HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

DIVISION BENCH

G.S. AHLUWALIA

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RAJEEV KUMAR SHRIVASTAVA J.J.

Cr.A. No. 443 of 2010

Moolchand

Vs.

State of M.P.

Shri A.K. Jain, Counsel for the Appellant
Shri Vijay Sundaram Counsel for the State

Date of Hearing : 25-11-2021
Date of Judgment : 06-12-2021
Approved for Reporting :

Judgment

06- December -2021

Per G.S. Ahluwalia J.

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 13-5-2010 passed by Additional Sessions Judge, Seondha, Distt. Datia in Sessions Trial

No. 46/2009 by which the appellant has been convicted under Section 376(2)(f) of IPC and has been sentenced to undergo Life Imprisonment and a fine of Rs.10,000/- with default imprisonment of R.I. for one year.

2. The necessary facts for disposal of the present appeal in short are that on 11-10-2008, the complainant lodged an F.I.R. that at about 3:30 P.M., he was in the house. His wife was working outside the house whereas the prosecutrix, aged about 1 year was playing on the platform. The appellant came there and took the prosecutrix to his house. After about half an hour, he brought back the prosecutrix and left her on the platform. The prosecutrix was crying and accordingly she was lifted by his wife, and found that her underwear was stained with blood. After removing her underwear, his wife found that blood was oozing out from her private part. At that time, Siyasharan came and informed that he was passing by the house of the appellant and heard the cries of a child and accordingly he went inside the house of the appellant, and found that the appellant was committing rape on the prosecutrix. After noticing Siyasharan, the appellant picked up the prosecutrix and left her on the platform. Accordingly, it was alleged that the appellant has committed rape on a one year old prosecutrix.

3. Accordingly, the police registered the offence under Section 376 of I.P.C. The prosecutrix was sent for medical examination. Her underwear was seized. One shirt of skyblue colour was also seized

from the possession of the appellant. The nail clippings of the appellant were seized. The statements of the witnesses were recorded. The seized articles were sent for Forensic examination. After completing the investigation, the police filed the charge sheet for offence under Section 376, 511 of IPC.

4. The Trial Court by order dated 2-5-2009, framed charges under Section 376(2)(f) of IPC.

5. The appellant abjured his guilt and pleaded not guilty.

6. The prosecution examined "A" father of prosecutrix (P.W.1), "B", mother of prosecutrix (P.W.2), Ramendra Singh (P.W.3), Siyasharan (P.W.4), Maniram (P.W.5), Badriprasad (P.W. 6), Dr. Sulbha Laghate (P.W.7), and Sunkesh Tripathi (P.W. 8).

7. The appellant examined Kalyan Singh (D.W.1) and Hari Singh (D.W.2) in his favor.

8. The Trial Court by the impugned judgment and sentence, convicted and sentenced the appellant for the offence mentioned above.

9. Challenging the impugned judgment and sentence passed by the Court below, it is submitted by the Counsel for the appellant, that the report of Forensic Laboratory has not been produced. The prosecution case is based on the evidence of related and interested witnesses. The use of words "*Bura Kaam"* doesnot mean that the prosecutrix was subjected to rape. The appellant has been falsely implicated and the Court below has not appreciated the defence

evidence in proper perspective.

10. Per contra, the Counsel for the State has supported the findings recorded by the Court below.

11. Heard the learned Counsel for the parties.

12. Dr. Sulbha Laghate (P.W.7) had medically examined the one year old prosecutrix and found the following injuries :

> No external injury visible on any part of body.
> Secondary Sex character are not developed.
> No injury visible over outer side of vulva II perineum (Illegible) at 6 O Clock of vagina, bleeding from wound present. Hymen torn at 6 O Clock position. P/V not possible because of her age. Two slides prepared from tear side. Sealed and handed over to Police Constable No. 13 along with brown colured underwear of having some doubtful stains. In my opinion, all signs are suggestive of rape has been committed on girl.

