

**IN THE HIGH COURT FOR THE STATE OF TELANGANA**

**AT: HYDERABAD**

**CORAM:**

**\* HON'BLE SRI JUSTICE K. LAKSHMAN**

**AND**

**HON'BLE SMT. JUSTICE P. SREE SUDHA**

**+ CRIMINAL APPEAL No.493 OF 2014**

**% Delivered on: 06-02-2024**

**Between:**

# Lyadella Sanjeev @ Venkatesh & another .. Appellants

Vs.

\$ The State of Telangana .. Respondent

! For Appellants : Mr.A. Prabhakar Rao

^ For Respondent : Mr. Muthyala Muralidhar  
Ld. Addl. Public Prosecutor

< Gist :

> Head Note :

? Cases Referred :

- |                      |  |
|----------------------|--|
| 1. (2000) 5 SCC 197  | 14. (2010) 2 SCC 9                                 |
| 2. AIR 1987 SC 1080  | 15. (2011) 7 SCC 130                               |
| 3. (2002) 9 SCC 86   | 16. (2012) 8 SCC 21                                |
| 4. (1996) 1 SCC 490  | 17. 2020 SCC OnLine Guj. 114                       |
| 5. (1996) 2 SCC 384  | 18. SMW (Cri.) No.04 of 2019 decided on 18.12.2019 |
| 6. MANU/TL/0331/2020 | 19. (2009) 16 SCC 69                               |
| 7. (1983) 3 SCC 217  | 20. (2004) 1 SCC 421                               |
| 8. (2018) 17 SCC 658 | 21. (2013) 14 SCC 643                              |
| 9. (2020) 10 SCC 573 | 22. 2006 AIR SCW 6424                              |
| 10. (2010) 8 SCC 191 | 23. AIR 1977 SC 1307                               |
| 11. (2005) 3 SCC 594 | 24. 2001 (2) ALD (Cri.) 706 (SC)                   |
| 12. (1996) 2 SCC 384 | 25. (2019) 2 SCC 703                               |
| 13. (1993) 2 SCC 622 |  |

**HON'BLE SRI JUSTICE K. LAKSHMAN**  
**AND**  
**HON'BLE SMT. JUSTICE P. SREE SUDHA**  
**CRIMINAL APPEAL No.493 OF 2014**

**JUDGMENT:** (Per Hon'ble Sri Justice K. Lakshman)

Heard Mr. A. Prabhakar Rao, learned counsel for appellants - accused Nos.1 and 2, and Mr. Muthyala Muralidhar, learned Additional Public Prosecutor appearing on behalf of the respondent.

2. This appeal is filed challenging the judgment dated 28.03.2014 in Special S.C. No.3 of 2013 passed by learned Special Judge for Trial of Cases under Protection of Children from Sexual Offences Act - cum - I Additional Sessions Judge, Warangal (for short 'trial Court').

3. The appellants herein are arraigned accused Nos.1 and 2 in the aforesaid Special S.C. No.3 of 2013, respectively. Therefore, for the sake of convenience, the parties will be hereinafter referred to as they were arraigned in Special S.C. No.3 of 2013.

4. Vide the aforesaid judgment, learned Sessions Judge convicted the appellants - accused Nos.1 and 2 for the offences punishable under Sections - 366, 376D and 506 read with 34 of IPC

[Criminal Law (Amendment) Act, 2013] and Section - 5 (g) read with 6 of the Protection of Children from Sexual Offences Act, 2012 and accordingly imposed life imprisonment on them and other punishments mentioned therein.

5. The case of the prosecution is as follows:

- i) PW.1, victim girl, aged 15 years and complainant, while PWs.2 and 3 are her parents and PW.4 is her sister-in-law. They are resident of Nagaram Village, whereas accused Nos.1 and 2 also hail from the very same village. Accused No.1 is the son-in-law of PW.5, maternal aunt of the victim girl and related to victim girl i.e., brother-in-law;
- ii) Accused Nos.1 and 2 kept an evil eye over PW.1- victim girl and waiting for a chance to fulfill their sexual lust over her;
- iii) On 14.03.2013, PW.2 and LW.4, brother of the victim girl, went to Vemulawada Temple leaving the victim girl and her father (PW.3) in the house. Accused came to know the same and taken an opportunity to fulfill their desire;

- iv) Accordingly, on 15.03.2023 night at about 22:00 hours, PW.3 went to agricultural fields for watering so saying the victim girl to sleep in her Aunt's house (PW.5). The victim girl went to the house of PW.5 and while she was sleeping, taking the same as advantage on the same day night i.e., 15/16.03.2013 at about 0100 hours, accused Nos.1 and 2 went to PW.3, offered him a quarter bottle and made him consume liquor heavily and sent him to his agricultural field;
- v) Later, accused Nos.1 and 2 went to PW.5's house on their motorcycle bearing registration No.AP 36AF 7039 (Splendor Plus), woke up her and informed that the father of the victim girl had consumed liquor heavily and is making nuisance by consuming liquor and said that they are not finding their house keys;
- vi) Accordingly, accused Nos.1 and 2 told lies and said PW.5 to send the victim girl with them and took her to their house on their motorcycle, made her to open the lock of their house, took her into their house and

threatened her to kill if she discloses the matter to anybody;

