

AFR

Reserved on 13.07.2020

Delivered on 23.09.2020

Court No. - 42

1. **Case :-** CRIMINAL APPEAL No. - 6966 of 2010

**Appellant :-** Gurpreet alias Sodi

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Devendra Saini, Dharmendra Singhal, Gaurav Kakkar, Govind Saran Hajela, Nafees Ahmad, Noor Mohammad, Rajeev Pandey, Vinay Kumar Sharma

**Counsel for Respondent :-** Govt. Advocate, P.S. Pundir

2. **Case :-** CRIMINAL APPEAL No. - 7153 of 2010

**Appellant :-** Balbindra alias Bagga

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Jitendra Kumar Shishodiya, Anurag Pathak, Govind Saran Hajela, Kameshwar Singh

**Counsel for Respondent :-** Govt. Advocate, P.S. Pundir

Hon'ble Ramesh Sinha, J.

Hon'ble Saurabh Shyam Shamshery, J.

**(Per Saurabh Shyam Shamshery, J. for the Bench under Chapter VII Rule 1(2) of Allahabad High Court Rules, 1952)**

1. Appellant-Gurpreet alias Sodi (in Criminal Appeal No. 6966 of 2010) and appellant-Balbindra alias Bagga (in Criminal Appeal No. 7153 of 2010) have preferred present appeals under Section 374(2) of Criminal Procedure Code (*hereinafter referred to as "Cr.P.C."*) challenging the judgment and order dated 19.10.2010 passed by Additional Session Judge, Room No. 7, Saharanpur in Session Trial No. 87 of 2010 (State vs. Gurpreet alias Sodi and others), whereby appellants were convicted under Section 376(2)g IPC and sentenced for rigorous imprisonment for life with fine of Rs. 20,000/- each and in case of default, one year rigorous imprisonment. Appellant-Gurpreet alias Sodi was also convicted under Section 506(2) IPC and sentenced for three years rigorous imprisonment with fine of Rs. 3000/- and in case of default, six months rigorous imprisonment.

## 2. Prosecution Story

**2.01** Ram Kumar (PW-1), father of victim (PW-2), (name of the victim is withheld in compliance with the ratio of **Bhupinder Sharma vs. State of Himachal Pradesh (2003) 8 SCC 551**), lodged a written report (Exhibit Ka 1) at Police Station Kotwali Nakud, District Saharanpur on 11.06.2009 at 18.20 hours, stating that her daughter (victim) went to attend nature's call on 07.06.2009 at about 8.00 P.M. but she did not come back till late night. Despite best efforts of family members she remained untraceable.

**2.02** Next day (08.06.2009) in the morning at about 9.00 A.M. victim telephoned from a Phone No. 01331-322426 to Sanjay Singh (PW-3), resident of same village informing about her whereabouts. Thereafter Sanjay Singh (PW-3) informed Rajveer (PW-4), resident of same village, who went to Village Husainpur and accompanied the victim back to her home.

**2.03** Victim, after returning back to her home, narrated the occurrence to her father (PW-1) that, when she was going to attend nature's call, accused Gurpreet alias Sodi son of Gurmeet Singh alongwith other two boys having their face covered took her forcefully to a far away sugarcane field and one by one committed rape, after that they ran away leaving her in unconscious state.

**2.04** After regaining consciousness, with great difficulty, she reached to nearby Village Husainpur and tried to contact her father but failed, thereafter she called Sanjay Singh (PW-3) and informed about her whereabouts, who informed Rajveer (PW-4) who went to Village Husainpur on motorcycle and took her back to her house.

**2.05** At about 4.30 P.M. on 08.06.2009, appellant-Gurpreet alias Sodi make a threatened call to PW-1 of dire consequences in case the incident was reported to police but any how after muster courage he reported the incident to police on 11.06.2009 at about 06.20 P.M.

