

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Appeal No.1671 of 2023

Nandlal Kujur S/o Kunwar Sai Kujur, Aged 20 years R/o
Village-Patarapali, P.S. Pathalgaon, Dist-Jashpur (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Pathalgaon, Dist-Jashpur (CG)

---- Respondent

Criminal Appeal No.1900 of 2023

Manish Lakda S/o Bedram Lakra, Aged about 18 years R/o
Village-Patrapali, P.S. Pathalgaon, District-Jashpur (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Police Station - Pathalgaon,
District - Jashpur (CG)

---- Respondent

And

Criminal Appeal No.2271 of 2023

Anil Ekka S/o Ramdhan Ekka, Aged about 21 years, R/o
Village - Patrapali, P.S. Pathalgaon, District-Jashpur (CG)

---- Appellant
(In Jail)

Versus

State of Chhattisgarh Through Police Station - Pathalgaon,
District - Jashpur (CG)

---- Respondent

(Cause title taken from Case Information System)





For Appellants: Mr.Sanjay Agrawal, Advocate

For State: Mr.R.S.Marhas, Additional Advocate General

Hon'ble Shri Ramesh Sinha, Chief Justice

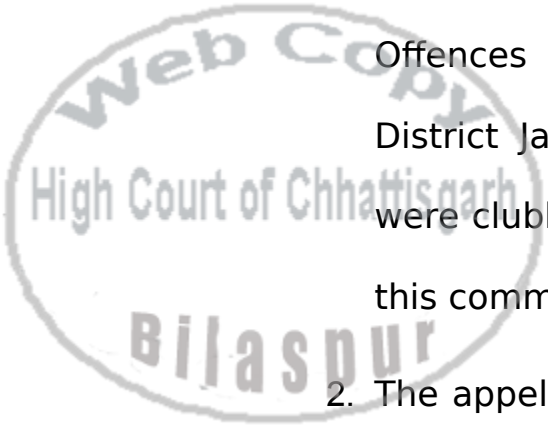
Hon'ble Smt.Rajani Dubey, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

9.4.2024

1. Since the aforesaid three criminal appeals have been filed against the impugned judgment dated 30.06.2023 passed by the Special Judge (under Protection of Children from Sexual Offences Act 2012), Link Court of Kunkuri, Pathalgaon, District Jashpur in Special Criminal Case No.05/2021, they were clubbed & heard together and are being disposed of by this common judgment.
2. The appellants have filed these three criminal appeals under Section 374(2) of the CrPC questioning the impugned dated 30.06.2023 passed by the Special Judge (under Protection of Children from Sexual Offences Act 2012), Link Court of Kunkuri, Pathalgaon, District Jashpur in Special Criminal Case No.05/2021, by which they have been convicted for offences under Sections 506 Part II, 394/34 and 376D of the IPC and sentenced to undergo RI for five years and fine of Rs.1000/-, in default of payment of fine to further undergo SI for six months, RI for ten years and fine of Rs.2000/-, in default of payment of fine to further undergo SI for two years and RI for twenty years and fine of Rs.5000/-, in default of payment of





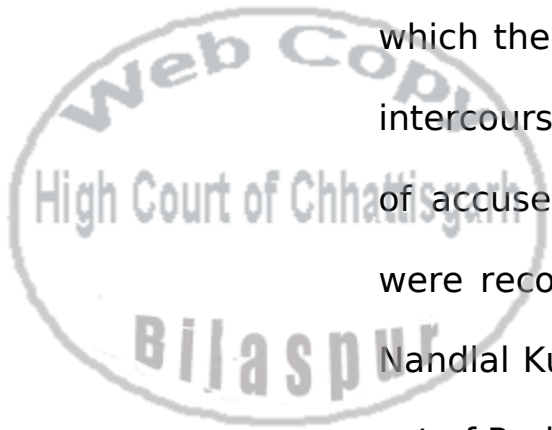
fine to further undergo SI for five months.

3. The case of the prosecution, in brief, is that on 2.2.2021 at 19.30 P.M. the victim (PW-1) lodged a report in Patthalgaon Police Station to the effect that she had gone to Pandripani School at 7 A.M. on 2.2.2021. After recess at 1 P.M. she was sitting with classmate Ayush having lunch in Patrapali Chhindbahari forest when at around 3 P.M. 09 boys suddenly came and threatened Ayush, forcibly removed his clothes and asked him to do wrong things with her. Then Ayush replied that he will not do anything wrong, then those persons pushed Ayush and said that you will not do this, they came to an agreement and took the victim towards bush, abusing and beating her, then 05 of them, accused Anil, Nandlal, Manish Lakra and the teenagers in conflict with the law took turns to forcefully rape her by threatening to kill her and held her hands and legs tight and they raped her, they were speaking each other's name, due to which she knew the names of the accused. They looted the victim's mobile set Vivo worth Rs.14,000/- and Ayush's mobile set Vivo worth Rs.18,000/-by threatening to kill her and her classmate Ayush if she told anyone about the incident. After those people left at around 4 P.M. she reached in village Pakarbav along with her friend Ayush and narrated the incident to her parents and parents of Ayush on mobile and had come to police station for lodging the report.
4. On the report of the victim, FIR in Crime No.36/2021 for





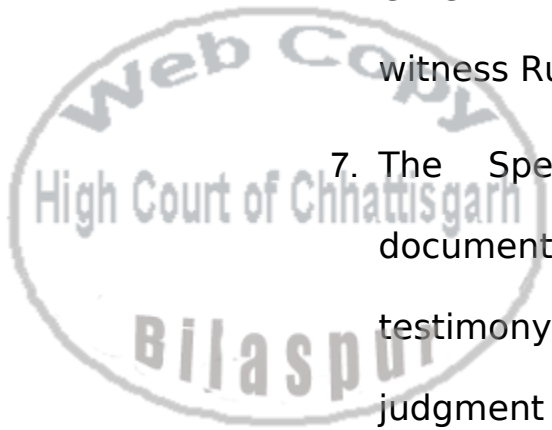
offence under Sections 294, 323, 506, 392 and 376D of the IPC and Sections 4 & 6 of the POCSO Act was registered by Pathalgaon Police Station vide Ex.P-1 and the case was taken for investigation. On 3.2.2021 statement of the victim was recorded under Section 161 CrPC. Spot map was prepared by the investigating officer vide Exs.P-2 and P-3. Memorandum statement of the the victim under Section 164 CrPC was recorded before the Judicial Magistrate First Class, Bagicha vide Ex.P-5. Accused Ashok Lakda, Anil Ekka, Nandlal Kujur, Anup Ekka and Nilesh Lakda were medically examined in which the doctor has opined that they are able to do sexual intercourse vide Exs.P-45 to P-49. Memorandum statements of accused Anil Ekka Ex.P-35 and Nandlal Kujur (Ex.P-36) were recorded. On the memorandum statement of accused Nandlal Kujur, mobile set of VIVO model No.1935 and mobile set of Redmi were seized from him vide Ex.P-37. From father of the injured victim, receipt of mobile and progress report have been seized vide Exs.P-20 and P-20A. From father of Ayush, receipt of mobile was seized vide Ex.P-38. Dakhil-kharij register of juvenile were seized vide Exs.P-32, P-64 and P-24. Patwari also prepared spot map vide Ex.P-26 and panchnama vide Ex.P-27. The Executive Magistrate conducted test identification parade vide Exs.P-6 to P-9. Vaginal slides and clothes of the victim were seized and sent to FSL and FSL report is Ex.P-71 and Articles A1, E, G. H contain semen stains and human spermatozoa. Dakhil-kharij





register of the victim was seized vide Ex.P-24A.

5. After completion of investigation, charge-sheet was filed before Special Judge under Sections 294, 323, 506, 392, 376D and 354 of the IPC and Sections 4 & 6 of the POCSO Act. The accused abjured the guilt and entered into defence.
6. In order to bring home the offence, the prosecution examined as many as 26 witnesses and exhibited 78 documents as Exs.P-1 to P-78. Statements of the accused/appellants were recorded under Section 313 of the CrPC in which they denied guilt. They examined one defence witness Ruman Sai Sidar in their support.
7. The Special Judge upon appreciation of oral and documentary evidence available on record and relying upon testimony of the prosecutrix (PW-1), by the impugned judgment dated 30.06.2023, convicted appellants for offence under Sections 506 Part II, 394/34 and 376D of the IPC and sentenced as mentioned in paragraph of this judgment. Hence, these appeals.
8. Mr.Sanjay Agrawal, learned counsel for the appellants submits that the judgment passed by the learned Special Judge is bad in law and also not sustainable in the eyes of law. Learned Special Judge completely overlooked the fact that the prosecution has failed to prove the age of the prosecutrix (PW-1), whereas at the time of the incident she was a minor girl. From the evidence on record, it is clear that there were major contradictions between the Court