- vii) Accused Nos.1 and 2 gagged clothes in her mouth, laid her on the cot, torn her Punjabi dress, forcibly removed her underwear and accused No.1 committed rape on her. While accused No.1 was raping her, accused No.2 stood outside of the house watching arrival of anybody. Then, accused No.1 said his friend, accused No.2 to rape the minor girl. Accordingly, accused No.2 also committed rape on the victim girl;
- viii) After committing rape on PW.1, accused Nos.1 and 2 threatened her to kill with dire consequences if she complains the matter to anybody and left away from their house;
- ix) On the same day, when PW.3 came and slept in the house in late night hours, she did not inform the incident to him;
- x) On 17.03.2013, when PW.2, LW.4 and PW.6, mother, brother and sister-in-law, respectively, returned from Vemulawada Temple, PW.1 informed them about the rape committed by the accused on her. On that, her

family members brought PW.1 to the police station and lodged Ex.P1 - complaint, and the same was registered as a case in Crime No.41 of 2013 under Sections - 376 (g) and 506 read with 34 of IPC by Hasanparthy Police Station against accused Nos.1 and 2 herein, and the Investigating Officer took up investigation;

- xi) During investigation, the police examined the witnesses, recorded their statements, also collected the birth certificate of the victim girl and it discloses that the victim girl is a minor and her age was 15 years;
- xii) PW.10 - Medical Officer examined the PW.1, preserved the vaginal swabs, smears and pubic hair etc., for examination and report and thereafter FSL report was received which discloses that 'there is evidence of recent intercourse';
- xiii) Thereafter, PW.11 examined accused Nos.1 and 2 and issued Exs.A11 and 12 - Potency Certificates opining that 'there is nothing to suggest that both the accused are not capable of doing/performing sexual intercourse'; and

xiv) After completion of investigation and collecting the medical evidence, the police filed charge sheet and, thereafter, it was committed to the Sessions Judge vide Special S.C. No.3 of 2013.

6. The learned Sessions Judge after framing charges for the offences proceeded with trial. During trial, PWs.1 to 13 were examined and Exs.P1 to P14 were marked and so also MOs.1 to 4. No evidence either oral or documentary was let in on behalf of the accused.

7. PW.1 is the victim girl besides being complainant; PW.2 is her mother and PW.3 is her father; PW.4 is her sister-in-law, while PW.5 is her Aunt, sister of PW.1's mother; PWs.6 and 7 are *panch* witnesses of scene observation *panchanama*; PW.8 is the *panch* witness for seizure of crime vehicle; PW.9 is the Head Master, who issued date of birth certificate of PW.1; PW.10 is the Medical Officer who examined the victim girl; PW.11 is the Professor who issued potency certificates (Exs.P11 and P12) in respect of accused Nos.1 and 2; PW.12 is the Inspector of Police, who registered the crime,

while PW.13 is the Investigating Officer who conducted investigation and laid charge sheet.

8. The learned Sessions Judge after hearing both sides, recorded conviction against both the accused and imposed life imprisonment on them. Challenging the same, both the accused preferred the present appeal.

9. Mr. A. Prabhakar Rao, learned counsel for the appellants - accused Nos.1 and 2 contended as follows:

- i) There are serious contradictions in the version of the victim (PW.1), more particularly, to that of Ex.P1 - complaint and her deposition;
- ii) There is delay of two (02) days in lodging Ex.P1 - complaint;
- iii) Colour of underwear (MO.2) was not mentioned;
- iv) Investigating officer failed to conduct investigation with regard to the date of birth of the victim;
- v) Relying on the victim deposition, the trial Court cannot record conviction against the appellants herein;



- vi) The trial Court failed to consider the contentions raised by the appellants that there are disputes between the accused and PW.3, father of the victim, with regard to the amount borrowed by him from PW.5 which fact was also admitted by PW.3 during his cross-examination;
- vii) There are serious contradictions in the version of PW.3;
- viii) As per medical evidence, there is no injury on the victim;
- ix) Medical evidence is not supporting the prosecution case;
- x) The version of the prosecution that both the accused committed rape on the victim is highly improbable;
- xi) There are many houses nearby or abutting to the house of PW.1 i.e., scene of offence. According to PW.1, the victim, during assault on her, she raised cries and tried to escape, but accused forcibly committed rape on her. Even then, the prosecution did not examine any of the neighbours;
- xii) All the prosecution witnesses are interested witnesses;
- xiii) PW.5, crucial witness, did not support the prosecution case;

- xiv) As per the evidence of PW.10, the doctor, who examined the victim girl, categorically admitted that there is no hard and fast rule to conclude of sexual intercourse only when two fingers admits;
- xv) In Ex.P8 - Preliminary report, there is no mention about collection of pubic hair. The last menstrual period of the victim is mentioned as 28.02.2013, but it is recorded as 28.11.2013. Absence of hymen may be due to several reasons. But, total absence of hymen is not possible due to other reasons other than sexual intercourse. Therefore, medical evidence is not supported the prosecution case;
- xvi) Without considering the said aspects, the trial Court convicted the appellants for the aforesaid offences; and
- xvii) The accused are in jail from 28.03.2014; and