**2.06** Consequently, First Information Report (FIR) was lodged against appellant-Gurpreet alias Sodi and two unknown persons under Sections

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376, 506 IPC at Police Station on 11.06.2009 at 06.20 P.M. Victim was medically examined. In Pathology report “smear found to be negative for spermatozoa”. Doctor opined that, “no definite opinion about rape can be given”. Hymen was found old torn. On the basis of physical and radiological finding, her age was reported to be about 18 years. On the person of victim following injuries of simple nature were found:

- (i) Multiple hard scabbed abrasion measuring 8 cm x 2 cm on left side front of neck. Partially cracked.
- (ii) A hard scabbed abrasion of 4 cm x 2 cm on back of right upper and just above elbow.
- (iii) A hard scabbed abrasion of 3 cm x 2 cm on left side of face. Partially cracked.
- (iv) Partially hard scabbed abrasion of 4 cm x 3 cm on front of left upper arm, 7 cm from left rib. Partially cracked.

**2.07** Statement of the victim under Section 164 Cr.P.C. was recorded on 30.06.2009 by Judicial Magistrate/ Civil Judge (Junior Division), Saharanpur, where she supported the version of FIR and also named appellant-Balbindra alias Bagga to be one of the two unknown assailants as she recognised him when he visited appellant-Gurpreet alias Sodi's residence, which was opposite to her house, after 7-8 days of the occurrence. She had seen his face during the occurrence, when his mask was removed.

### Charge

**3.** After completion of investigation charge sheet was submitted and charges under Sections 376(2)g and 506(2) IPC, were framed against both appellants on 09.04.2010, to which they denied and claimed trial.

### Prosecution Witnesses

**4.01** In support of its case prosecution examined, in all, eight witnesses, namely, Ram Kumar, father of victim (PW-1); victim (PW-2); Sanjay (PW-

3); Rajveer (PW-4); Constable Vipin Kumar (PW-5); Dr. Abha, Women Medical Officer (PW-6); Police Inspector, Syed Laik Hasan (PW-7); and, Dr. Keshav Swami, E.M.O. (PW-8).

**4.02** PW-1, Ram Kumar, supported the prosecution case, as narrated in written complaint and further stated that victim recognized appellant-Balbindra alias Bagga after 7-8 days when he visited the place of appellant-Gurpreet alias Sodi who lives opposite to their house. In cross-examination he stated that distance of Village Husainpur from his house was about 8-1/2 km and in between Villages Kazibans, Samaspur, Aplana and Kutubpur fall. He further stated that battery of his Phone was discharged on the day of occurrence. Victim was not taken to any Doctor because she had not suffered any injury. He denied of any pressure put on the accused-Gurpreet alias Sodi to sell his land. This witness has admitted that even before occurrence accused- Balbindra alias Bagga was also acquainted to him as he usually visited the house of accused-Gurpreet alias Sodi.

**4.03** Victim (PW-2) supported prosecution case, narrated the incident and manner in which she recognised appellants. She admitted that she was acquainted with appellant-Gurpreet alias Sodi for 8-9 months prior to occurrence but she never talked to him. She denied acquaintance with accused Balbindra alias Bagga. She mentioned that place of occurrence was at a distance of 6-7 field from her house. She regained consciousness at about 8-9 A.M. on the next day of occurrence. After crossing field she found PCO at some distance. Her statement was recorded on 11.06.2009, after four days of occurrence, when FIR was lodged and on the same day she was medically examined. After occurrence all the accused took her to nearby field where she become unconscious. She did not remember, whether she washed the clothes, which she was wearing at the time of occurrence or she threw it away, then said she burnt the clothes. Subsequently she got married in December, 2009 and staying at her matrimonial house. She did not remember the phone number of her father due to recent change of sim card but she knew the number of Sanjay (PW-

3), therefore, she called him intimating her whereabouts. She neither remembered the time taken by her to reach Village Husainpur nor number of villages crossed till she reach Village Husainpur. She was raped in a maize field and regained consciousness at sugarcane field near Village Husainpur. She denied any physical relationship with Sanjay (PW-3) or with any one else before her marriage. She even shouted for help during the occurrence, however, none came forward for help. She also stated that engine was working at that time. She was confronted with her statement recorded under Sections 161 as well as 164 Cr.P.C. on the issue, whether faces of accused were covered or not during occurrence and visit of accused, Balbindra at the place of accused, Gurpreet after 10-11 days of occurrence. She denied false implication of accused, Gurpreet due to land deal and accused, Balbindra as he was doing pairavi of accused, Gurpreet.

