

**A.F.R.**

**Reserved on 13.10.2020**

**Delivered on 05.01.2021**

**Court No. - 68**

**Case :- CRIMINAL APPEAL No. - 7704 of 2007**

**Appellant :- Vijay Singh**

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

**Counsel for Appellant :- M.P.S. Chauhan, Apul Misra**

**Counsel for Respondent :- Govt. Advocate**

**with**

**Case :- CRIMINAL APPEAL No. - 7686 of 2007**

**Appellant :- Hari Om Sharma And Another**

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

**Counsel for Appellant :- Pankaj Srivastava, Apul Misra, J N Chaturvedi,  
Rahul Chaturvedi, Shyam Sunder, Yogesh Kumar Srivastava**

**Counsel for Respondent :- Govt. Advocate**

**Hon'ble Ramesh Sinha,J.**

**Hon'ble Samit Gopal,J.**

**(Per Samit Gopal, J. for the Bench)**

**[Delivered by Samit Gopal, J. for the Bench under Chapter VII Rule 1  
(2) of the Allahabad High Court Rules, 1952]**

1. The aforesaid appeals are connected together and arise out of judgment and order dated 31.10.2007 passed by the Additional District & Sessions Judge, Fast Track Court No.4, Aligarh in Sessions Trial No. 367 of 1998 (State of U.P. vs. Anil) and Sessions Trial No. 278 of 1998 (State of U.P. vs. Vijay and another), whereby the accused/appellants Anil, Vijay Singh and Hariom Sharma have been convicted and sentenced under Section 342 of the Indian Penal Code, 1860 for one year rigorous imprisonment, a fine of Rs. 1,000/- each and in default of payment of fine to one month simple imprisonment, under Section 376 (2) (g) of the Indian Penal Code,

1860 to Life imprisonment, a fine of Rs. 20,000/- each and in default of payment of fine to two months simple imprisonment, under Section 3 (2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to Life imprisonment, a fine of Rs. 20,000/- each and in default of payment of fine to two month simple imprisonment. Further, the appellant no.2 Anil Kumar in Criminal Appeal No. 7686 of 2007 has been convicted and sentenced under Section 506 of the Indian Penal Code, 1860 to two years rigorous imprisonment, a fine of Rs. 2,000/- and in default of payment of fine to two months imprisonment. The sentences have been ordered to run concurrently.

2. In view of the legislative mandate as contained in Section 228-A of the Indian Penal Code, 1860 and the observation made by the Apex Court in various judgments, the identity of the prosecutrix/victim is not being disclosed and she will be referred to as “V” hereinafter.

3. The prosecution case as per the first information report lodged by Paramsukh (P.W.-2) is that he along with his wife Smt. Kishan Pyari Devi aged about 55 years, his two daughters namely “V” aged about 16 years and Thanwati aged about 13 years and his son Ved Prakash aged about 10 years reached the brick kilns of Ram Chandra Mukhiya on 19.10.1994 at about 5.00 p.m. in the presence of Ram Singh Contractor, on which Ram Singh Contractor left him and his family members under the supervision of watchman Sherpal. After the contractor left the place, the first informant said to the watchman that his family will not be secured at the kiln and they be sent to the house of the owner but the watchman assured him that in an hour labours will come. The first informant pleaded many times to the watchman and later on went to his hut. Subsequently after sometime at about 7.00 p.m. three persons came to the hut and showed the first informant a country made pistol and directed him that he should call his family members out, otherwise they will burn the hut. It is further stated that the first informant then shouted for the watchman, who then went to the back side and the said persons then took his whole family along with

himself to a field of paddy near the brick kiln. The first informant, his wife and his daughter were tied to a tree and about 8 meters away from the place and his elder daughter "V" aged about 16 years was then raped by the said three persons, which was witnessed by them helplessly as they were tied to the tree. It is further stated that out of the said persons he identified two of them, who are namely Thakur Pappu S/o Chintar Pal and Pandit Pappu S/o Babu Lal Sharma R/o Mulla Pada, Bhujpura and the third person was unknown. It is further stated that after about 30 minutes of the incident, the younger daughter of the first informant Km. Thanwati untied them. It is then stated that later on, the said incident was informed to the owner of the brick kiln, who told them that he will inform the police and he may not lodge any report, but since he did not take any action then he has come to lodge the present first information report.