13. The MLC is Ex. P.8. This witness was cross-examined. In cross-examination, She stated that there was no identification mark on the body of the girl. The prosecutrix is aged about 2 years. She denied the suggestion that if the prosecutrix falls from the platform twice or thrice, then She can sustain the injury. This witness explained on her own, that if a person falls from a height, then he would suffer injuries on the other part of the body also. She denied that the prosecutrix cannot sustain the injury if a piece of wood gets inserted while playing. She further stated that looking to the age of the prosecutrix, it is not necessary that there would be laceration of labia majora on account of penetration. There was a laceration of perineum.

14. From the evidence of this witness, it is clear that there was an internal injury and hymen was torn and there was laceration in perineum also. Accordingly, it is held that there was a penetration of hard object, but whether the prosecutrix was subjected to rape or she sustained the injury accidentally while playing shall be considered and decided after considering the evidence led by the prosecution and defence.

15. "A" (P.W.1) is the father of the prosecutrix. He has stated that on the fateful day, he was in his house. It was around 3:30 P.M. His wife was working outside. The prosecutrix was on the platform. The appellant came there and took the prosecutrix to his house. Siyasharan, who is his neighbor informed his wife, that the prosecutrix is bleeding from her private part. His wife informed him that the appellant had left the prosecutrix in the house. The appellant had left at about 4 P.M. He also saw that the prosecutrix was bleeding from her private part. He also stated that he was informed by Siyasharan, that he has seen the appellant committing "*Bura Kaam"* with the prosecutrix. Accordingly he lodged the F.I.R., Ex. P.1 He had also seen that the underwear of the prosecutrix was stained with blood. Thereafter, the police came on the spot. This witness had pointed out the place from where the appellant had taken away the prosecutrix and the place where he had left her. This witness was cross-examined.

16. In cross-examination, this witness admitted that he had not

seen the appellant, taking away or leaving the prosecutrix, and he has disclosed the name of the appellant, on the information given by his wife. Thus it is clear that this witness is a hearsay witness, and his evidence can be considered as a corroborative piece of evidence.

17. "B" (P.W.2) is the mother of the prosecutrix. She has stated that she was working outside her house. The appellant came there and took away the prosecutrix. Thereafter, the appellant left her in the house. At that time, the prosecutrix was crying. She saw bleeding from the private part of the prosecutrix. Thereafter, She removed the underwear of the prosecutrix and found that "*Bura Kaam"* has been committed with her. Siyasharan had also informed her that the appellant was committing "*Bura Kaam"* with the prosecutrix. The girl was crying inside the house of the appellant, and after noticing Siyasharan, the appellant had run away. The report was lodged on the next day. This witness was cross-examined.

18. In cross-examination, this witness has stated that at about 3 P.M., She was working outside her house. The prosecutrix was also playing there. The road is made up of stones, and if some body falls down on the road, then he may suffer bleeding, but specifically denied the suggestion that her daughter had fallen down. The appellant is married to the cousin sister of this witness, therefore, he is brother-in-law (*Jeeja)* by relation. Her brother, namely Prakash is the nephew of Babulal. She has two more Nephews. The land of Babulal was transferred in the name of the wife of the appellant, and

denied the suggestion for want of knowledge that Prakash had asked the appellant, that the land of Babulal be continued to remain in his name. She further stated that there was no dispute between Prakash and the appellant on the question of land. She admitted that wife of the appellant has one more sister, namely Vati. She further claimed that a fight had taken place between Vati and the wife of appellant. She further stated that She had seen the appellant, bringing back the prosecutrix. The appellant had come running. She had shouted on the appellant and had also abused him. No body had come there. When the appellant was taking away the prosecutrix, then She had enquired as to why he is taking away. Then it was replied by the appellant that he is taking away for playing with her. Since, the prosecutrix was bleeding therefore, She was given shower and had changed her underwear. As the bleeding was continuing, therefore, the second underwear also got stained with blood. She further stated that She had informed her husband that the appellant had taken away the prosecutrix. Siyasharan had informed her that the appellant has committed "*Bura Kaam"* with the prosecutrix. She denied that the prosecutrix had fallen on the stones, as a result She had sustained injuries. The underwear of the prosecutrix was seized in the hospital. She admitted that Siyasharan is her elder-brother-in-law (Jeth). She cannot see the watch and She had disclosed the time out of her assessment. She denied that the appellant had neither taken away the prosecutrix nor had left her. She denied that She is making false