**4.04** Sanjay was examined as PW-3, who supported prosecution case that on 08.06.2009 at about 8.30 /9.00 am, he received a call on his mobile number from the victim, who in stressed voice asked him to pick her from PCO at Village Husainpur. He asked Rajveer (PW-4) to accompany the victim back to her house. He came to know about the occurrence only from Ram Kumar, the father of the victim. In cross-examination he mentioned that his statement was recorded by police after 20 days of occurrence. He admitted his friendship with Ram Kumar (PW-1). He denied that PW-1 exerted pressure on accused-Gurpreet alias Sodi to sell his land. He also denied any illicit relationship with the victim. He did not remember the phone number of PCO from where the victim called him on the next day of occurrence. After the occurrence it was a talking issue amongst the villagers. He also denied false implication of accused-Balbindra alias Bagga as he was doing pairavi of co-accused, Gurpreet alias Sodi.

**4.05** Rajveer (PW-4) stated in his testimony that he met Sanjay (PW-3) at about 9.00-9.15 A.M. on 08.06.2009 on road, who told that he had received a phone call from his cousin sister (victim) from a PCO at Village Husainpur and asked him to accompanied her back to her house. This

witness reached Husainpur by motorcycle, where he met the victim, whose clothes were torn and dirty and was in a distressed state. They return back to her house. In cross-examination he admitted about visiting terms with accused-Gurpreet alias Sodi. His statement was recorded after 20-25 days of the occurrence by police. He was acquainted with accused- Balbindra alias Bagga being schoolmates.

**4.06** PW-5, Constable 316, Vipin Kumar proved the written report and FIR.

**4.07** PW-6, Dr. Abha, Women Medical Officer, Women Hospital, Saharanpur, who examined the victim, has proved medical examination report and reiterated that on the basis of report no definite opinion could be given regarding rape. She further mentioned that hymen was old torn, which means it was possible that occurrence could happened seven days before or might be earlier.

**4.08** SI Syed Laik Hasan, Investigating Officer (PW-7) supported the prosecution case. He visited place of occurrence as told by the victim, prepared site plan of place of occurrence but not the place where victim regained consciousness. He arrested accused-Gurpreet alias Sodi on 12.06.2009. Accused-Balbindra alias Bagga was arrested on 24.08.2009 from Court premises after he surrendered before Court. In cross-examination he mentioned that distance between sugarcane field of Rajveer (PW-4) and maize field was about 4 kms. Place of occurrence was told to be sugarcane field of Rajveer (PW-4) and not the maize field. He could not get the clothes of victim despite efforts. He did not prepared map of PCO at Village Husainpur. He stated that distance between Rajveer's (PW-4) field and maize field was 450 meters. Sanjay and Rajveer were not found in the village on 11.06.2009 and 16.06.2009. Informant or victim had not disclosed identity of any of unknown accused before 30.06.2009 though they met him on many occasion prior to it. This witness has further stated that victim has not told him about removal of face mask of unknown

persons during the occurrence. He further states that victim has specifically stated that she could not see the faces of unknown accused persons, as they were covered by mask.

**4.09** Dr. Keshav Swamy (PW-8), who examined injuries of the victim, proved the injury report and stated that all the injuries were of simple nature and could be caused by friction to any rough surface. He further stated that injuries could be caused during struggle when rape was committed.

#### **Statements under Section 313 Cr.P.C.**

**5.** Both appellants recorded their statements under Section 313 Cr.P.C. wherein they denied prosecution case. Accused-Gurpreet alias Sodi has mentioned in his statement that he was falsely implicated in the case as Complainant, Ram Kumar (PW-1) was pressurizing him and his father to sell their land, whereas accused-Balbindra alias Bagga has stated that he belonged to Sikh community, who kept beard and wear headgear and victim knew him very well even before alleged occurrence.

#### **Defence Witnesses**

**6.** Appellants examined two defence witnesses, namely, Mahendra Singh (DW-1) and Om Singh (DW-2) in order to support their case regarding false implication of accused-Gurpreet alias Sodi as Ram Kumar (PW-1) was pressurizing to sell his land and false implication of accused-Balbindra alias Bagga as he was doing pairavi for co-accused, Gurpreet alias Sodi, respectively.

#### **Impugned Judgment**

**7.** The Trial Court after considering the evidence and other material on record convicted and sentenced the accused-appellants as mentioned above.