4. An application for lodging of the first information report was given by Paramsukh, the same is marked as Exhibit Ka-1 to the records. On the basis of the said application, a first information report was registered on 22.10.1994 at about 17.30 hrs. at Police Station-Kotwali, District-Aligarh as Case Crime No. 219 of 1994, under Sections 342, 504, 376 of the Indian Penal Code, 1860 and 3 (2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The said first information report is marked as Exhibit Ka-6 to the records.

5. The prosecutrix/victim "V" was medically examined on 22.10.1994 at 6.30 p.m. by Dr. S. Latoriya (P.W.-3) at Mohan Lal Gautam Women Hospital, Aligarh. The medical examination report is marked as Exhibit Ka-2 to the records. The doctor conducting the medical examination on local examination found the hymen to be torn, old tear present and the vagina admitting two fingers easily. It was mentioned in the medical examination report that no marks of injuries were seen over face, neck, chest, back abdomen and extremities. The opinion given by the doctor is as follows:-

“No definite opinion about rape can be given as she is used to intercourse.”

For the determination of age of “V” she was advised X-ray, which was conducted on 24.10.1994 and a report was given by Dr. Qamar Ahmad (P.W.-4), in which after X-ray examination he opined as follows :-

“All centres of ossification united at the respective places.”

The said report is marked as Exhibit Ka-3 to the records.

6. The accused/appellant Vijay Singh was also subjected to medical examination on 23.10.1994 at 8.25 p.m. and the doctor found the following injuries on his person:-

- “(i) Abrasion 1 cm x ¼ cm on the right side of face.
- (ii) Abraded contusion 2 cm x 1 cm on the bridge of nose.
- (iii) Tenderness over the left elbow joint.
- (iv) Tenderness over the left knee joint.
- (v) Contusion 2 cm x 1 cm on the back of left midline chest.
- (vi) Tenderness over the front of chest.
- (vii) No sign of ext injury seen.”

The doctor conducting the medical examination gave his opinion as follows:

“Injury No. 1 to 7 are simple caused by blunt object. Duration ½ day old.”

7. The investigation concluded and a charge-sheet dated 21.11.1994 was submitted against the accused persons under Sections 342, 376, 506 of the Indian Penal Code, 1860 and Section 3 (2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the same is marked as Exhibit Ka-5 to the records.

8. The Trial Court vide its order dated 26.05.2003 framed charges against accused Vijay Singh and Hariom under Sections 342, 376 (2) (g) of the Indian Penal Code, 1860 and Section 3 (2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. Against accused Anil Kumar, the charges were framed vide order dated 12.10.1998 by the Trial Court under Sections 376, 342, 506 of the

Indian Penal Code, 1860 and Section 3 (2) (v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

**10.** All the accused persons pleaded not guilty and claimed to be tried. They have not led any defence evidence.

**11.** The prosecution in order to prove its case produced “V” as P.W.-1, who is the prosecutrix/victim and the daughter of the first informant. Paramsukh P.W.-2 is the first informant of the present matter and the father of “V”, who claims himself to be an eyewitness of the incident. Amongst the formal witnesses Dr. S. Latoriya P.W.-3 conducted the medical examination of “V”, Dr. Qamar Ahmad P.W.-4 is the Radiologist, who conducted the X-ray examination of “V”, R.P. Chaudhary P.W.-5 is the Sub-Inspector, who took up the investigation and remained the Investigating Officer till 27.10.1994, after which it was transferred to Sharad Chandra Pandey, who had submitted the charge-sheet. The said witness proved the handwriting of Sharad Chandra Pandey and also of Constable Clerk Lakhan Singh, who had transcribed the chik first information report.