statement before the Court. She admitted that Prakash is her brother. She denied the suggestion that Siyasharan had instigated her to falsely implicate the appellant and therefore, a false report has been lodged.

19. Siyasharan (P.W. 4) has stated that he was coming back to his house. The house of the appellant is on the way. The prosecutrix was crying in the house of the appellant, therefore, he went to the house of the appellant and found that the appellant was doing "*Bura Kaam"* with the prosecutrix. He had slapped the appellant, thereafter, he went to his house to take a lathi. The appellant went outside from the another door, and left the prosecutrix in her house. He saw that the mother of the prosecutrix was working outside her house and therefore, he informed her that the appellant has committed "*Bura Kaam"* with the prosecutrix. The prosecutrix was bleeding from her private part. This witness was cross-examined.

20. In cross-examination, this witness has stated that he was going. When he stopped for urinating in front of the courtyard of the house of the appellant, then he had heard the cries of the prosecutrix. He denied that the prosecutrix and her elder sister were playing on the platform and were crying as they were hungry. He also denied that the prosecutrix had sustained injuries due to fall from the platform. He denied that the appellant had not taken away the prosecutrix and had not committed "*Bura Kaam"* with the prosecutrix. He denied that he had not seen the incident.

21. Ramendra Singh (P.W. 3) had brought a packet from the hospital, which was containing cloths, slide of the prosecutrix and specimen seal which were seized by Head Constable vide seizure memo Ex. P.3. In cross-examination, this witness had admitted that he had not seen that what was kept in the packet. He had not opened the sealed packet.

22. Maniram (P.W. 5) has stated that the appellant was arrested vide arrest memo Ex. P.4. However, he stated that nothing was seized in his presence, and accordingly he was declared hostile on the said aspect. Thereafter, in cross-examination by the public prosecutor, he admitted that the police had seized the shirt of the appellant which was of sky blue colour. He further admitted that the nail clippings of the appellant were also seized. The seizure memo, Ex. P.5 contains his signatures. In cross-examination, this witness admitted that the appellant had given the sky blue coloured shirt to the investigating officer.

23. Badriprasad (P.W. 6) has stated that on 11-10-2008, he was posted as Head Constable. "A" had lodged the report under Section 376 of IPC. The FIR, Ex. P.1 was written and the prosecutrix was sent for medical examination. On 12-10-2008, he had seized a packet brought by Babu Khan. The counter copy of the F.I.R. was sent on 11-10-2008 to the concerning Magistrate, and its acknowledgment dated 13-10-2008 is Ex P.7.

24. In cross-examination, this witness has stated that A.S.I. Lal

Singh was the incharge Station House Officer of Police Station and since, he was out of station, therefore, this witness was holding the charge of S.H.O. He further admitted that he had not mentioned his designation as Incharge S.H.O. below his signatures.

25. Sunkesh Tiwari (P.W. 8) is the investigating officer. He had recorded the statements of the witnesses. He had also prepared the spot map, Ex. P.2. On 15-10-2008, he had seized a sky blue coloured shirt from a nearby place of his house. The blood stained nail clippings of the appellant were also seized vide seizure memo Ex. P.5. On 10-8-2008, the appellant was arrested vide arrest memo, Ex. P.4. The seized articles were sent to F.S.L. Gwalior vide memo Ex. P.9. This witness was cross-examined.