10. On the other hand, learned Additional Public Prosecutor contended as follows:

- i) Prosecution has examined the victim girl (PW.1), their parents - PWs.2 and 3 and sister-in-law - PW.4 and also PWs.6 and 7 - *panch* witnesses for scene of offence and *panchanama*, PW.8 - *panch* witness for seizure of crime

vehicle, PW.7 - Head Master of the School, who issued date of birth certificate of the victim, PW.10 - the doctor, who examined the victim; PW.11 - the doctor who conducted potency test and issued Exs.P11 and 12 - potency certificates and PWs.12 and 13 - Investigating Officers; and filed Exs.P5 - seizure *panchanama*, Ex.P6 date of birth certificate of the victim, Ex.P7 - admission extract of the victim, Ex.P8 - preliminary report of the doctor (PW.10) and Ex.P9 - final report of PW.10, Ex.P10 - FSL Report, Exs.P11 and 12 - potency certificates and Ex.P14 - copy of the letter of advice; and also marked MOs.1 to 4;

- ii) Victim girl specifically deposed about the entire incident;
- iii) In a matter like this, minor contradictions can be ignored;
- iv) PW.10, the doctor specifically opined that there was evidence of recent sexual intercourse on the victim;
- v) PW.9 is the Head Master of the School, who issued Ex.P6 - date of birth certificate and Ex.P7 - admission extract of PW.1;

- vi) The accused have taken advantage of loneliness off the victim and also habits of her father (PW.3) and committed rape on the victim;
- vii) The offences committed by the accused are grave and serious in nature; and
- viii) On consideration of the entire evidence, the trial Court convicted both the accused and there is no error in it;

**MINOR CONTRADICTIONS:**

11. It is the contention of learned counsel for the appellants - accused Nos.1 and 2 that there are serious contradictions in the version of the victim. In Ex.P1 - complaint, dated 17.03.2013, the victim (PW.1) specifically stated about the incident occurred on 15/16.03.2013 at about 1.00 AM. She has also specifically stated that accused No.1 is the son-in-law of her maternal aunt (PW.5) and accused No.2 is distant relative. They have made PW.5 believe that PW.3 was in drunken condition, that they sought key. Therefore, PW.5 being the mother-in-law of accused No.1 believed their version and sent the victim along with accused on the motorcycle. They have committed rape on her one after other. But, the victim in her evidence deposed that on 15.03.2013 at about 10.00 P.M., she and her father

had dinner and they were sleeping in their house. At about 10.00 P.M., accused Nos.1 and 2 came to their house and woke them up. Accused Nos.1 and 2 represented her father that the crop in their fields was being drying up and requested him to go to the agricultural well for watering the fields. While leaving so, her father asked the victim to stay in the house of PW.5. Her father dropped her at the house of PW.5 and left to the fields along with accused Nos.1 and 2. At about 1.00 A.M., PW.5 woke her up and informed her that her father was vomiting at the house and that the house keys were with her and requested her to go to her house. However, she deposed that she went to her house along with accused Nos.1 and 2 on the motorcycle. Her father was not there. Accused No.2 opened the doors, she entered into the house. Thereafter, they have closed the doors, threatened her with dire consequences. Accused No.1 dragged her into the room and forcibly committed rape on her. Accused No.2 was staying in another room. After committing rape by accused No.1, accused No.2 also committed rape on her. Thus, both the accused (accused Nos.1 and 2) had committed rape on the victim (PW.1).

i) It is not in dispute that the mother of the victim and other family members went to Vemulawada for pilgrimage. However,

during cross-examination, PW.1 has admitted that due to fear she did not inform the incident to anybody. But she was suffering from the incident. She went to the school to attend the examination but while attending the examination, she was weeping due to the incident and when the teacher asked her she informed him that she was afraid of going to the house, but he advised her to go to the house of her aunt, namely Rajitha. However, the police have not recorded the statement of the said Rajitha, nor examined her during trial.

ii) Thus, there are contradictions with regard to the accused taking the father of the victim i.e., PW.3 to the fields and vomiting etc. According to this Court, the said contradictions are minor in nature. However, PW.1 - victim specifically deposed about other facts including the accused committing rape on her. Therefore, the appellants cannot take advantage of the said minor contradictors in a matter like this.

**ABSENCE OF INJURY:**

12. It is the specific contention of learned counsel for the appellants that the prosecution failed to prove the offence by producing cogent evidence. Referring to the deposition of PW.10, the doctor, who treated the victim and Exs.P8 to P10, he would submit

that there were no external injuries. Therefore, there was no sexual assault on the victim. As discussed above, the victim specifically deposed the entire incident. PW.10 opined that there is evidence of recent sexual assault.

i) During cross-examination, PW.1 has admitted that she did not sustain any bleeding injuries except impact of pressing of bangles to her hands.

ii) In **Joseph v. State of Kerala**<sup>1</sup>, the Apex Court held as under:

15. “...Injuries on the body is not always a must or sine qua non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to brutal rape and forced sexual intercourse...”

iii) In **Balwant Singh v. State of Punjab**<sup>2</sup>, the Apex Court held as under:

15. “...As there was no such injury, it should be held that there was no such incident as alleged. This argument, in our opinion, is devoid of merit. It cannot be said that whenever resistance is

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<sup>1</sup>. (2000) 5 SCC 197

<sup>2</sup>. AIR 1987 SC 1080

offered there must be some injury on the body of the victim...” (emphasis added)

iv) It is relevant to note that in **State of Orissa v. Thakara Besra**<sup>3</sup>, the Apex Court held as under:

“This Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case...”

v) In **Bodhisattwa Gautam v. Subhra Chakraborty**<sup>4</sup>, the Apex Court observed that rape is a crime not only against a woman but against society. It was held in paragraph No.10 of the Report that:

“10.Rape is thus not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is only by her sheer will-power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the

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<sup>3</sup>. (2002) 9 SCC 86

<sup>4</sup>. (1996) 1 SCC 490



most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects.”

vi) About a month later from the above judgement in **Bodhisattwa Gautam (supra)**, the Apex Court observed in **State of Punjab v. Gurmit Singh**<sup>5</sup> as under:

“We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.”

vii) A Division Bench of this High Court in **Sama Thirupataiah v. The State of Telangana**<sup>6</sup> has drawn attention

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<sup>5</sup>. (1996) 2 SCC 384

<sup>6</sup>. MANU/TL/0331/2020

towards the psychological impact of the sexual assault on children at a young age, and held as under:

“12. It will be useful to quote from the research papers/articles published by the child psychologists and experts about the impact of trauma on account of sexual abuse.

"The trauma that results from sexual abuse is a syndrome that affects not just the victim and their family, but all of society. Because sexual abuse, molestation, and rape are such shame-filled events, our culture tends to suppress information about them." (Trauma: Childhood Sexual Abuse by Susanne Babbel MFT, PhD., Somatic Psychology). Posted on [psychologytoday.com](http://psychologytoday.com) on 13th March, 2013 and updated in the website in the year 2020.

Consequences:

"Sexual assault in childhood or adulthood impacts not only the victim, but also the victim's family and friends as well as society as a whole. In this regard, sexual assault is a public health problem that concerns everyone. Sexual assault has numerous potential consequences that can last a

lifetime and span generations, which serious adverse effects on health, education, employment, crime, and the economic wellbeing of individuals, families, communities and societies."

(Understanding sexual assault by INSPQ, Institute National de SantePublique du Quebec (French: National Public Health Institute of Quebec; Canada) ... Available in the website-mobile.inspq.ac.ca of INSPQ in 2020.)”

Therefore, the contention of learned counsel for the appellants that there is no sexual assault on the victim and prosecution failed to prove the offence by providing cogent evidence is untenable.

**DELAY IN LODGING REPORT WITH POLICE:**

13. Admittedly, there is delay of two (02) days in giving the report with police. According to PW.1, the incident had occurred on 15/16.03.2013 at about 1.00 A.M., whereas she gave report to the police on 17.03.2013 at 9.00 P.M. It is her contention that her mother and other family members went to Vemulawada on pilgrimage. Her father was not well. Therefore, she could not give report to the police immediately and could not inform her father immediately. However, after her mother, brother and sister-in-law returning from

Vemulawada, she informed the said incident to her mother. She has also informed the said incident to her teacher, who advised her to go to her maternal aunt's house. However, the police have not examined and recorded the statement of the said Mr. Narayana Reddy, the teacher of the victim and Rajitha, her maternal aunt. Their non-examination is not fatal to the case of the prosecution. Thus, PW.1 - victim explained the delay in giving the report to the police. In a matter like this, more particularly, when the victim is a minor girl, the offence is grave and serious in nature, the delay of two (02) days is not fatal to the prosecution case.

i) It is relevant to note that in **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**<sup>7</sup>, the Apex Court has categorized reasons for non-reporting sexual offences in Indian settings and those are as under :

“(1) 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;  
(2) She would be conscious of the danger of being ostracised by the Society or being looked down by

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<sup>7</sup>. (1983) 3 SCC 217

the society including by her own family members, relatives, friends, and neighbours;

(3) She would have to brave the whole world;

(4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered;

(5) If she is unmarried, she would apprehend that it would be, difficult to secure an alliance with a suitable match from a respectable or an acceptable family;

(6) It would almost inevitably and almost invariably result in mental torture and suffering to herself;

(7) The fear of being taunted by others will always haunt her;

(8) She would feel extremely embarrassed in relating the incident to others being over powered by feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo;

(9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy;

(10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of

social stigma on the family name and family honour;

(11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence;

(12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.”

ii) As discussed above, in the present case, the mother, brother and sister-in-law of the victim went to Vemulawada on pilgrimage, her father alone was present. After her mother, brother and sister-in-law returned from pilgrimage, PW.1, the victim, gave a report with the police on 17.03.2013 at 21:00 hours. Therefore, the contention of learned counsel for the appellants that there is delay in lodging the report with the police cannot be accepted and it is not fatal to the case of prosecution.

**COMMITTING RAPE ON THE VICTIM BY BOTH THE ACCUSED IS HIGHLY IMPROBABLE:**

14. It is the further contention of learned counsel for the appellants that version of the prosecution that both the accused committed rape on the victim is highly improbable since there are

houses nearby the house of the victim - PW.1, and according to PW.1, she raised cries, even then, prosecution did not examine any of the neighbours of PW.1.

i) In Ex.P1 - report as well as deposition of PW.1, the victim specifically deposed about the accused committing rape on her one after other. According to her, accused No.1 committed rape on her first by dragging her into the room and thereafter accused No.2 committed rape on her. Accused No.1 is the son-in-law of PW.5, her maternal aunt while accused No.2 is her agnate. Therefore, PW.5 having sent PW.1 - victim along with the accused on their motorcycle to her house and gave statement (Ex.P2) before the police under Section - 161 of the Cr.P.C. But, PW.5 did not co-operate with the prosecution. She turned hostile. Just because PW.5 turned hostile, it is not fatal to the case of prosecution. In the light of the said specific evidence of the victim, the contention of learned counsel for the appellants that the version of prosecution that both the accused committed rape on the victim girl is highly improbable cannot be accepted.

**DETERMINATION OF AGE OF THE VICTIM GIRL:**

15. According to learned counsel for the appellants, the Investigating Officer did not conduct investigation properly to determine the age of the victim girl. The prosecution did not examine relevant witness and did not produce any cogent evidence in proof of the age of the victim girl. Without considering the said aspects, the trial Court convicted the appellants for the offence punishable under Section - 5 (g) read with 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). PW.9 is the Head Master, ZPHS, Nagaram, where the victim girl studied up to 10<sup>th</sup> Class. The police recorded his statement. He deposed that the police came to him and requested to issue date of birth certificate. He has furnished Ex.P6 - date of birth certificate and Ex.P7 admission extract of PW.1. He has issued Exs.P6 and P7 on the basis of the admission register.

i) However, referring to his cross-examination, wherein he has admitted that the victim was admitted in their school in 6<sup>th</sup> Class and he was not the Head Master at that time, he did not verify whether the parents of PW.1 produced date of birth certificate at the time of her admission, learned counsel for the appellants would submit that



Exs.P6 and P7 were issued by PW.9 without verifying the record. But, perusal of Ex.P6 - date of birth certificate, dated 23.06.2010 issued by PW.9, the date of birth of the victim girl is mentioned as '11.03.1997'. Her admission number is mentioned as '3889'. In Ex.P7 - extract of Register of Admission, the name of the victim girl is mentioned at serial No.28 and admission number as '3889'. Her date of birth is mentioned as '11.03.1997'. However, according to learned counsel for the appellants, at serial No.27 in Ex.P7, 'Bandari Anusha' name is mentioned which is above the name of the victim girl and her date of birth is mentioned as '26.07.1995'. The victim name is 'Elukati Anusha'. There is some confusion with regard to the date of birth of both 'Bandari Anusha' and 'Elukati Anusha'. Even in the said admission register, the date of leaving of the victim is mentioned as 23.03.2013. There are corrections. Therefore, the same cannot be relied upon.

ii) As discussed above, PW.9 specifically deposed about issuance of Exs.P6 and P7 - date of birth certificate and extract of admission register. He issued Exs.P6 and P7 on the basis of the admission register. Even then, nothing contra was elicited from him. There is no confusion in the name of the victim. Surnames of the

victim and other Anusha are different i.e., 'Elukati Anusha' and 'Bandari Anusha'. The father's name are also different i.e., PW.1's father name is 'Lachaiah', while the father's name of Bandari Anusha is 'B. Sadaiah'. In fact, the appellants are trying to create confusion and taking advantage of the same. The admission number, serial number, name and surname etc., are specifically mentioned in Ex.P6 and Ex.P7.

iii) In **State of Madhya Pradesh v. Preetam**<sup>8</sup>, the Apex Court examined similar issue and observed as follows:

"11. ... In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of Headmaster, Bhaulal (PW 8), and the school certificate produced by him i.e. Ext. P/13-A, age of the victim has to be taken as 12 years at the time of occurrence."

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<sup>8</sup>. (2018) 17 SCC 658

iv) As discussed above, to determine the age of the victim, prosecution has examined the Head Master of the School as PW.9 and also filed Exs.P6 and P7. Therefore, the contention of learned counsel for the appellants that the Investigating Officer did not conduct proper investigation to determine the age of the victim and that the prosecution failed to prove the age of the victim by producing cogent evidence cannot be accepted.

**CONVICTION CAN BE SOLELY ON THE TESTIMONY OF VICTIM:**

16. With regard to the contention of the appellants that except the evidence of PW.1 - victim girl, there is no other evidence which inspires confidence to convict the appellants and that conviction cannot be solely on the testimony of the victim.

i) In **Ganesan v. State**<sup>9</sup>, **Vijay v. State of M.P.**<sup>10</sup>, **State of U.P. v. Pappu**<sup>11</sup>, **State of Punjab v. Gurmit Singh**<sup>12</sup>, **State of H.P. v. Raghubir Singh**<sup>13</sup>, **Wahid Khan v. State of M.P.**<sup>14</sup>, **Krishan Kumar Malik v. State of Haryana**<sup>15</sup> and **Rai Sandeep v. State**

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<sup>9</sup>. (2020) 10 SCC 573

<sup>10</sup>. (2010) 8 SCC 191

<sup>11</sup>. (2005) 3 SCC 594

<sup>12</sup>. (1996) 2 SCC 384

<sup>13</sup>. (1993) 2 SCC 622

<sup>14</sup>. (2010) 2 SCC 9

<sup>15</sup>. (2011) 7 SCC 130

**(NCT of Delhi)**<sup>16</sup>, the Apex Court categorically held that there can be conviction on sole evidence of prosecutrix, and in case, the Court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases, amounts to adding insult to injury. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. There is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Thus, the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

ii) As discussed above, in the present case, the evidence of PW.1 - prosecutrix is supported by deposition of PW.10, the doctor, who issued Exs.P8 and P9 - preliminary and final reports and Ex.P10 -

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<sup>16</sup>. (2012) 8 SCC 21

FSL report. Therefore, the contention of learned counsel for the appellants that conviction cannot be recorded solely based on the evidence of PW.1 - victim is untenable.

**MEDICAL EVIDENCE:**

17. As discussed above, PW.1 - victim girl has specifically deposed about the incident and committing rape by both the accused one after other. The same is supported by PW.10, the doctor, who examined the victim girl and gave final opinion based on history and clinical examination and FSL report, and as per the same, there is evidence of recent sexual intercourse on the victim girl. The same is supported by Ex.P8 - preliminary report and Ex.P9 - final report. PW.10, the doctor, further stated that as per FSL report, the smears on glass slides contain human semen and spermatozoa. The pubic hair sent was detected as human hair. Ex.P10 is the FSL report furnished to him. However, during cross-examination, he has admitted that in Ex.P8, there is no mention about collecting the pubic hair. The last menstrual period of the victim is mentioned as 28.02.2013, but it is recorded as 28.11.2013. In the final report, the last menstrual period is as 28.11.2013. There is no hard and fast rule to conclude of sexual intercourse only when two fingers admit. Absence of hymen may be

due to several reasons. But, total absence of hymen is not possible due to other reasons other than sexual intercourse. Thus, PW.10 specifically deposed about the recent sexual intercourse on the victim girl. Exs.P11 and 12 are the potency certificates of accused Nos.1 and 2, and PW.11 is the doctor, who issued the same.

i) In **State of Gujarat v. Rameshchandra Ramabhai Panchal**<sup>17</sup>, a Division Bench of Gujarat High Court held as under:

“**26.** The two-finger test also known as the PV (Per Vaginal) refers to an intrusive physical examination of a woman's vagina to figure out the laxity of vaginal muscles and whether the hymen is distensible or not. In this, the doctor puts two fingers inside the woman's vagina and the ease with which the fingers penetrate her are assumed to be in direct proportion to her sexual experience. Thus, if the fingers slide in easily the woman is presumed to be sexually active and if the fingers fail to penetrate or find difficulty in penetrating, then it is presumed that she has her hymen intact, which is a proof of her being a virgin.

**27.** It is relevant to quote Section-146 of the Indian Evidence Act. It reads thus:—

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<sup>17</sup>. 2020 SCC OnLine Guj. 114

**146. Questions lawful in cross-examination.**—*When a witness is cross-examined, he may, in addition to the questions herein-before referred to, be asked any questions which tend—*

- (1) to test his veracity,
- (2) to discover who he is and what is his position in life, or
- (3) to shake his credit, by injuring his character, although the answer to such questions might tend directly or indirectly to criminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture: Provided that in a prosecution for rape or attempt to commit rape, it shall not be permissible to put questions in the cross-examination of the prosecutrix as to her general immoral character.

**28.** Despite the aforesaid proviso, the two-finger test leading to the formation of the medical opinion regarding consent allows the past sexual history of the victim to cause prejudice to her testimony.

**29.** The test itself is one of the most unscientific methods of examination used in the context of sexual assault and has no forensic value. Whether a survivor is habituated to sexual intercourse prior to the assault has absolutely no

bearing on whether she consented when the rape occurred. Section 155 of the Indian Evidence Act, does not allow a rape victim's credibility to be compromised on the ground that she is "of generally immoral character.

**30.** The two-finger test is unconstitutional. It violates the right of the victim to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot *ipso facto*, give rise to presumption of consent..."

18. With regard to the FSL report, as stated above, the Investigating Officer submitted MOs.1 to 3, consists of Punjabi dress (both the top and bottom), underwear, and three broken pieces of bangles. The testimony of the prosecution witness, P.W.1, the victim, is strongly substantiated by medical evidence, particularly the Forensic Science Laboratory (FSL) Report. The FSL Report conclusively established traces of spermatozoa on the examined slabs, providing concrete evidence that the victim had been subjected to sexual intercourse.



i) The Apex Court in **Re:Assessment of The Criminal Justice System in Response To Sexual Offences**<sup>18</sup> highlighted the importance of Forensic examinations. The relevant paragraph is extracted hereunder:

“13. Forensic examination and report play an important role during the investigation as well as trial for linking the culprit with the crime. With the advancement of the DNA science and its accuracy, the sampling for the purpose of Forensic examination and expeditious reports after due examination are vital to the just adjudication of the case. The sampling for the purpose of DNA test as well other forensic tests like forensic odontology is essential in cases relating to rape.”

19. The Forensic Science Laboratory (FSL) report stands as a testament to the prosecution's case, affirming the presence of blood stains on the lower portion of the Punjabi Dress and underwear. Additionally, traces of spermatozoa and semen were detected on the glass slides (Item No.5) and cotton swabs (Item No.6 and 7), providing evidence of a sexual encounter between the victim and the accused.

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<sup>18</sup>. SMW (Cri.) No.04 of 2019, decided on 18.12.2019

20. The Potency Certificates of both accused, admitted as Exs.P11 and P12, further corroborate the prosecution case. Notably, the FSL report, dispatched for examination on the 17.03.2013 and received on 18.03.2013 supports the prosecution case.

21. In the light of the aforesaid evidence, more particularly, Ex.P10 - FSL report, Ex.P14 - copy of letter of advice, Exs.P8 and 9 - preliminary and final reports issued by PW.10 - doctor, the contention of learned counsel for the appellants that the medical evidence did not support the prosecution to prove that there was sexual assault on the victim girl cannot be accepted.

**IMPLICATION OF ACCUSED IN FALSE CASE:**

22. As discussed above, PW.5 is the mother-in-law of accused No.1 and close relative of accused No.2. Therefore, she turned hostile. PW.3, father of the victim, admitted that he borrowed an amount of Rs.50,000/- from PW.5 for the marriage of his elder daughter. Except that, the accused did not elicit anything from PW.3 and so also from PW.2. Basing on the said admission that PW.3 borrowed an amount of Rs.50,000/- from PW.5, the appellants cannot claim that PWs.2 and 3 implicated both the accused in a false case.

Even according to PW.5, accused No.1 is her son-in-law and accused No.2 is her agnate.

i) In the socio-cultural context of India, where the public perception of a rape victim remains stigmatized, and the enduring impact on the victim is far from transient, the court grapples with the notion that the prosecutrix would voluntarily subject herself to the potential repercussions of levelling a fabricated accusation. This scepticism is exacerbated by the societal consequences the victim faces, including ostracization and limited opportunities, making it challenging to assert that the victim would willingly fabricate an allegation.

ii) In **Rajinder v. State of H.P**<sup>19</sup>, the Apex Court has clearly opined as under:

“In the context of Indian culture, a woman--victim of sexual aggression--would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-

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<sup>19</sup>. (2009) 16 SCC 69

respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

iii) In view of the above discussion and the principle laid down in the above decision, the question of PWs.2 and 3 implicating both the accused in a false case that too, in rape case, cannot be accepted.

#### **FINDING OF TRIAL COURT:**

23. The trial Court recorded the demeanor of PW.1 while recording her evidence that the victim girl has been weeping throughout the evidence. PW.1 in her evidence deposed that her father was a drunkard. Her mother, brother and sister-in-law went to Vemulawada on pilgrimage. Both accused are close relatives to PW.3 and the victim. Taking advantage of the said situation and also advantage of PW.3, father of the victim, is a drunkard, took him to

agricultural field, offered him drink, took the victim girl to her house and committed rape on her. The same is supported by the evidence of PW.1 - victim girl, PW.3, her father and PW.10, the doctor, who examined her. Exs.P8 and 9 are preliminary and final reports. Even Ex.P10 - FSL report supported the prosecution case.

i) On consideration of entire evidence, both oral and documentary, the trial Court convicted the accused. The trial Court also gave a finding that piece of evidence cannot be treated as contradictory. The evidence of PW.1 is quite consistent that sexual assault/rape was committed forcibly on her under the threat of dire consequences and against her consent. The trial Court also considered the scene of offence, crime details etc., and gave a finding that one house is under construction situated towards west and another house is situated on the other side of the road and house of one Mr. Bandari Chandraiah is situated towards east at far away distance. Therefore, the cries raised by PW.1 - victim girl from inside the house cannot be heard by the neighbours, particularly neighbours staying in the opposite house of the victim. Therefore, the said finding of the trial Court is on consideration of entire evidence and based on proper reasons.

ii) It is also apt to refer that time of the incident was 1.00 A.M. i.e., wee hours on 16.03.2013. The trial Court also considered the contention of the appellants that the evidence of PWs.2 and 3 is not believable and gave a finding that PW.2, mother, PW.3, father and PW.4, sister-in-law of the victim girl cannot implicate the accused in a case alleging that they have committed rape on PW.1. It is relevant to note that PW.1 was studying 10<sup>th</sup> class at the time of incident and she was an unmarried girl. Therefore, the question of PWs.2 and 3 implicating the accused in a false case as claimed by the appellants does not arise.

iii) The trial Court also gave a finding that when the evidence of victim is categorical that accused Nos.1 and 2 forcibly committed rape on her, the contention of learned counsel for appellants that her vagina admitting one finger disproves the evidence of PW.1 is not tenable. The medical evidence further discloses that on examination of the victim by PW.10, he found hymen was absent and pelvic admits one finger and uterus infantile shows that the victim was aged only 15 years and was weak. The doctor has collected two swabs and smears on glass slides and sent them to FSL. The Investigating Officer has collected Punjabi dress of both upper and lower of the victim. The

evidence of PW.1 clearly shows that while committing the offence of rape on her, her Punjabi dress was also torn by the accused. When the same was exhibited before the trial Court, the dress of PW.1, particularly upper part was torn. It shows that some physical violence was used on the victim.

iv) The trial Court also gave a further finding that seized articles, such as dress and underwear of victim and bangles, smears and swabs were collected and sent to the FSL, and Punjabi dress upper part was marked as item No.1 etc. The trial Court on consideration of the said evidence, gave a specific finding that the victim was subjected to sexual intercourse. The evidence of PW.1 has categorically corroborated by the evidence of the doctor and FSL report. The trial Court also considered that there was no consent of the victim for committing sexual intercourse. However, the said alleged consent has no relevancy since the victim was 15 years as on the date of incident. The trial Court also gave a finding with regard to the injuries and also the medical evidence including FSL report.

v) In the light of the aforesaid discussion, the trial Court on consideration of the entire evidence convicted the appellants. The impugned judgment is a reasoned one and well-founded. The

appellants failed to make out any case to interfere with the said reasoned and well-founded judgment.

vi) The offence committed by the appellants is heinous and grave in nature.

a) In **State of Punjab v. Ramdev Singh**<sup>20</sup>, the Apex Court dealt with the issue and held that rape is violative of the victim's fundamental right under Article - 21 of the Constitution of India. So, the courts should deal with such cases sternly and severely. Sexual violence, apart from being a dehumanizing act, is an unlawful intrusion on the right of privacy and sanctity of a woman. It is a serious blow to her supreme honour and offends her self-esteem and dignity as well. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries, but leaves behind a scar on the most cherished position of a woman i.e. her dignity, honour, reputation and chastity. Rape is not only an offence against the person of a woman, rather a crime against the entire society. It is a crime against basic human rights and also violates the most cherished fundamental right guaranteed under

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<sup>20</sup>. (2004) 1 SCC 421



Article - 21 of the Constitution of the India. The said principle was also reiterated by the Apex Court in **Lillu v. State of Haryana**<sup>21</sup>.