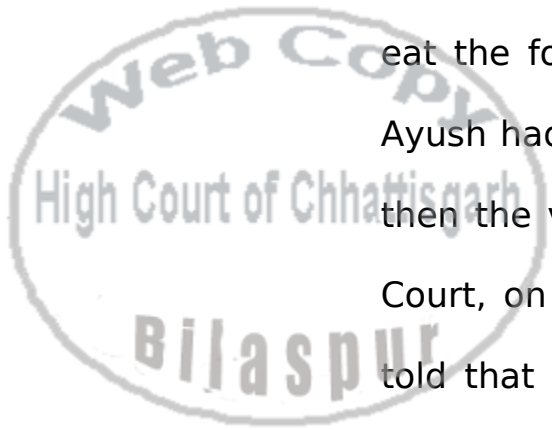
statement and the case diary statement of the prosecution witnesses. He further submits that the learned trial Court gravely erred in convicting the appellants only on the basis of material available on record, whereas there is no evidence available to show that the appellants had committed rape with the prosecutrix and looking to the material contradictions and omissions in the statements of the prosecutrix (PW-1) the learned trial Court should have given the benefit of doubt to the appellants. He also submits that the learned trial Court has already acquitted co-accused Ashok Lakda in the similar set of evidence. The appellants have falsely implicated in the present case and there is no any documentary evidence available on record that the appellants have committed rape with the prosecutrix and the prosecution has failed to prove its case beyond reasonable doubt. As such, the appeals deserve to be allowed and the impugned judgment deserves to be set aside.

9. On the other hand, Mr.R.S.Marhas, learned Additional Advocate General appearing for the respondent/State, would support the impugned judgment and submit that statement of the prosecutrix (PW-1) is wholly reliable and trustworthy and her testimony inspires confidence. He further submits that the the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted and sentenced the appellants which warrants no interference by this Court.





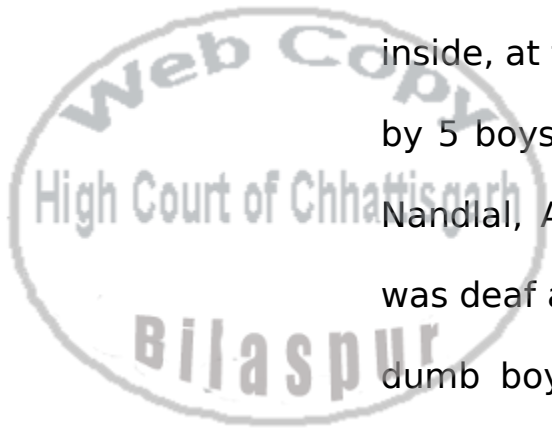
10. We have heard learned appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
11. As regards the complicity of the appellants in crime in question, conviction of the appellants is based on the evidence of the prosecutrix (PW-1). As per her evidence, on 2nd February, 2021 she had left school for her home with her friend Ayush Ambast. She studied in class 12th. After leaving school, she and Ayush went to Kosabadi on a motorcycle, where Ayush always goes, where she and Ayush stopped to eat the food. In para 2, she has stated that when she and Ayush had lunch in Kosabadi, many boys came from behind, then the victim pointed towards the accused present in the Court, on which when asked the name of the accused, she told that his name Nandlal, he told both of them what are you guys doing here, then Ayush Ambast said that they are having lunch here, then one of those boys said that you guys are lying, then accused Nandlal and Anil hit Ayush with stick kept in his hand by Anil Ekka, she said to him brother, why you are doing this, then they replied you have to say it with love, they will leave from here. After that, accused Nandlal present in the Court told her that you will argue with him. After that accused Nandlal also beat her. After that he forcibly asked her and Ayush to take off their clothes. When they refused to take off their clothes, the boys present there were threatening them and saying that they will kill them





and throw them in the nearby pond and were abusing her and Ayush. They were asking Ayush to take off his clothes and forcibly have sex with her. In para 4, she has stated that her friend Ayush told those boys that he will not do anything wrong. After that Ayush was beaten up by accused Anil who was present in the Court. Some boys had made a video of her and Ayush on their mobiles. After that, all the accused dragged her and Ayush in dense forest of Kosabadi. After that, after taking Ayush inside, they separated him from her.

12. In para 5, she has stated that the accused took her further inside, at that time there were 5-6 boys there. She was raped by 5 boys, out of which three accused present in the Court, Nandlal, Anil Ekka, Manish Lakra and another accused who was deaf and dumb did not do anything to her. That deaf and dumb boy had brought her clothes after being raped and accused Anil Ekka present in the Court was strangulated her throat and some of them were also making a video of the incident. She has admitted in para 28 of her cross-examination that after first aid from CHC Pathalgaon, she was not given any medicine to take to the hospital or home. She has denied that she was physically healthy after the alleged incident. The witness was asked where she felt pain from being beaten, to which the witness relied that she felt pain on her cheek, back and leg due to the beating. She has admitted that apart from pain on her cheeks, back and legs, there was no pain anywhere else on the body. She has





denied that the accused present in the Court have not forcibly raped her. She has also denied that whatever wrong has happened to her has been done by Ayush. She has also denied that because she like Ayush, the blame has been put on the accused.