26. In cross-examination, this witness has stated that Manoj Kumar was the S.H.O. The investigation was handed over to him on 12-10-2008.

27. The appellant has examined Kalyan Singh (D.W.1).who has stated that he was going to the market. While he was passing in front of the house of "A", he saw that the wife of "A" was working outside her house and the prosecutrix and three other girls were playing with a piece of wood. While they were playing, the piece of wood got inserted in the private part of the prosecutrix. Thereafter, "B" (P.W.2) the mother of the prosecutrix, picked up the prosecutrix in her lap and slapped her elder daughter thrice. On the next day, he came to know that F.I.R. has been lodged against the appellant. In cross-

examination, this witness could not state the date, month of the incident. He claimed that he had informed the S.H.O., about the fact that the prosecutrix has sustained injuries while She was playing, but could not state as to whether his statement was recorded by the S.H.O. or not? He further claimed that the appellant is his uncle by relation. He further claimed that he was accompanied by Satru and no one else was there.

28. Hari Singh (D.W.2) has also also stated that the prosecutrix was playing and got injured as a piece of wood accidentally got inserted in her private part.

29. Thus, if the entire evidence is considered then, it is clear that the appellant himself has admitted by examining his defence witnesses, that the mother of the prosecutrix was working outside her house and the prosecutrix was also there. The defence witnesses have stated that the prosecutrix got injured that a piece of wood got accidentally inserted, whereas it is the case of the prosecution that the appellant has committed "*Bura Kaam"*.

30. It is submitted by the Counsel for the appellant, that the prosecution witness Siyasharan has not stated that he had seen the appellant committing rape, but he has merely stated that he had seen the appellant committing *"Bura Kaam",* therefore, it cannot be said that the appellant had committed rape on her.

31. The submission made by the Counsel for the appellant cannot be accepted. It is well established principle of law that the Court

should handle the cases of rape with all sensitivity. A prosecutrix is not expected to explain the sinful act in detail, by giving minute details of each and every act. No one should be allowed to place the prosecutrix in a more awkward condition while recording of her evidence. The entire evidence of the prosecution witnesses should be read as a whole. At the time of examination of the prosecutrix, every attempt should be made to avoid obscenity in the Court. It is very easy for a prosecutrix to describe the entire incident in few words and she should not be compelled to explain the incident in detail. Further, no suggestion was given to the prosecution witnesses, that they have some other meaning of the words "*Bura Kaam"* . Further, it is the defence of the appellant himself that a piece of wood got inserted in her private part. Thus, it is clear that the prosecution witnesses as well as the appellant were clear in their mind, that the word "*Bura Kaam*" means penetration. In the case of **Annu @ Anoop Kumar Vs. State of M.P.**, by judgment dated **20-8-2008** passed in **Cr.A. No.687 of 1994**, it has been held as under :

> (24.) First of all, this Court is of the opinion that where a case of rape has been filed in the Court with the allegations that the accused committed rape and for the fact of sexual intercourse, certain expressions were used such as Galat Kam Kiya, Bura Kam Kiya or Ulta Kam Kiya, then prima facie, these expressions would amount to sexual intercourse. It is not necessary at all in each and every case that the prosecutrix must express categorically all the details of rape or in other words, we cannot expect of a lady that she shall disclose all the acts of the accused, when he ravished her. In the Courts, obscenity must be avoided. Normally, the ladles are shy of disclosing the facts of rape in specific terms in presence of the accused, Advocates,

Judge and the deposition writer. It is very easy for a lady to disclose the words spoken to her, gestures or indecent behaviour shown to her by tile accused, but certainly, it is not expected of a lady that she shall disclose facts of sexual intercourse in detail. Therefore, if a lady says in the Court that the accused had committed Galat Kam or Bura Kam or Ulta Kam, or any other such type of expression is disclosed by her and if there is any direct or indirect evidence in the statement of the prosecutrix or she discloses any other circumstance in support of her above expressions, this certainly amounts to committing rape. It is not necessary at all for that lady to disclose a particular circumstance or any other vulgar details. Even if a particular fact or circumstance has not been disclosed by the prosecutrix in support of a phrase, it does not mean that in absence of a particular circumstance, the offence of rape shall not be proved. It has been held in the case of Wahid Khan (supra), that -

