and appreciated in isolation. In examination in chief, this very witness in categorical terms stated that the complainant prosecutrix dictated the complaint and that he recorded the complaint verbatim as dictated by the prosecutrix. This version of this witness PW-5 is corroborated and fully supported by the prosecutrix. Not only that PW-5 PSO also deposed that on the complaint as dictated by the complainant a thumb impression was ascribed by her in the presence of him. This was again corroborated by husband of prosecutrix PW-4 who is examined at Exh.9. This is the weighty evidence suggesting that the complaint was dictated by the complainant only and the say of PW-5 Police Station Officer in examination in cross by one sentence that the complaint was dictated by other persons must be ignored. On appreciation of evidence, at the best it can be said to be minor discrepancies. When a fact is proved by weighty evidence, it is not necessary for the court to disbelieve that evidence and to rely upon a sentence in the cross-examination as contended. So far as the injuries to the prosecutrix is concerned, it is contended that Dr.Mohit Maksud, PW-6 Exh.13 stated that the injuries were as old as four to five days from the date of examination. It was contended that the prosecutrix in her cross-examination admitted that she received injuries on her back. Having considered the prosecution case overall, as said above, this contention on appellant side is trivial and insignificant because the opinion of Doctor about the age of the injury, though the doctor being an expert, cannot be considered to be a conclusive evidence. In medical science, the age of injury may be examined and approximate tenure of time can be ascertained. This opinion can never be exact and

allows concession of some time upward and downward. In the facts and circumstances as narrated above, it would be doing injustice to the prosecution to disbelieve the evidence of prosecution.

20. Lastly, and in the alternative, a contention for reduction of sentence was advanced. But, for the reasons stated by the Trial Court, the Trial Court in its discretion has reduced the sentence and awarded less than the minimum. The reduction of sentence still further would not be proper in the circumstances of this case.

21. In view of the above discussion, and for the reasons aforesaid, the Appeal stands dismissed.

(J.R. Vora, J.)

p.n.nair