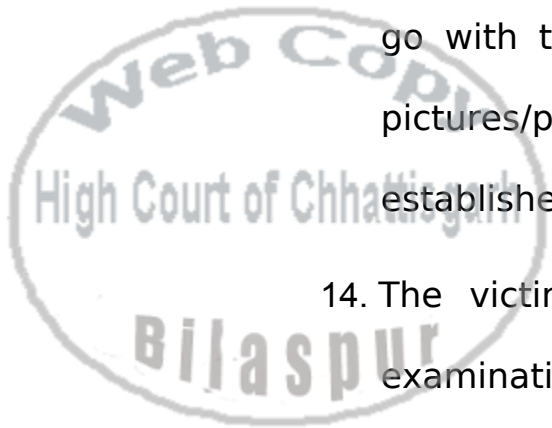
13. Injured Ayush Ambast has been examined as PW-13. He has stated in para 2 of his evidence that the accused started telling them that you are not sitting here for lunch but to do some other work and the accused started abusing them and beating them with sticks and then started saying to him and the victim that you both of them take off your clothes and do the work you have come to do, on which they both told the accused that they will not do anything like this, then after that the accused started threatening both of them and said that if you people do not take off your clothes, then you will kill them. After that the accused pushed him on the victim and after that the accused were making a video of them. He told the accused that he will not do anything like what you guys are doing. After that the accused caught hold of both of them and took them inside Chhindbahri forest, after which three-four accused caught hold of him and took him away from another place, on which the victim was calling him and after half an hour they leaved the victim. After that she came to him. In par 5 he has stated that after the victim's father arrived, they all went to Pattalgaon Police Station to lodge the report. After lodging the report, the police took him to





CHC Patthalgaon to examine his injury. He was injured on his back side and his right hand due to the assault. In para 6, he has stated that after the incident, the process of identification of the accused was done by the police in the rest house Patthalgaon where the accused were identified by him and the victim. Identification proceeding panchnama are Exs.P-6 and P-8. In para 14 of his cross-examination, he has denied that he and the victim are 18-19 years old and hence want to marry each other. In para 15 of his cross-examination, he has also denied that whenever he used to go with the victim then also used to watch objectionable pictures/photos on Google. She had denied that he has established physical relationship with the victim many times.

14. The victim was examined by Dr.Anita Minz. In external examination of the victim, Dr.Anita Minz (PW-14) has found that 27 teeth were present on her jaw, 14 in upper jaw and 13 in the lower jaw, her secondary sexual characteristics were fully developed. There were scratch marks present on the lower back of the victim whose length was $3 \times \frac{1}{2}$ cm with redness, 4 scratches were found on her back whose size was $\frac{1}{2} \times \frac{1}{4}$ cm which were present on the back with redness. It was found that it was present on the booty region of the buttocks behind the back which was $1.5 \times \frac{1}{4}$ cm in size and had redness. The injuries found on the victim's back could have been caused by a hard and blunt object and occurred within 12 hours. An old mark was found on the right thigh of



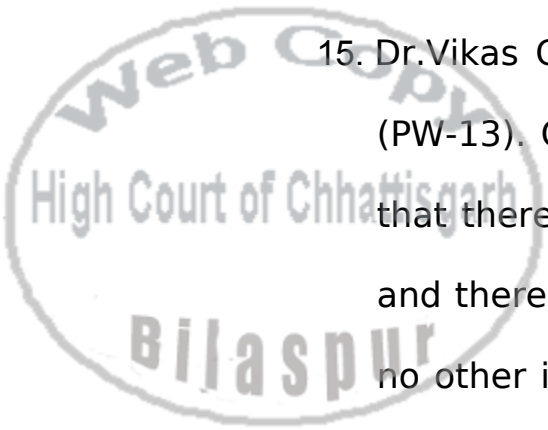


the victim in which she told that while working in the kitchen, hot oil had fallen on her due to which she got burnt. Its size was 1 x ½ cm and on the back side of the right leg, there were ½ x ½ cm marks which were brown in colour and four marks were present. While doing internal examination, she was feeling pain, her labia majora and labia minora were red and swollen, the membrane of her vagina was red and swollen, her vagina was slightly torn on the lower side, the size of which was ½ x ½ cm and was red. Her text report is Ex.P-40.