".....in different parts of the country, a particular act is described in many ways and different expressions are used for the purpose of same act. In my opinion, evidence of a witness has to be understood from the language of the people of that area. It is not expected of a witness to use in deposition the words mentioned in codified law. A Judge is under an obligation to understand what a witness desires to convey."

(25.) In a case of rape, if the prosecutrix discloses the words - Mere Sath Galat Kam Kiya or Ulta Kam Kiya or Bura Kam Kiya, and she also discloses any or different circumstances in corroboration of the story such as the accused caught hold of her or removed the clothes or entered in the house or dragged her towards a particular place and so on and so forth and then she uses any expression to describe the fact of sexual intercourse, then certainly, it would mean that the prosecutrix wants to disclose the fact of rape committed by the accused. We cannot restrict ourselves to a particular situation. The facts, situations and expressions differ from case to case and the Courts have to find out the exact meaning of the expression from the evidence adduced in that particular case.

32. It is next contended by the Counsel for the appellant, that the FSL report has not been produced, therefore, it is not clear that the

prosecutrix was subjected to rape or not?

33. The submissions made by the Counsel for the appellant cannot be accepted and hence, they are rejected. It is a well established principal of law, that if the evidence of the prosecutrix is found to be reliable, then asking for corroboration, is nothing but adding a pinch of salt to her injuries.

34. The Supreme Court in the case of **Sham Singh v. State of Haryana,** reported in **(2018) 18 SCC 34** has held as under :

> **6.** We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab* v. *Gurmit Singh* (SCC p. 403, para 21).]
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> **7.** It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to

conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See *Ranjit Hazarika* v. *State of Assam*.)

8. It is also relevant to note the following observations of this Court in *Raju* v. *State of M.P.*, which read thus: (SCC p. 141, paras 10-11)

> "*10*. The aforesaid judgments, lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.
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> *11*. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration."

We have assessed the entire material on record to satisfy our conscience once again, keeping in mind the aforementioned set principles in such matters.

35. It is next contended by the Counsel for the appellant, that there is a delay of about 2 hours in lodging the F.I.R. which makes the

prosecution story doubtful. The submissions made by the Counsel for the appellant are misconceived and cannot be accepted. In the present case, the F.I.R. was lodged within a 2 hours of the incident. There is nothing on record to suggest that the F.I.R. was antedated or ante timed. Merely because the counter signed copy of the FIR was received by the concerning Court on 13-8-2008, is not sufficient to hold that the FIR was antedated or ante-timed, specifically when, no questions were put to Badri Prasad (P.W. 6) that when the counter copy of the FIR was sent to the concerning Court on 11-8-2008 itself, then why it reached to the concerning Court on 13-8-2008? Although there is no delay in lodging the F.I.R., but still when the pride of a family and future of the prosecutrix is involved, then the family members can take time to deliberate on the question as to whether the matter be reported to the police or not? The Supreme Court in the case of **State of Punjab Vs. Gurmit Singh** reported in **(1996) 2 SCC 384** has held as under :

> 8....In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR 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.....