**8.** Heard Sri Dharmendra Singhal, learned Senior Advocate assisted by Sri Shivendra Raj Singhal, Advocate and Sri Noor Mohammad, Advocate for appellant-Gurpreet alias Sodi and Sri Kameshwar Singh, Advocate for



appellant-Balbindra alias Bagga, Sri P.S. Pundir, learned counsel for Complainant, Sri Amrit Raj Chaurasia, learned A.G.A. for State and perused the record.

**Submission on behalf of Appellants**

9. Learned Senior counsel appearing for appellants submitted that:-

- (i) Delay of five days in lodging FIR remained unexplained which indicates false implication of the appellants.
- (ii) Defence has successfully brought on evidence that family of the victim was pressurizing accused Gurpreet alias Sodi to settle issue regarding sale of his land which was the reason of his false implication and further co-accused, Balbindra alias Bagga was falsely implicated as he was doing pairavi of accused-Gurpreet alias Sodi and Ram Kumar (PW-1) has objected him for doing so and threatened to implicated him in the case.
- (iii) There are major contradictions in the statement of victim recorded under Sections 161, 164 Cr.P.C. and statement recorded during trial before Court on the issue of identification of accused-Balbindra alias Bagga as she was not sure whether the faces of unknown assailants were covered or not. Disclosing name of appellant-Balbindra alias Bagga after 19 days of lodging FIR in the statement under Section 164 Cr.P.C. was nothing but a case of false implication. Place of occurrence is also changed as she mentioned in chief examination it to be sugarcane field whereas in cross it was mentioned to be maize field.
- (iv) Medical evidence on record has ruled out possibility of rape, injuries inflicted on victim were simple in nature and likely to be caused by friction on a rough surface, therefore, medical evidence does not support the prosecution case.



(v) Victim has not able to explain how she reached Village Husainpur which was about 8-1/2 kms from the place of occurrence. Even she has not explained why she did not call (by phone) from the villages fall in between the place of incident and Village Husainpur which were more than 5 or 6 in number. She did not even remember the phone number of her father. In these circumstances victim could not be termed as sterling witness being untrustworthy and blemished.

(vi) The Trial Court has passed the impugned judgment on the basis of conjectures and surmises and erroneously convicted appellants on the basis of sole witness of victim ignoring major contradictions in her testimony and improbability of events as mentioned in the testimony of other witness.

(vii) Relying on a judgment passed by Apex Court in **Santosh Prasad @ Santosh Kumar vs. The State of Bihar, (2020) 3 SCC 443** it is contended that in a case where evidence of prosecutrix does not inspire confidence and appears to be untrustworthy and blemished and is not of sterling quality, it would not safe to convict accused only on solitary evidence of prosecutrix.

#### **Submission on behalf of State**

10. Opposing submissions made on behalf of appellants learned A.G.A. appearing for State and counsel for informant submitted that:-

(i) In the present case delay of four days in lodging FIR is duly explained by complainant PW-1 in the complaint itself that he was under fear due to threatening call made by accused-Gurmeet alias Sodi of dire consequences in case of lodging FIR.

(ii) Evidence of victim is trustworthy and she has explained the manner of occurrence and when she became conscious she found herself to be near the Village Husainpur, therefore, in the natural course she would have called (by phone) from Village Husainpur only. Contradictions, if any, are trivial in nature.

(iii) Injuries to the victim as well as testimony of Dr. Keshav Swami (PW-8) supports prosecution case that injuries to victim might be caused due to struggle during the occurrence.

(iv) Defence has not able to prove their case and, therefore, Trial Court has rightly convicted appellants on the basis of trustworthy and reliable sole evidence of the prosecutrix.

**Analysis : (A) Delay in lodging FIR**

11. As per prosecution case occurrence took place in the night of 07.06.2009 and victim reached at her house at about 8.45 am on 08.06.2009 and narrated occurrence to her father (PW-1). However, they remained silent for about three days and lodged FIR only on 11.06.2009 at about 18.20 hours. The only explanation was some threat given by accused-Gurmeet alias Sodi on telephone, which remained unproved. It has come in the evidence of PW-3, Sanjay that villagers had knowledge about the incident soon after the victim reached her house. Therefore, there was no reason of fear for informant from going to Police Station to lodge FIR promptly.

12. It is well settled that mere delay in lodging FIR may not prove fatal in all cases, but in a given circumstance, even a minor unexplained delay in lodging FIR could be one of the factors which may affect credibility of the prosecution version. In **State of Himachal Pradesh vs Gian Chand, (2001) 6 SCC 71** Apex Court held:

*“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is*

*explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”*

*(emphasis supplied)*

13. In the present case, prosecution is not able to satisfactorily explain the delay of three days in lodging FIR though it would not, on its own, discredit the prosecution case in its entirety and we have to now consider, whether the intervening period was utilized for concocting a story to falsely implicate appellants.

14. It has come in evidence from prosecution side as well as from defence side that both the accused were acquainted to victim and their family. Therefore, the prosecution story that victim was unable to recognize any one of the unknown accused, even after their faces masks were removed during occurrence, cannot be believed. Implication of accused- Balbindra alias Bagga after 19 days of lodging FIR, further discredit the prosecution story. Defence has come up with their case that false implication was due to land deal. Thus, in the present case, FIR comes under grave suspect and it is possible that time taken in lodging FIR was utilized to falsely implicate accused-Gurpreet alias Sodi. Disclosing name of other accused- Balbindra alias Bagga after 19 days of lodging FIR though he was acquaintance to family of the victim even before the occurrence also comes under scanner.

**(B) Whether victim is a sterling witness?**

15. It is well settled that conviction in rape case could be based on sole testimony of victim without corroboration if witness is a sterling witness. In the judgment relied by appellants in **Santosh Prasad @ Santosh Kumar vs. The State of Bihar (supra)** Apex Court held that:

*"5.4 Before considering the evidence of the prosecutrix, the decisions of this Court in the cases of Raju (supra) and Rai Sandeep @ Deepu, relied upon by he learned Advocate appearing on behalf of the appellant-accused, are required to be referred to and considered.*

5.4.2 In the case of Rai Sandeep alias Deepu (*supra*), this Court had an occasion to consider who can be said to be a "sterling witness". In paragraph 22, it is observed and held as under:

*"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre 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 every one 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 such similar tests to be applied, can it 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."

*5.4.3 In the case of Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality."*

*(emphasis supplied)*

16. Keeping in mind the above mentioned observations of Apex Court we have scanned the testimony of victim (PW-2) in order to ascertain, whether her evidence inspire confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality. Having gone through the deposition of prosecutrix we find that there are material contradictions on various issues which are as follows:

- (i) Victim in her chief has mentioned the place of occurrence to be field of sugarcane. However, in cross examination she changed the place of occurrence to be maize field. Even evidence of IO (PW-7) is not corroborated with her statement regarding place of occurrence. IO (PW-7) in his cross examination has mentioned place of occurrence to be sugarcane field and not maize field.
- (ii) In her chief victim has stated that she become unconscious and regained consciousness only in the next morning in a sugarcane field near to Village Husainpur which was about 8-9 kms from the place of occurrence. Though she mentioned that after committing rape accused took her to nearby field, where she became unconscious, but it remained unexplained how she reached to a field which was far

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away. IO (PW-7) has not even inspected the said place as well as site of PCO. Thus, prosecution has failed to fix place of occurrence and also place where victim regained consciousness.

(iii) It has come in the evidence that both accused were acquainted to victim and her family, therefore, it is highly improbable that she was not able to recognize accused-Balbindra alias Bagga when as per her statement his face mask was removed during the occurrence. There is no explanation afforded by the victim, why she did not disclose name of accused-Balbindra alias Bagga to police before her statement was recorded under Section 164 Cr.P.C. on 30.06.2009 disclosing his name, though as per her version she came to know about identity of appellant-Balbindra alias Bagga after 7 days of occurrence according to her statement recorded under Section 164 Cr.P.C. or after 10-11 days, as mentioned in her testimony. Unexplained delay of at least 10 days in disclosing name of the accused, Balbindra alias Bagga to police by the prosecutrix after she identified him during his visit to the house of co-accused, Gurmeet alias Sodi casts grave suspicion on the prosecution version.

(iv) Even otherwise the medical evidence does not support the prosecution case as it has come in medical evidence that no definite opinion could be made regarding rape and injuries might be caused due to friction on a rough surface.

17. Considering above referred major contradictions and non explanation of vital issues, we are of the opinion that this witness has failed to pass any of the test of being sterling witness.

**(C) Other supporting evidence:**

18. Testimony of PW-1, PW-3 and PW-4, who are not eye witnesses are not helpful for prosecution case. PW-1, father of the victim has stated what her daughter (victim) has told him. His prior acquaintance with both the accused also goes contrary to the testimony of the victim. PW-3, Sanjay,

who was the first person with whom victim contacted after the occurrence, recorded his statement before the police after 20 days of occurrence. There are material contradiction on his availability for recording to statement in his testimony and in the testimony of IO (PW-7). PW-3 has stated that he visited police station after the occurrence, whereas IO has stated PW-3 and PW-4 were not available in the village for recording their statements. Therefore prosecution would not get any help from the statements of PW-1, PW-3 and PW-4. In the present case prosecutrix is not a sterling witness as well as other witnesses are not able to provide any supporting evidence.

### **Conclusion**

19. The off shoot of above discussion is that there are material contradictions and variation in the version of the victim. Prosecution has failed to fix the place of occurrence as well as place where victim regained consciousness. Prosecution has failed to come up with any plausible explanation how the victim reached at a place which was 8-9 Kms. from place of occurrence. IO has failed to explain delay of about 20 days in recording statements of PW-3 and PW-4. Even statement of the victim under Section 164 Cr.P.C. was recorded after 19 days of lodging FIR. There is unexplained delay in lodging FIR and also in disclosing the name of appellant-Balbindra alias Bagga. Medical report does not support case of the prosecution. Clothes of the victim were not recovered. In absence of any supporting evidence, the manner in which occurrence is stated to have occurred is not believable. There is likelihood of false implication of accused appellants. The evidence of victim cannot be taken as gospel truth at its face value and in absence of any other supporting ocular or medical evidence, there is no scope to sustain the conviction and sentence of the appellants.

20. It is also apt to mention a recent judgment of Supreme Court in **Parminder Kaur @ P.P. Kaur @ Soni versus State of Punjab: 2020 SCC**



**Online SC 605** which has dealt the issue of “failure to refute Section 313 Cr.P.C. statement” and held as follows:-

*“21. Under the Code of Criminal Procedure, 1973 after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1)(b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed and considered by the Trial Court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the Trial Court to fairly apply its mind and consider the defence, could endanger the conviction itself. Unlike the prosecution, which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities. Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defense plea.” (emphasis supplied)*

21. In the present case the accused have given their version of false implication and prior acquaintance, supported by defence witnesses, which is a plausible version but neither the prosecution has negate such evidence nor the Trial Court has analyzed it properly. This is also a reason to allow these appeals.

22. In view of above discussion, we are of the considered view that the impugned judgment cannot be sustained and is liable to be set aside.

23. Both the appeals are allowed. Judgment and order dated 19.10.2010 passed by Additional Session Judge, Room No. 7, Saharanpur in Session Trial No. 87 of 2010, is hereby set aside. The appellants are acquitted of the charges under Sections 376(2)g and 506(2) IPC. Appellant-Gurpreet alias Sodi (Criminal Appeal No. 6966 of 2010) is in jail and shall be released forthwith, if not detained in any other case. Appellant-Balbindra alias Bagga (Criminal Appeal No. 7153 of 2010) is on bail and need not to surrender. His bail bonds are cancelled and sureties are discharged.

24. Lower Court record alongwith a copy of this judgment be sent back immediately to Trial Court concerned for compliance and further necessary action.

25. Keeping in view provisions of Section 437-A Cr.P.C., accused-appellants Gurpreet alias Sodi and Balbindra alias Bagga are directed to forthwith furnish a personal bond in terms of Form No. 45 prescribed in Cr.P.C. of the sum of Rupees twenty-five thousand each and two reliable sureties each in the like amount before concerned Court, which shall be effective for a period of six months, alongwith an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before Hon'ble Supreme Court.

**Order Date :-23.09.2020**

AK

(Saurabh Shyam Shamshery,J.)

(Ramesh Sinha,J.)