15. Dr. Vikas Garg (PW-10) has examined injured Ayush Ambast (PW-13). On examination of the injury, the doctor has found that there was slight scratch on the elbow of the right hand and there was a stick shape redness on the back. There was no other injury marks present on the body of Ayush Ambast who was injured. During examination, when asked by him, he did not experience any kind of fainting, vomiting, bleeding from nose, mouth and ears or epileptic shock. Injury Ayush was medically and physically healthy. In view of the injured back injury, he had advised x-ray to the injured Ayush and x-ray film is attached in the case.

16. According to the FSL report (Ex.P-71), vaginal slides Article "A1", kurta of the victim Article "E", blazer of the victim Article "G" and underwear seized from accused anil Ekka article "H" contain semen stains and human spermatozoa.

17. Rupan Sai Sidar has been examined as defence witness on





behalf of the defence side. The statement of the said witness is that he knows accused Manish, Ashok, Nandlal and Anil, but does not know the victim. He is aware of the case pending in the Court against the accused. On the so-called incident date of 2nd February, 2021 from 12 noon to 5 P.M. cleaning work was going on in the Quarantine Center School Secondary School, Patrapali in which accused Manish, Ashok, Nandlal and Anil were working and this witness being Up-Sarpanch he was getting the work done and was present there. It is further stated that before the said incident, around January 15, T.I. Patthalgaon along with his staff had come to the village for patrolling, when the accused were sitting in the square, there was a situation of altercation and fight between the sir and the boys and T.I. sir said that when the time comes, he will implicate you in the case. In cross-examination, he has denied that the accused were not working in the quarantine center on the date of the incident, rather they have committed the wrong act of raping the victim.

18. In the present case, the defense witness has not given any suggestion to the prosecution witnesses in cross-examination regarding the presence of the accused at the quarantine center at the time of the incident nor has the above defense been taken in the statement under Section 313 CrPC. Therefore, since the statement of the defense witness is not reliable the defense of presence of the





accused elsewhere does not stand.

19. In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the *sine qua non* for conviction in a rape case. The observations of Vivian Bose, J. in **Rameshwar v. The State of Rajasthan (AIR 1952 SC 54)** were:

“The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...”.



20. Crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. 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. The Court, therefore, shoulders 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 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 trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in **State of Punjab v. Gurmeet Singh [1996 (2) SCC 384]**.

21. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her

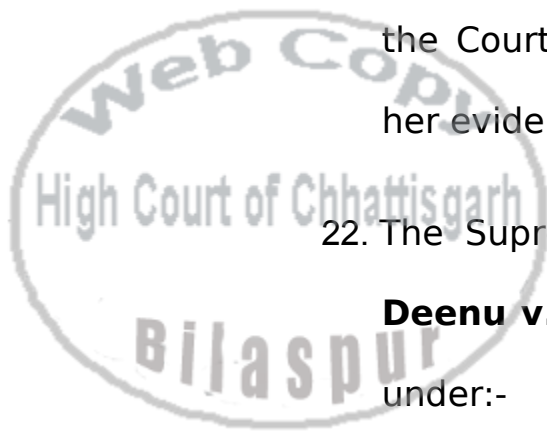




testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

22. The Supreme Court in the matter of **Rai Sandeep alias Deenu v. State (NCT of Delhi), 2012 (8) SCC 21** held as under:-

“22. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be





natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a 'sterling witness' whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."





23. On the basis of testimony of the prosecutrix (PW-1), evidence of injured witness Ayush Ambast (PW-13), examination report of the prosecutrix by Dr.Anita Minz (PW-14) vide Ex.P-40, considering the FSL report (Ex.P-71), memorandum statements of the appellants and the material available on record, we are of the considered opinion that the trial Court has rightly convicted for offences under Sections 506 Part II, 394/34 and 376D of the IPC. We do not find any merit in these appeals.

24. In the result, this Court comes to the conclusion that the prosecution has succeeded in proving its case beyond all reasonable doubts against the appellants. The conviction and sentence as awarded by the trial court to the appellants is hereby upheld. The present criminal appeals lack merit and are accordingly **dismissed**.

25. It is stated at the Bar that the appellants are in jail. They shall serve out the sentence as ordered by the trial Court.

26. The Registry is directed to transmit the certified copy of this judgment along with the record to the trial Court concerned for necessary information and compliance.

Sd/-

(Rajani Dubey)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice



HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 1671 of 2023

Nandlal Kujur

-Versus-

State of Chhattisgarh

Head -Note

Victim of rape being an injured witness is exclusively considered as a 'sterling witness'.