36. In the present case, according to Dr. Sulbha Laghate (P.W.7),

internal injuries were found and the hymen was found torn. Thus, it is clear that there was a penetration. Although the appellant has examined the defence witnesses to claim that the prosecutrix had sustained injuries as a piece of wood had got inserted while she was playing, but surprisingly, no such suggestion was given to "B" (P.W.2), the mother of the prosecutrix. The appellant by examining the defence witnesses has also taken a stand that the mother of the prosecutrix "B" (P.W.2) was working outside the house and the prosecutrix was also there. Further, a piece of wood always have rough surface and if any piece of wood gets inserted even accidentally, then there is every possibility of sustaining injuries on the outer wall of private part of the prosecutrix. No such injury was found by Dr. Sulbha Laghate (P.W.7). On the contrary, the suggestion given to the prosecution witnesses "B" (P.W.2) was that the prosecutrix might have sustained injuries due to fall from the height. No external injury was found on any part of the body of the prosecutrix, thus, it rules out the possibility of sustaining internal injuries due to fall. Thus, in absence of any suggestion to the mother of the prosecutrix "B" (P.W.2), regarding accidental insertion of piece of wood as well as in the light of the medical evidence, this Court is of the considered opinion, that the defence taken by the appellant is not worth acceptance.

37. So far as non production of FSL report is concerned, it is once again held that if the evidence of the prosecutrix is reliable, then the

Court should not look for any corroboration. Further, in the present case, it is the defence of the appellant, that although there was a penetration, but claimed that it was a piece of wood, which got accidentally inserted. Dr. Sulbha Labhate (P.W.7) has stated that the vaginal slide of the prosecutrix could not be prepared due to her young age. Further, even a partial penetration would make out an offence of rape. In the present case, it appears that since, the appellant was seen by Siyasharan, therefore, he immediately left the prosecutrix. Thus, it is very possible, that he may not have discharged. Under these circumstances, the absence of report of Forensic Science Laboratory is of no consequence.

38. It is next contended by the Counsel for the appellant, that the appellant has been falsely implicated on account of land dispute.

39. The submission made by the Counsel for the appellant cannot be accepted, because it is not the case of the appellant, that the parents of the prosecutrix had any land dispute with the appellant. Why the parents would put the pride of the family as well as future of their one year old daughter at stake, in order to falsely implicate the appellant, specifically when the medical report clearly indicates that the prosecutrix was subjected to penetration? Further, except by giving suggestions, the appellant has not produced any documentary evidence to show that there was any land dispute between him and the brother of the mother of the prosecutrix (Maternal Uncle of the prosecutrix).

40. So far as the submission that all the witnesses are related witnesses is concerned, it is suffice to mention here that the evidence of a witness cannot be rejected merely on the ground that he is "related witness". There is a difference between "related witness" and "interested witness". It is true that the evidence of a "related witness" should be appreciated more carefully, but at the same time, why a "related witness" would spare the real culprit in order to falsely implicate the accused? An "interested witness" means who derives some advantage by falsely implicating the accused. Nothing has been brought on record to suggest that the parents of the prosecutrix had some vested interest to falsely implicate the appellant, even by putting the pride of their family and future of their one year old daughter at stake.

41. The Supreme Court in the case of **Rupinder Singh Sandhu v. State of Punjab,** reported in **(2018) 16 SCC 475** has held as under :

> The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of PWs 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.

42. The Supreme Court in the case of **Shamim Vs. State (NCT of Delhi)** reported in **(2018) 10 SCC 509** has held as under :

> **9.** In a criminal trial, normally the evidence of the wife, husband, son or daughter of the deceased, is given great weightage on the principle that there is no reason for them not to speak the truth and shield the real culprit.....

43. The Supreme Court in the case of **Rizan v. State of**

Chhattisgarh, reported in **(2003) 2 SCC 661** has held as under :

> **6.** We shall first deal with the contention regarding interestedness of the witnesses for furthering the prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.
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> **7.** In *Dalip Singh* v. *State of Punjab* it has been laid down as under: (AIR p. 366, para 26)
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> "*26*. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts."
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> **8.** The above decision has since been followed in *Guli Chand* v. *State of Rajasthan* in which *Vadivelu Thevar* v. *State of Madras* was also relied upon.
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> **9.** We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in *Dalip Singh case* in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed: (AIR p. 366, para 25)
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> "*25*. We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are

> women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in — '*Rameshwar* v. *State of Rajasthan*' (AIR at p. 59). We find, however, that it unfortunately still persists, if not in the judgments of the courts, at any rate in the arguments of counsel."
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> **10.** Again in *Masalti* v. *State of U.P.* this Court observed: (AIR pp. 209-10, para 14)
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> "But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. … The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."
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> **11.** To the same effect is the decision in *State of Punjab* v. *Jagir Singh* and *Lehna* v. *State of Haryana*.