**12.** The Trial Court after considering the entire evidence on record came to the conclusion that there is sufficient evidence against the accused persons for committing rape on “V” and in so far as the evidence of “V” was concerned, which was recorded in Sessions Trial No. 367 of 1998 (State of U.P. vs. Anil Kumar), the Trial Court came to its conclusion that the statement of “V” was recorded after about 10 years of the incident as such the variations were of no consequence and convicted the accused persons and sentenced them as stated above.

**13.** We have heard Shri Yogesh Kumar Srivastava, learned counsel for the appellants Hariom Sharma and Vijay Singh and Ms. Kumari Meena, learned Additional Government Advocate for the State and perused the record.

**14.** In the present matter two sets of evidences have been recorded. One set of evidence has been recorded in Sessions Trial No. 278 of 1998 (State

of U.P. vs. Vijay Singh and another), in which two accused persons, who were tried are Vijay Singh and Hariom Sharma. The second set of evidence has been recorded in Sessions Trial No. 367 of 1998 (State of U.P. vs. Anil Kumar), in which accused Anil Kumar is the sole accused.

Accused Anil Kumar, who is the appellant no.2 in Criminal Appeal No. 7686 of 2007 has died and as such his appeal stands abated vide order dated 08.09.2020 passed by this Court.

**15.** As of now, the appellant no.1 Hariom Sharma in Criminal Appeal No. 7686 of 2007 and the sole appellant Vijay Singh in Criminal Appeal No. 7704 of 2007 are the surviving accused persons before this Court in the two appeals.

**16.** The trial of Anil Kumar was separated being Sessions Trial No. 367 of 1998 (State of U.P. vs. Anil Kumar) and separate evidence was recorded in the same and since he has died and his appeal has abated, this Court will not be referring to the evidence recorded in his trial as the same would not be of any purpose and help to the surviving accused persons namely Hariom Sharma and Vijay Singh as the evidence in their trial has been recorded separately.

**17.** The learned counsel for the appellants made the following submissions:-

- (i)** The prosecutrix/victim "V" is a major girl. There is no evidence whatsoever in the present matter to show that rape has been committed on her.
- (ii)** The medical evidence in the present matter does not at all corroborate with the prosecution case. The doctor did not find any mark of injury on the body of "V". The doctor gave an opinion that she is used to intercourse and no definite opinion about rape can be given. The link, which comes forward by way of medical evidence for corroborating an incident of rape, is totally missing.
- (iii)** Except for "V" as P.W.-1 and her father Paramsukh as P.W.-2, who has claimed to be an eyewitness of the incident, no other person specially Smt. Kishan Pyari Devi, the wife of P.W.-2 and the mother of P.W.-1, her

younger sister Km. Thanwati and her younger brother Ved Prakash have been produced as witnesses, who are also claimed to be eyewitnesses.

- (iv) The delay in lodging of the first information report of 3 days does not have any plausible explanation and thus, the same has been lodged just to falsely implicate and harass the accused persons.
- (v) There have been serious and material contradictions in the version given by “V” P.W. - 1 and Paramsukh P.W. - 2 in their statements.

**18.** On the other hand, the learned Additional Government Advocate for the State opposed the submissions of learned counsel for the appellants and argued that “V” was produced and examined as P.W.-1, who has stated categorically about rape being committed on her by the accused persons. It is further argued that even Paramsukh P.W.-2, who is the father of “V” and the first informant, is an eyewitness of the incident and had also categorically stated about rape being committed by the accused persons on his daughter. It is argued that the presence of P.W.-2 is very natural. It is argued that the appeal lacks merit and is liable to be dismissed.

**19.** “V” P.W.-1 is the prosecutrix/victim and the daughter of the first informant. She in her examination – in - chief states that she belongs to Jatav community. She identifies accused persons present in Court and states that they belong to Thakur community. She states that the incident took place around 4 years back. She used to work at Bhujpura brick kiln along with her father and mother. She states that in the night at about 8.00 p.m. three people came and took her away out of whom two accused are present in Court and the third was an unknown person. They took her forcibly to the jungle. The accused persons took her mother and father also. Her brother and sister were also taken by them. The said persons tied her father and mother with a tree and took her away. They took her 2 kms. away from that place. She was raped at that place. She then describes the manner, in which rape was committed upon her. She states that the accused ran away after committing rape upon her. Her mother and father then reached the place, where she was present and then she came back with

them. She states that her father lodged the first information report and got her medical examination done. The accused persons threatened her of dire consequences.

**20.** In her cross-examination she has stated that she and her family members have never worked in the brick kiln for casting bricks, where the incident took place. She came to the said place along with her mother and father for the first time. She has no relative in Bhujpura. She prior to the present incident did not know any person of Bhujpura and even did not know accused persons from before. She was called to work in the brick kiln by Ram Singh Contractor. On the first day, they stayed at the kiln itself. There was a hut at the kiln and they stayed in it. Baking work at the kiln was not being done. There was no person at the kiln. The night was a dark night. It was so much dark that face of a person could not be seen. She states that it was about 8.00 p.m. She, her mother, her father and her brother and sister were in the hut. She states that when rape was being committed her both hands were not on the waist of the accused. Her hands were on the ground. It took about 30 minutes in committing rape. She states that she had bleeding from her private part. She states that her petticoat and dhoti got blood stained. She states that the accused persons had scratched on her chest. Her chest had marks of scratches of nails. She states that the accused persons had even injured her private part and she had received injuries. Her dhoti was taken off and thrown aside. She was only wearing petticoat and blouse. No cloth was spread her under her waist. She states that the place where she was thrown on the ground was a ploughed field. She was thrown in the open and the accused persons had turned her various times. All the three accused persons committed rape within 30 minutes and then ran away. She states that she received scratch on her face but she does not know whether there was any injury mark or not. Her legs were apart. She states that her family members were tied to a tree. Her mother was tied with a dhoti. She was made to stand near a tree and dhoti was wrapped all around. She does not know as to which tree it



was, but it did not have any leaves on it. Her mother and father were got untied by her sister and then the family members took her back by lifting her. Her whole family and Ram Singh Contractor had gone to the police station. The accused persons did not let them go to the police station and they went after three days. They reached the police station on the third day at about 7.00—8.00 a.m. Police did not take her clothes into their possession. Her medical examination was conducted on the third day. She was interrogated by the police on the day when her medical examination was conducted. She states that she had told the Investigating Officer that it was dark night. She states that she has also informed the Investigating Officer that the accused persons had with their hands scratched her chest and private parts due to which she received injuries. She states that she also told the Investigating Officer that she did not know the accused from before. She states that watchman had told the names of the accused persons. She states that if the said facts have not been written in my statement by the Investigating Officer, she does not know the reason for the same. She states that she told the Investigating Officer that her family members had brought her to the house by lifting her and if the same has not been written in her statement by the Investigating Officer, she does not know the reason. To a suggestion that all the three persons did not commit rape on her, she denies the same. She further denies the suggestion that a false report has been got registered on the saying of villagers. Further to a suggestion that three unknown persons had come for a loot and on the saying of villagers they have been falsely implicated in a case of rape, she denies the same.

21. “V” was recalled by the prosecution for further examination by the orders of the Trial Court, wherein she stated that she came to know of the name of accused Vijay Singh @ Pappu Thakur and Hariom Sharma @ Pappu Pandit at the time of incident. The said accused persons were taking names of each other.

22. In her cross-examination she stated that the accused persons were taking names of each other at the time of incident. She heard the name of Hariom @ Pappu and Vijay @ Pappu. She states that accused persons were calling each other by taking names of their caste. They said Thakur Pappu may also come. Amongst the accused persons one was Pandit Pappu. She states that in her earlier statement she has stated that the accused persons were of Thakur community. She states that amongst the accused persons one was a Thakur and the other was a Brahmin. She states that her earlier statement that both the accused persons were of Thakur community was not correct. She states that she has not given any statement in Court that both the accused persons were of Thakur community. She further states that her father had gone for getting the first information report lodged. She had a talk with her father prior to the lodging of the first information report. She had told the entire incident to her father. She states that she did not know the accused persons from before. She states that the accused present in Court is Hariom. They were calling each other by name. She states that now she does not know as to of which caste the accused belongs. The name of Hariom was mentioned in the first information report. She states that when the accused persons were calling each other by taking their names. Her father was also present there. Her father was present at a distance of 10 to 20 steps. To a suggestion that she is giving a false statement, she denies.

23. Paramsukh P.W.-2 is the father of "V", the first informant of the present matter and also claims himself to be an eyewitness of the incident. In his examination – in – chief he states that "V" is his daughter. They belong to Jatav community. The accused are of higher caste. He states that around 4 years back he was working in a brick kiln in Bhujpura and were staying there in the night. At about 8.00 p.m., the accused persons along with one other person came to the kiln and asked him for "maal", to which he said that he has nothing and then he was called out of his hut. At that time his family consisted of himself, his wife Kishan Pyari, his daughter

“V” and another daughter Thanwati and a small child. The said persons took them to the paddy field forcibly and tied them to a babul tree. The accused persons tied all of them except “V” and took “V” away at some distance from them. Thanwati could not be tied and she slipped from it as she was small. The accused persons then committed rape on “V” and ran away. His younger daughter Thanwati untied them and then they went to “V” and lifted her and brought her back. He states that then they went to the house of Mukhiya in the village, who called Ram Singh Contractor. Ram Singh Contractor then took him to his house. They did not let him lodge a report for 2 days. He then lodged a report after 2 days. He was read out the report, and states that he gave the same and also identifies his thumb impression on it, which was marked as Exhibit Ka-1 to the records. He states that the medical examination of his daughter was done. He states that at that time his daughter was aged about 14 years.

**24.** In his cross-examination he states that he had mentioned the age of his daughter as 16 years in his report. He states that he had earlier worked in the kiln and was driving a buggy. He states that at the time of incident except for his family there was no one else. The watchman had run away. He states that he does not know that the watchman had run away prior to the coming of the accused persons. He does not know the name of the watchman, who is a resident of Daudpur. The accused persons had come and asked for “maal” and they were referring to his daughter by saying so, the night was dark. He and his family members did not know the accused from before. He does not know the name of Mukhiya, who is called so. He states that the accused persons told their names after their arrest. Villagers had told the names of the accused persons. At the time of lodging of the report he knew their names. The accused persons made them walk ahead of themselves. Both the accused called him Pappu. He did not know the caste of the accused prior to lodging of the report. All the accused were of Thakur community. He states that he does not know the name of the person, who told him the name of the accused. He states that he had

written in the report of the accused had detained them. If the same is not written in the report he does not know the reason for it. He states that his report was written at the police station by someone else and he cannot tell as to who wrote it. On the report his thumb impression was got affixed and the same was read to him. He states that the delay in lodging of the first information report was due to the reason that the accused had detained them. He states that he had told the name of third accused also, but if the same is not in the report he does not know the reason about it. All the persons were tied with a dhoti. They were tied for about 30 minutes. They had lifted the girl and brought her. The accused persons had stopped them from lodging of the first information report and had threatened them of dire consequences, due to which the same was got registered on the third day, for which they had gone by hiding for lodging the report. He was interrogated by the Investigating Officer on the day of lodging of the report. He had told the names of three Pappu's to the Investigating Officer, but if in his statement, the name of third person has not been written, he does not know the reason. He states that he had told the Investigating Officer that the accused persons had detained them due to which the first information report has been lodged with a delay, but if the said fact has not been written, he does not know the reason. To a suggestion that he has falsely named the accused on the saying of villagers, he denies. He states that he cannot say as to whether he could recognize the accused persons due to dark or not. Further to a suggestion that on the saying of villagers due to party-bandi he has falsely implicated the accused persons, he denies the same. He states that it is true that the Inspector at the police station had written his report and got his thumb impression affixed on it.

**25.** The said witness was recalled for further examination by the prosecution vide order of the Trial Court. He states that the accused persons were taking names of each other and were calling them by taking names and they used to come to the kiln for taking bricks. He further states that at the time of incident they had taken the names.

In the cross-examination he stated that they were taking name of Pappu. They were calling Thakur Pappu. They were saying that Pappu burn the hut. Both were Pappu Thakur. The third person was Anil he had written the names of all the three accused in the report. He is illiterate. He does not remember the name of the third person. He states that he had got the name of Anil written in the report, but if his name is not written he does not know the reason. He states on seeing the accused persons in Court that he now does not remember their names. The names of the accused were told to him by Ram Chandra Mukhiya. He states that previously he had stated that he had written the names on the saying of villagers. He states that he does not remember as to which police personal wrote the report. He states on seeing Exhibit Ka-1 that the same was written by a police personal at the Police Chauki. On a suggestion that he is giving the statement on the tutoring of the Government Advocate, he denies the same. He states that he had got the correct names of the accused written.

**26.** Dr. S. Latoriya P.W.-3 was posted as Medical Officer in Mohan Lal Gautam Women Hospital, Aligarh on 22.10.1994. She examined "V", who was brought by police constable. She states that she did not find any injury on the face, neck, chest, back, hands and legs of "V". She states that on internal examination she found the hymen to be old torn, which admitted two fingers easily. She had advised X-ray examination for ascertaining the age of "V". She states that she cannot give any opinion about rape as "V" was habitual to intercourse. She proves the medical examination report, which was marked as Exhibit Ka-2 to the records.

In her cross - examination she states that in the report there is no mention of any injury and if there would have been any injury, she would have written it. She states that it is true that the victim was habitual to intercourse. She further states that there is a variation of two years on other sides of age.

**27.** Dr. Qamar Ahmad P.W.-4 was posted as Senior Radiologist in M.S. Hospital on 24.10.1994. He got the X-ray examination done under his

supervision of “V”. He states that the right wrist, right elbow and the right knee was subjected to X-ray and it was seen that all centres of ossification are united at the respective places. He proves the X-ray plates, which is marked as Material Exhibit-1 to the records.

In the cross-examination he states that the age of “V” as per Radiological examination is about 19 years. He states that the age of girl can be 2 years above 19 years, but cannot be less than 19 years. He states that he has not mentioned the age in his report. The estimation of age is about 19 years. He states that the supplementary report is not on the record of this case. He states that he has disclosed the age of the girl on the basis of X-ray plates.

**28.** R.P. Chaudhary P.W.-5 is the first Investigating Officer of the case. The investigation remained with him from 22.10.1992 to 27.10.1994. During this period. He recorded the statement of the first informant, his wife and the victim. He prepared the site plan and inspected the place of occurrence. He then recorded the statement of Ved Prakash, the son of the first informant. He proves the site plan, which is marked as Exhibit Ka-4 to the records. He arrested accused Anil Kumar on 25.10.1994 with the help of the first informant and “V”. He had recommended recording of the statement u/s. 164 Cr.P.C., which was recorded and then the investigation was transferred to Sharad Chandra Pandey. He identifies the handwriting of Sharad Chandra Pandey and proves the charge-sheet, which was prepared by him. The same is marked as Exhibit Ka-5 to the records. He then identifies the handwriting of Constable Clerk Lakhan Singh and proves the chik report as that written by him. The same is marked as Exhibit Ka-6 to the records. He proves the G.D. entry being G.D. No. 30 at 17.30 hrs. dated 22.10.1994 regarding the lodging of the first information report and proves the carbon copy of the same, which is marked as Exhibit Ka-7 to the records.

In his cross-examination he states that he prepared the site plan on the pointing out of the first informant on 22.10.1994. He has not

mentioned the distance between the hut of the first informant and the place of occurrence in the site plan. He states that the field was not having any crop of paddy. It was lying vacant. He states that there was a closed well near the place of occurrence. He has not written the names of the person whose fields are near the place of occurrence. He states that the place of occurrence was a vacant land and was not used for cultivation. He states that there were 12 huts at the kiln. To a suggestion that he did not go to the place of occurrence and has thus, not mentioned the names of the owners of the tubewell and fields and has not mentioned the distance between the place of occurrence and the huts, he denies. He states that he has not mentioned the length and breadth of the kiln. He states that in the 12 huts, 12 families live. He did not interrogate any labour as they were not present at the spot. He states that he did not consider it necessary to interrogate the labours and as such did not make any effort again. He states that he did not show the route of the accused going as he did not consider it necessary. He interrogated "V" on 22.10.1994. He states that "V" did not tell him that the night was dark and the face of anyone was not visible. He states that he did not ask "V" about the blood stained clothes and she did not tell him about the accused scratching her chest. He states that she had told him that she knew the accused from before. He states to have interrogated Paramsukh on 22.10.1994 and have also read the first information report. He has stated that in the first information report it is mentioned that the delay in lodging the same was due to the fact that the brick kiln owner had told him not to lodge it. He states that the first informant had in his statement told him that the owner of the brick kiln has informed the police. He states that the scribe of the first information report is Vinod Kumar Gautam. The first informant told him in his statement that he does not know the name of the scribe of the first information report. To a suggestion that the application has been got written at the police station, he denies. To a further suggestion that the Inspector has written the report by his hand, he denies. He states that he has not taken into custody the petticoat and blouse of girl as the

incident was 3 days old. He denies the suggestion that he did not go to the place of occurrence and did paper work falsely at the police station.

**29.** The accused in their statements under Section 313 Cr.P.C. have denied the incident.

**30.** Accused Anil Kumar in his statement under Section 313 Cr.P.C. has stated that he is not named in the first information report, he has been implicated on the saying of others and has been falsely implicated and the investigation as done is totally faulty, he be acquitted.

**31.** Accused Vijay Singh in his statement under Section 313 Cr.P.C. has stated that he has enmity with Ram Chandra of kiln, who has falsely got shown him as an accused. He had purchased the land of someone and was digging mud from the boundary of his field due to which he was inimical. He states that he has been implicated in the matter due to enmity. Paramsukh was working in the kiln of Ram Singh Contractor. Paramsukh did not know him from before.

**32.** Accused Hariom Sharma in his statement recorded under Section 313 Cr.P.C. has stated that he has no relationship with Vijay Singh, he is a Brahmin and has been falsely implicated due to village party-bandi and due to enmity.

**33.** "V" P.W.-1 states that she was raped by three persons but the medical evidence runs totally contrary to it. She also states to have received scratches caused by nails of the accused persons on her chest and private parts but there is no such injury found by the doctor who medically examined her. She states that she had bled while being raped and her clothes became blood stained but neither did she give any such clothes to the Investigating Officer nor did the doctor conducting her medical examination find any such injury on her private parts but to the contrary she found her to be habitual to sexual intercourse.

**34.** Similarly Paramsukh P.W.-2 has also given the same version of the incident and rape on his daughter as given by "V" P.W.-1. Even his statement does not find corroboration from the medical evidence. He



states to be an eye witness to the incident alongwith his wife, younger daughter and son but the same also does not find corroboration from any source.

35. The other alleged eye witnesses of the incident being the mother, younger sister and younger brother of “V” P.W.-1 have not been produced before the trial court but their not being produced can in no manner be fatal to the prosecution and in a case like this the version of the prosecutrix/victim is sufficient to prove the charge against the accused persons but in the present case Paramsukh P.W.-2 who is the first informant and the father of PW 1 has deposed of being an eye witness of the incident.

36. This court has to appreciate the evidence of the said two witnesses viz. “V” P.W.-1 and Paramsukh P.W.-2 as to whether they are truthful witnesses and as to whether their evidence is of such quality that they are to be treated as fully reliable witnesses after testing their deposition from the corroborating evidence and circumstances to prove the charges against the accused persons.

37. The law regarding the test to assess the quality of oral evidence led by the prosecution for proving or disproving a fact is well settled. In the case of *Vadivelu Thevar Vs. State of Madras : AIR 1957 SC 614*, the Apex Court has held as follows:

“..... Generally speaking oral testimony in this context may be classified into three categories, namely (1) wholly reliable (2) wholly unreliable and (3) neither wholly reliable nor wholly unreliable. In the first category of proof, the Court should have no difficulty in coming to its conclusion either way- it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation

of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable.”

**38.** Further, it is also well settled that while appreciating evidence the number of counts of witnesses is not an important aspect in a matter. What is important is the quality of evidence given by the witness(s). In the case of *Laxmibai (Dead) through Lrs. and Another Vs. Bhagwantbuva (Dead) through Lrs. and others: (2013) 4 SCC 97*, the Apex Court held as under:

“39. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement in law of evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Where the law requires the examination of at least one attesting witness, it has been held that the number of witnesses produced do not carry any weight.”

**39.** In the present matter the evidence of “V” examined as P.W.-1 that she was raped by three persons during which she bled from her private parts to such an extent that the clothes which she was wearing became blood stained and that she was injured by the accused persons by their act during the commission of rape does not find corroboration from any source. The medical examination done on her, though was after three days but that cannot give the result as given in the present case in the circumstances of the incident being taken place as alleged by “V” P.W.-1

and Paramsukh P.W.-2. Had “V” bled from her private parts due to rape being committed on her by three persons, the doctor would have discovered corresponding injuries in her private parts. Even her version that the accused persons has scratched her chest and private parts and she had received scratch marks and injuries on her chest and private parts also is conspicuously missing in the medical evidence. The blood stained clothes of “V” did not see the light of the day. The version even on this count does not find corroboration and is thus untrue. The finding of the doctor PW 3 in her medical examination report and statement in court also at this point is important to be referred and considered which says that “V” was habitual to sexual intercourse. The other factor that the incident was committed in a ploughed field has been stated by “V” in her deposition. Her not receiving any bodily injury while being raped by three persons in a ploughed field while lying bare in it is also an impossibility.

**40.** Although the appellant Vijay Singh was medically examined and his medical examination report is on record but the same has neither been relied by the prosecution for any event nor has he taken use of it for any benefit. The same has not even been proved in the trial by any witness.

**41.** The evidence of Paramsukh P.W.-2 also suffers from the same lacunas as that of “V” P.W.-1.

**42.** This court comes to the conclusion that although “V” P.W.-1 is the prosecutrix/victim of the present case and Paramsukh P.W.-2 is the first informant and her father who claims himself to be an eye witness of the incident and both the witnesses have tried to narrate a version for implicating the accused appellants but the same is a concocted version is termed as a “concocted uniformity” and is thus not safe to be relied upon. The said two witnesses fall in the category of unreliable witnesses.

**43.** Thus the conviction of the appellants by the trial court is not sustainable in the eyes of law. The trial court committed an error in recording the conviction and sentence of the appellants. Hence the

impugned judgment and order dated 31.10.2007 passed by the trial court is liable to be set aside, which is accordingly set aside.

44. The present appeals are **allowed**.

45. The appellants- Vijay Singh and Hariom Sharma are in jail. They are directed to be released forthwith unless wanted in any other case.

46. Keeping in view the provision of Section 437-A of The Code of Criminal Procedure, 1973 the accused-appellants Vijay Singh and Hariom Sharma are directed to furnish a personal bond in terms of Form No. 45 prescribed in The Code of Criminal Procedure, 1973 of a sum of Rs. 25,000/- with two reliable sureties in the like amount before the court concerned which shall be effective for a period of six months along with 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 the Apex Court.

47. The lower court record along with a copy of this judgment be sent back immediately to the trial court concerned for compliance and necessary action.

48. The party(ies) shall file computer generated copy of such judgment downloaded from the official website of High Court Allahabad before the concerned Court/Authority/Official.

49. The computer generated copy of such judgment shall be self-attested by the counsel(s) of the party(ies) concerned.

50. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the judgment from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

**Order Date :- 05.01.2021**

M. ARIF

**(Samit Gopal,J.)**

**(Ramesh Sinha,J.)**