**AUTHORITATIVES RELIED ON BY THE APPELLANTS:**

24. In **Prem Narain v. State of M.P.**<sup>22</sup>, the Apex Court considered the testimony of an eye-witness. Since there were serious contradictions in the versions of eye-witness, the Apex Court held that the same is not reliable. In the present case, there are no serious contradictions in the version of the victim. The contradictions, if any, the same are minor in nature. Therefore, the facts of the said case are different to the facts of the present case.

i) In **Pratap Misra v. State of Orissa**<sup>23</sup>, the facts are that prosecutrix was a grown up and experienced pregnant lady. The allegation was that three accused had forcible and violent sexual intercourse with her one after the other in quick succession resulting in her abortion 4 or 5 days thereafter. There was no injury on any of the accused or on prosecutrix except some bleeding from vagina. Thus, in the absence of any injury, an inference of consent of prosecutrix if can be drawn. Whereas, in the present case, in

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<sup>21</sup>. (2013) 14 SCC 643

<sup>22</sup>. 2006 AIR SCW 6424

<sup>23</sup>. AIR 1977 SC 1307

paragraph No.29 of the judgment, the trial Court on consideration of the evidence including MOs.1 to 4 gave a specific finding that when the Punjabi dress was exhibited before the trial Court, the dress of the victim, particularly upper part was torn, it shows that some physical violence was used on the victim. The seized articles, such as dress and underwear of the victim and bangles, smears and swabs were collected and sent to the FSL. On considering items sent for the FSL and also the FSL report, the trial Court gave a specific finding that PW.1 was subjected to sexual intercourse. Therefore, the facts of the said case are altogether different to the facts of the present case.

ii) In **Dilip v. State of M.P.**<sup>24</sup>, the allegation against the accused was that prosecutrix was raped by two persons. On considering the evidence, the Apex Court gave a finding that the evidence of prosecutrix comparing with other evidence found to be unbelievable. In paragraph No.9 of the said judgment, the Apex Court considered the facts of the said case. In the present case, the version of PW.1 - victim is supported by medical evidence i.e., PW.10, the doctor and Exs.P8 and P9 - preliminary and final reports and Ex.P10 -

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<sup>24</sup>. 2001 (2) ALD (Crl.) 706 (SC)

FSL report. Therefore, the facts in the aforesaid decision are altogether different to the facts of the present case.

**CONCLUSION:**

25. In the light of the aforesaid discussion, the trial Court on consideration of the entire evidence convicted the appellants. The impugned judgment is a reasoned one and well-founded. The appellants failed to make out any case to interfere with the said reasoned and well-founded judgment. Thus, the present criminal appeal fails and the same is liable to be dismissed.

i) The present Criminal Appeal is accordingly dismissed confirming the conviction and sentences of imprisonment imposed by learned Special Judge for trial of Cases under Protection of Children from Sexual Offences Act - cum - I Additional Sessions Judge, Warangal, vide judgment, dated 28.03.2014 in Special S.C. No.3 of 2013.

**VICTIM COMPENSATION:**

26. However, it is relevant to note that learned trial Court did not award any victim compensation to PW.1. The victim was fifteen (15) years as on the date of incident. Exs.P6 and P7 - date of birth

certificate and extract of admission register, respectively, and PW.9's evidence who is the Head Master of the School would reveal the same. Therefore, as per Section - 33 (8) of the POCSO Act, the victim is entitled for compensation.

i) As per Section - 33 (8) of the POCSO Act and Rule - 9 of the Rules, 2020, the Special Court is having power to determine the compensation to the victim and forward the same to the DLSA for disbursal of the award amount. The DLSA is under legal obligation to give effect to the compensation determined by the Special Court.

ii) The Apex Court in **Nipun Saxena v. Union of India**<sup>25</sup>, held as under:

“The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the

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<sup>25</sup>. (2019) 2 SCC 703

accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code of Criminal Procedure, 1973 (sic) or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.”

ii) In view of the above discussion and the principle laid down by the Apex Court, the matter with regard to determination of victim compensation is remanded to the Special Judge for Trial of Cases under Protection of Children from Sexual Offences Act - cum - I Additional Sessions Judge, Warangal, with a direction to determine the victim compensation to be paid to the victim (PW.1) in terms of Section - 33 (8) of the POCSO Act and Rule - 9 of the Rules, 2020. Since the incident occurred on 15.03.2013, the Special Court/trial Court is directed to complete the said exercise in consultation with District Legal Services Authority within three (03) months from the date of receipt of copy of this judgment.

As a sequel, miscellaneous applications, if any, pending in the appeal shall stand closed.

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**K. LAKSHMAN, J**

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**P. SREE SUDHA, J**

**06<sup>th</sup> February, 2024**

**Note:** L.R. copy be marked.  
(B/O.) Mgr