44. Thus, it is clear that there is a difference between "related witness" and "interested witness". "Interested witness" is a witness who is vitally interested in conviction of a person due to previous enmity. The "Interested witness" has been defined by the Supreme Court in the case of **Mohd. Rojali Ali v. State of Assam,** reported in **(2019) 19 SCC 567** as under :

> **13.** As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now well-settled that a related witness cannot be said to be an "interested" witness merely by virtue of being a relative of the victim. This Court has elucidated the difference between "interested" and "related" witnesses in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has

a motive to falsely implicate the accused (for instance, see *State of Rajasthan* v. *Kalki*; *Amit* v. *State of U.P.*; and *Gangabhavani* v. *Rayapati Venkat Reddy*). Recently, this difference was reiterated in *Ganapathi* v. *State of T.N.*, in the following terms, by referring to the three-Judge Bench decision in *State of Rajasthan* v. *Kalki*: (*Ganapathi case*, SCC p. 555, para 14)

"*14*. "Related" is not equivalent to "interested". A witness may be called "interested" only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eyewitness in the circumstances of a case cannot be said to be "interested"."

14. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal cases was made by this Court in *Dalip Singh* v. *State of Punjab*, wherein this Court observed: (AIR p. 366, para 26)

"*26*. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person."

15. In case of a related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and consistent. We may refer to the observations of this Court in *Jayabalan* v. *State (UT of Pondicherry)*: (SCC p. 213, para 23)

"*23*. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. The primary endeavour of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim."

45. No other arguments have been advanced by the Counsel for the appellant.

46. Thus, after meticulous appreciation of evidence of "A"(P.W.1), "B" (P.W.2), Siyasharan (P.W.4) as well as the evidence of Dr. Sulbha Laghate (P.W.7), it is held that the prosecution has succeeded in establishing beyond reasonable doubt, that the appellant took away the one year old prosecutrix and when it was seen by Siyasharan (P.W.4) that the appellant was committing rape on her, then the appellant, immediately left her in her house. Bleeding was seen and accordingly as per medical evidence, it was found that there was a laceration in perineum and even at the time of medical examination, bleeding was present from the wound and hymen was found torn at 6 O clock position. All signs of injuries were suggestive of rape. Accordingly, it is held that the appellant is guilty of committing rape on a one year old prosecutrix. Thus, his conviction under Section 376(2)(f) of IPC is hereby **affirmed.**

47. So far as the question of sentence is concerned, under the facts and circumstances of the case, the appellant has committed rape on a minor girl aged about 1 year. If a girl aged about 1 year is not safe in the Society, then it would create havoc in the Society. Thus, such incidents are to be dealt with all seriousness. Deterrence is the sentencing policy, therefore, this Court doesnot find any illegality in the sentence of Life Imprisonment, imposed by the Trial Court. Accordingly, the sentence of Life Imprisonment is hereby **upheld.**

48. Accordingly, the judgment and sentence dated 13-5-2010 passed by Additional Sessions Judge, Seondha, Distt. Datia in Sessions Trial No. 46/2009 is hereby **affirmed.**

49. The appellant is in jail. He shall undergo the remaining jail sentence.

50. The office is directed to immediately supply a copy of this judgment to the appellant, free of cost.

51. The record of the Trial Court along with the copy of this judgment be immediately send to the Trial Court for necessary information and compliance.

52. The appeal fails and is hereby **Dismissed.**

(G.S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge