

(2015) 09 GUJ CK 0039
In the Gujarat High Court
Case No : Criminal Appeal No. 353 of 2011

Govindbhai Bodhabhai Mer

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 313, 374 (2), 374(2)
Evidence Act, 1872 — Section 118
Penal Code, 1860 (IPC) — Section 363, 376

Citation : (2015) 09 GUJ CK 0039

Hon'ble Judges : Anant S. Dave, J; Z.K. Saiyed, J

Bench : Division Bench

Advocate : Pratik B. Barot, for the Appellant; Jirga Jhaveri, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anant S. Dave, J—This Appeal preferred under Section 374 (2) of the Code of Criminal Procedure, 1973 ("Code, 1973"), arises out of judgment and order dated 29.4.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Veraval, Camp at Una in Sessions Case No. 2 of 2009, whereby conviction and sentence for life imprisonment is awarded by the learned Judge for the offence under Section 376 of the Indian Penal Code and the Rs. 50,000/- is awarded to the victim towards the compensation.

2. As per the case of the prosecution, on 4.10.2008, daughter of the complainant was kidnapped by the appellant after closure of the primary school around 14:30 by alluring her to give Rs. 10/- and also threat was administered to the brother of the victim and thereafter, she was taken to the house of the accused, where he committed rape on her brutally with which the accused committed crime under Section 376 of the Indian Penal Code. A reference in detail would be made later on, but at the end of investigation, pursuant to the registration of FIR being CR I 48 of 2008 for the offences punishable under Sections 363 and 376 of the

Indian Penal Code and on completing necessary procedure, the learned Judicial Magistrate First Class, Una, in exercise of power under Section 209 of the Code, 1973, committed the case to the learned Additional Sessions Judge, Veraval, where it was numbered as Sessions Case No. 2 of 2009 and later on, it was tried whereby the prosecution examined 14 witnesses and 35 documentary evidence and finally statement of the accused also came to be recorded under Section 313 of the Code, 1973, whereby charge was denied by the accused completely and finally came to be convicted by the trial Court as per the conviction and sentence recorded in earlier paras.

3. For the sake convenient, we refer following prosecution witnesses and documentary evidence:

4. That the charge came to be framed being Exhibit 10 which reads as under:

"I, Mr. N.N. Parmar, Additional Sessions Judge, Presiding Officer, 2nd Fast Track Court, Veraval Camp, At. Una hereby frame charge against you the accused Govind Bogha Koli resident of Sanvav that,

(1) You the accused on 04/10/2008 at 14-30 hours Renukaben, the daughter of the complainant Bhanji Masri, Age 7 years, Resi. Sanvav and Mahesabhai were going on foot at about 2-30 hours in afternoon as the school was over. During that time you the accused gave ten rupees to the daughter of the complainant and telling her to take Bhag, by taking Bablu from the shop of Dhirubhai, frightening and intimidating Maheshbhai asked him to go home and therefore Maheshbhai went home and thereafter you the accused gave temptation for giving Bhag, induced her and took her at your house (in farja), took out clothes of Renuka and committed an evil act and thus committed a crime punishable u/s. 363, 376 of IPC.

Therefore, I hereby order that as you the accused have committed the aforesaid crime within the jurisdiction of this court, the judicial trial against you should be conducted in this court.

Veraval : Camp - Una Date : 11/08/2009

Sd/- Illegible 11-8-09 (N.N. Parmar) Addl. Sessions Judge, Presiding Officer, Second Fast Track Court Veraval, Camp - Una"

5. That basically, P.W. 1 at Exhibit 23 is panch of Muddamal seized from the scene of offence and witness of the procedure of drawing panchnama and put his signature, even in cross-examination, in his testimony stand by what he stated and signed in panchnama. P.W. 2 Renukaben Bhanjibhai, is a child victim aged 6 years, Exhibit 24, though suffered brutality at the hand of accused, in her testimony, reiterates and stands by her version about heinous crime. Likewise P.W. 3 Minaben, Exhibit 27 is grandmother of the victim, who immediately came into contact of the victim and took her to the hospital for treatment etc. remained unshaken in her testimony. At the same time, Dr. Bhaveshbhai Gordhanbhai Tank, Exhibit 28, who was performing at Civil Hospital, Junagadh,

examined the victim. Dr. Tarik Yasin Baloch, P.W. 7, Exhibit 36 was serving as Medical Officer, Community Health Center, Una, who initially examined and treated the child victim and further, Dr. Nileshbhai Meramanbhai Ahir, P.W. 23, Exhibit 45, Assistant Professor of Gynec Department at Civil Hospital, Rajkot, whereby the victim was taken over for further treatment and to undertake surgery of rectum part which was taken out from abdomen by doing operation namely sigmoid-loop colostomy and the victim was treated for number of days. In addition to above, other P.Ws. including Panch witnesses namely P.W. 8, 9, 10 and 11 who had given their testimonies at Exhibit 39, 41, 43 and 44 by and large supported the case of prosecution. Further, P.W. 13 and 14 namely Investigating Officer Rakeshkumar Prabhudas Gharsandiya and Balwantsinh Bhavubha Jadeja at Exhibit 49 and 68 confirm about the registration of complaint, version of victim supporting evidence during the course of investigation till charge-sheet was filed and documentary evidence which particularly, panchnama of local place of offence Exhibit 14, panchnama seizing cloth of victim Exhibit 15, panchnama - discovery of cloth of accused Exhibit 42, original complaint Exhibit 26, medical certificate of victim at Junagadh Exhibit 29, case papers of treatment at Junagadh Exhibit 30, then medical certificate of accused Exhibit 32 about his physical fitness in committing sexual intercourse and further communication addressed for sending sample of accused at Exhibit 35, medical certificate of victim at Community Health Center, Una Exhibit 37 along with case papers of victim Exhibit 38 and relevant yadis intimation send to police, scientific officer, receipts of reports etc.

6. Thus, finally medical evidence, receipt received upon examination and analysis of sample reflected in serological report Exhibit 63 and analysis report Exhibit 65, left no lacuna in case of prosecution and it was found at the end of trial that the accused committed the crime for which he was charged and convicted and sentenced for life with rigorous imprisonment with a fine of Rs. 1,000/-, in default of payment, further undergo simple imprisonment of three years and the victim was awarded Rs. 50,000/- towards the compensation in accordance with law.

7. Learned advocate Mr. Barot for the appellant - convict would contend that the complaint was registered because of political rivalry and to harass the appellant and even the possibility of injury on private part of the victim due to fall on stone or any sharp article was not ruled out. It is also submitted that the narration by child witness in absence of any other eye-witness, the case of the prosecution could not be held to have been proved beyond reasonable doubt and further, the medical and scientific evidence conclusively did not prove the guilt of the accused and accordingly, the judgment and order of conviction and sentence be quashed and set aside. Lastly, he has submitted that the sentence for life with rigorous imprisonment is harsh and deserves to be reduced to 10 years alternatively, the appeal be allowed accordingly.

8. We have heard learned APP, who referred to the reasoning and findings of the

judgment and order under challenge and submitted that in a case of charge under Section 376 of the Indian Penal Code, the trial Court has considered oral as well as documentary evidence and on all stages, the prosecution fully proved the case leaving no room of doubt by which innocence of accused can be even inferred, with the manner in which 6 years old daughter of the complainant was allured and subjected to brutal rape and it can be appreciated by leading examination-in-chief and cross of P.W. 5 Dr. Bhavesh Tank and other Doctors and Surgeon, who treated her later on reveal that she was ravished so cruelly with even surgery of her private part was to be undertaken by Surgeon at Rajkot, Civil Hospital, the treatment continued for long period. It is submitted that FSL and Serological reports which remained completely proved reveal the presence of semen on private part of the victim, on cloths of accused and victim, including bloodstains for which no dispute ever raised of matching of group in context of crime committed. According to learned APP, when the prosecution has proved its case on the strength of oral as well as documentary evidence well appreciated by the learned trial Judge, and the case was proved beyond reasonable doubt, established the guilt of the accused, no case is made out to interfere with the conviction and sentence so awarded and the appeal be rejected.

9. We have already reproduced the nature of evidence documentary as well as oral, confirming the part of trial and appreciated by the learned trial Judge, it is necessary to reproduce the injury Nos. 1 and 3 of the victim aged 6 years was initially examined by Dr. Tarik Baloch, P.W. 7, at Community Health Center, Una and upon examination of the victim, he confirms the same. Then P.W. 5 Dr. Bhavesh Tank, Civil Hospital, Junagadh, confirms the same after examining the victim.

Here it is necessary to quote the depositions of P.W. 2 -victim Renukaben, P.W. 4 - grandmother of victim - Minaben and P.W. 7 - Dr. Tarik Baloch, Medical Officer, CHC, Una which are as under:

"Deposition of the Prosecution Witness No. 2

I do hereby on solemn affirmation state that -

Note : As the victim witness is a child witness, questions were asked to her in the court with closed doors to ensure that whether she understands the truthfulness of oath or not.

This witness is a child witness and as she understands the truthfulness of oath, let the oath be given to her.

Examination-in-chief by A.P.P. Mr. M.K. Gohel.

(1) This incident took place before one year and four months at about 2-00 to 2-30 hours when I was going at my home after the school hours with my friend. My brother Mahilo @ Mahesh who studies with me in the school was also with me at that time. My brother and I were going to home from the school. At that time, Govind - the person who is present in the court today as an accused was sitting

at the pan parlor on the way. He called me. He gave me ten rupees and told me to take packet of bablu but as the shopkeeper had no change, Govind took me with him and as there was no change at the next shop also, nothing was found and while doing so he took me at his house and he told me, "you take out your clothes" and by saying so he took out my clothes and he climbed on me and my mouth was shut and he climbed on me and raped me. He inserted his instrument of urination in my place of urination. Therefore I started painning at the place of urination and bleeding also started from the place of urination. Thereafter, Govind made me to wear clothes and driven me out of the house and so I went to my home. I reached my home on foot. When I was going at my home, my grandmother Meenben met me on the way and she took me at home. After going home, I talked about this and therefore my parents took me at Gadhada hospital and from there I was taken to Una and from Una we went to Junagadh. We also went to Rajkot from Junagadh. I stayed at Rajkot hospital for about three and half months. Police interrogated me about this. The clothes - frock worn by me at that time can be identified by me if I am shown. The clothes are shown to me and looking at the same I state that they are my clothes.

(2) After the school hours, I was coming with my brother Mahila and when we were standing at the shop, Govind abused my brother and therefore my he went away.

Cross-examination by Adv. Mr. B.B. Solanki for the accused.

(3) Timing of my school is from 12-00 hours of morning till 5-00 hours in evening. It is holiday on Sunday. On Saturday the timing of school is from 10-00 hours to 2-00 hours in the noon. On the day of the incident it was a half day school and it was Saturday. It is not true that my house and school are situated at nearby distance. It is true that while going to school we all girls and boys come and go together. Wherein friends of my age are also there. It is true that on the day of the incident apart from my brother and I, many other girls and boys were there with us. It is true that in our village there are also other persons having the name Govind. We don't have the relations to go at the house of the accused Govind and his family members also do not come at our house. This Govind is not my relative. It is not true that on the day of the incident the accused Govind did not meet me and did not give me any currency note of Rs. 10/- and did not take me to buy a packet named bablu. It is not true that the accused Govind did not take me to his house by tempting to give a packet of bablu and did not do any such evil act with me as stated by me. It is not true that as I was going from school by running and as I fell down and as a stone hit at the place of urination, it was bleeding and painning. When I was coming on foot, my grandmother met me on the way. When my grandmother met me, I was directly going at home. It is not true that when my grandmother met me on the way, she told me such that "since very long we are searching for you, where were you?" We went to hospital in the next day morning. When we went to hospital, my mother, father, grandfather Boghabhai and Sarpanch Laljibhai were

with me. It is not true that many other persons of the village and Devubhai, the shopkeeper also came with me. We all went to hospital in an ambulance. It is true that when I came to hospital, the doctor inquired me and I gave answers to whatever he had asked. I was also inquired by the doctors of Junagadh and Rajkot and I also answered them. When I was in the hospital at Rajkot, the police came to inquire me. It is true that when I was at Rajkot hospital, my father was with me and also dictated all the facts to the police. It is not true that Govind has not done anything to me and did not give me ten rupees to buy bablu - the packet of snack and thereafter as no change of rupees were found, he took me at his house by inducing me and as I have stated earlier he did not do any evil act with me by removing my clothes. It is not true that my father and father of Govind were opposite to each other in the election of the village and a quarrel took place between them. It is not true that as my father told me to falsely mention the name of Govind in this case, I state false facts and identify Govind by falsely involving him in this incident.

No re-examination.

Date : 11/02/2010

Before me Sd/- Illegible Presiding Officer Fast Track Court No. 2 Veraval.

The deposition on being read over to the witness, she admits it to be true.

Sd/- Illegible Presiding Officer Fast Track Court No. 2 Veraval."

"Deposition of the Prosecution Witness No. 4

I do hereby on solemn affirmation state that -

Examination-in-chief by A.P.P. Mr. M.K. Gohel.

(1) The victim in this case is the daughter of my son and we all live together in one family. My son Bhanji has two sons and a daughter. It has been about one and a half years of the incident which had taken place with the victim. It was Saturday on that day and I was at my home. The victim Renuka - the daughter of my son had gone to school and therefore Mahesh- the son of my son had also gone to school. Mahesh alone came back from the school and therefore as I asked about the victim, he said that she is coming later. But the victim did not come till evening and we were looking for her. At that time, when I was going to look for her, she met me on the way two-three houses away from the house of the accused Govind and she was coming in tired condition dragging her school bag therefore I took her my home holding her hand and giving her support. My daughter was speaking nothing at that time and she started speaking at 8-00 hours in the morning and she told that the accused Govind took her from the Raj Pan Parlour by tempting her to give a packet of bablu -snack and from there, took her at his house saying that the homework of my sister has to be done. The house was closed and so the accused took her in courtyard of keeping cattle. Taking her in the courtyard, the school bag was kept aside and made her to take

out her clothes and her mouth was shut and an evil act was done with her. I asked her as to why she did not shout. She said that her mouth was shut by placing his hand on the mouth. Her place of urination was in blood stained condition and blood was also there at the place of her rectum. Her clothes were also stained with blood. At this time, my son and his wife had gone for labour work and they came at 7-30 hours in the evening and they also saw this condition of the victim at that time. As the victim could not speak, in the morning when she regained consciousness, she informed all the facts. So we called for an ambulance and took her at Girgadhadh hospital. But as the doctor was not present, we took her at Una hospital and from there we took her Junagadh for further treatment and thereafter she was taken to Rajkot for further treatment. Approximately for three and a half months the victim was kept at Rajkot hospital for treatment. The police interrogated me for this and took my statement. I am shown clothes of the victim and they are the same which were worn by her and the police had seized them. The accused Govind belongs to my village only and I know him very well.

Cross-examination by Adv. Mr. B.B. Solanki for the accused.

(2) It is true that on the day of the incident I was at my home and I came to know about the incident as the victim told me about it. It is true that the police only asked my name and address. It is true that it has not happened that the police may have written in my presence and took my statement. It is not true that the victim started to talk with me when she met me on the way. It is true that I escorted the victim and made her to sleep in the bed and thereafter she did not speak anything to anyone. It is not true that I falsely state the fact that the accused took her from the pan parlour by tempting her to give her packet of bablu - snack and under the pretext of doing homework of her sister. It is not true that I falsely state the fact that when the victim met me on the way, she was dragging her school bag and coming in a very tired condition. I do not know the fact that my daughter started speaking at 8-00 hours in the morning and told us all the facts. I did not dictate this fact in the statement. It is not true that I falsely state the fact that when the accused took the victim at his house, it was locked and so the accused took her in courtyard of keeping cattle where asking her to keep her school bag in a corner, made her to take out her clothes and her mouth was shut and an evil act was done with her and she did not shout. It is not true that I falsely state the fact that I saw her clothes and place of urination and other part of body were blood stained. It is not true that as the victim fell down, she sustained injuries at the secret part and blood oozed out. It is not true that the accused did not take the victim at any place by tempting her and did not do any evil act with her. It is not true that as we have discord with the family of the accused, my son has filed this completely false complaint and I give a false deposition to help him.

No re-examination.

Date : 04/03/2010

Before me Sd/- Illegible Presiding Officer Fast Track Court Veraval/Una

The deposition on being read over to the witness, she admits it to be true.

Sd/- Illegible Presiding Officer Fast Track Court Veraval/Una"

"Deposition of Prosecution Witness No. 7

I do hereby on solemn affirmation state that:--

Oath administered

Examination-in-chief by A. P.P. Mr. M.K. Gohel

(1) I am serving as Medical Officer since last eleven years and I am performing duty as Medical Officer since last two years at CHC, Una. I was present on my duty as Medical Officer on 5/10/08. During that time, Miss Renuka Bhanabhai Gohil, age 6 years, resident of Sanvav came to me for treatment at 11-45 hrs with her father without police yadi. Her father gave history that she has been rapped and had informed that Govin Bogha had rapped her on 4/10/08 during two hrs in the afternoon to six hrs.

(2) As I examined her, she was in total conscious state. Her vital data was normal and her main body functions were clinically normal. Her height was about 115 cm and weight was about 15 kg. Her body was thinly built and she was poorly nourished. Axillary hair was not present and she did not have public hair. Breast was not developed and external genital organs were also not developed. Her menstruation cycle had not started. Upon examining her with perspeculam, it seemed painful, swelling was seen inside the vulva upon seeing it with the instrument and the inside part was lacerated. Swelling and redness was present. Upon examining her with finger(p.v), the vagina was pink and hymen was torn. Her uterus size could not be measured as she complaint about extreme pain. One finger could enter in her vagina with little pain and upon entering two fingers, she complaint about extreme pain.

(3) Upon examining the victim, the following injuries were seen.

Injury No. 1:-- In the local injuries on genital organs, there was approximately 2 cm long tear on the right side to the vagina and foul smelling discharge was present due to infection.

Injury No. 2:-- There was about approximately 1 inch long tear on the left side of vagina with infection.

Injury No. 3:-- There was a long tear in the mid-line below the vagina up to rectum.

Injury No. 4:-- There was a small tear on the upper part of the vagina and bleeding was present there.

This victim had also sustained other physical injuries, which are as below.

Injury No. 1:-- There were total three abrasions on the lower back part of the victim, one with about 2 cm diameter, second with about one and a half inch diameter and the third with about 1 cm diameter. There was a 2 cm long abrasion below these abrasions. There were two abrasions of 1 cm and 2 cm on her hip part. There was a 1 cm long abrasion on her left side. These injuries were on her back part. This victim had sustained about one inch long abrasion on the front part of the body on inguinal. I have mentioned those injuries with separate sketch with the certificate. I examined the same victim and issued that certificate in my own handwriting. There is seal of the hospital and my signature therein. That injury of mark 9/17 is given Exh-37. During the examination, I had taken samples of blood, saliva, vaginal smear, nail etc of this victim and gave that to the police.

(4) I had given preliminary treatment to this victim and then I had referred her to Gynecologist in Junaghad for further treatment. As the victim could not be treated in this hospital, she was referred. As she had sustained grievous injuries during the incident such as rupture of vagina and rectum and as she needed treatment, she was referred. As per my opinion, if any mature person tries forcefully to have sexual intercourse and has sexual intercourse, then the injuries mentioned by me can be caused. Today, I have brought the case papers with respect to examining the victim, which is in my handwriting and it is now given Exhibit No. 38.

Cross-examination by advocate Mr. B.B. Solanki for the accused

(5) It is true that the victim was brought without police yadi. It is not true that when the victim was brought to me, she was unconscious. It is not true that there was no lady nurse with me, while examination of the victim. It is true that I have not made entry in the certificate about lady nurse being present there. It is true that the history about the incident was dictated by Bhana Marsi who had come with her. It is not true that as the victim was a minor, I had not taken her written permission before examination. I have obtained this permission on case papers, which is written in the paper of Exh-38 and have obtained signature. It is true that I have not mentioned the fact of obtaining permission of the certificate. It is true that the name of the nurse in whose presence the victim was examined is also not written in the certificate and have not mentioned in the produced case papers. It is true that I did not refer the victim to radiologist to know the injuries. It is not true that the injuries of the victim on the genitals can be known from the opinion of radiologist and gynecologist doctor. It is not true that the injuries mentioned by me were such that can be caused if person is dashed with hard substance while falling down. It is not true that other than rape, the injuries sustained by the victim on genitals, can be caused if injured with any substance while trying to stop it. It is true that hymen can be ruptured due to other reasons such as cycling, running, falling, long jump or falling down from higher place. It is not true that some persons do not have hymen from birth or that it is torn. It is true that outward number is not given in medical certificate. It is not true that

the injuries on genitals were such that can be caused due to falling. It is not true that I am falsely stating all the facts about the injuries sustained by the victim and that foul smelling discharge was present and the vagina was ruptured and the rectum had also got ruptured. It is not true that there was no abrasion and there was no other injury on the back of the body and on the hip part to the victim. In spite of it, I have mentioned them in the certificate falsely. It is not true that I had not obtained samples of any kind of the victim and I have not sent them for analysis. It is not true that even though no grievous injuries were sustained by the victim, I had referred her wrongfully. It is not true that I have issued false certificate as per the say of the father of the victim.

10. Finally, P.W. 12, Dr. Nilesh Ahir, Assistant Professor of Gynec Department in Rajkot Civil Hospital, Exhibit 45 and Dr. Jaydeep Ganatra, Pediatric Surgeon with whom the operation of sigmoid-loop colostomy was performed upon the victim reveal that the victim was brutally subjected to and no room is left for any other inferences. The evidence recorded before the trial Court, reads as under:

"Deposition of Prosecution Witness No. 12

I do hereby on solemn affirmation state that:--

Oath administered

Examination-in-chief by A. P.P. Mr. M.K. Gohel

(1) During the period of October, 2008, I was performing my duty as Asst. Professor in Gynec Department in Rajkot Civil Hospital. During that time, as the victim of this case, Renukaben was referred to us for further treatment from Junaghad Civil Hospital, she was brought for treatment on 7/10/2008. During my duty as professor, I have to do the work of teaching and giving treatment. When this victim was brought to me for treatment, her age was only seven years, which was informed by her relative. As I examined her, the following condition was seen.

(2) Discharge was present in her genitals and she was not ready to get examined, therefore, she was not cooperating. Such grievous injuries she had sustained on her genitals that the vagina and the rectum had become one due to tear. This was the condition of the victim when she was first brought to me on seventh date. Foul smell was coming from her vagina.

(3) Before examining her on the second day on eighth, she was made unconscious by giving anesthesia and upon examining her, the wound was cleaned along with Dr. Jaydeep Ganatra who is a pediatric surgeon and the rectum part was taken out from abdomen part by doing operation (sigmoid-loop colostomy). That surgery was done by Dr. Ganatra at six hrs in the evening who was with me.

(4) Thereafter, the injured part and the operated part were cleaned daily from 9/10/08 till the injury sustained by the patient was healed to the level that

stitches can be taken.

(5) Thereafter, on 24/10/08, this patient was operated upon by Dr. Ganatra and Dr. Bipin Nayak of our hospital for injuries sustained by the patient and the vaginal part and rectum were made normal by stitches. This operation was for complete perineal tear repair. After this operation of the patient, the wound and injury were cleaned daily and on 11/11/2008 the stitches were removed by operation and operation of rectum was done and its dressing was continued.

(6) As the patient seemed better during the treatment and as she her condition improved, the stitches of the abdomen were opened with the help of pediatric surgeon again on 13/11/2008 and advice was given to close the operation of colostomy and she was discharged. I had issued certificate in this respect on 21/11/08, which has been produced in this case vide mark 9/19. I have also showed diagram of injured part in that certificate. It is prepared in my handwriting and I have made my signature and the seal of hospital is also there. It is given Exhibit No. 46. The police had sent me yadi to obtain the certificate of this victim, which I have brought today. Wherein I identify my signature as receiver of the yadi. It is given Exhibit No. 47. I have also brought today the original case papers of this victim, page No. 3 to 40 showing the details from the time she was admitted in our hospital till she was discharged. Those original case papers, page No. 3 to 40 are given Exhibit No. 48. As per my opinion, such injuries can be caused if any mature age person, has had sexual intercourse forcefully with a younger person that means the victim.

Cross-examination by advocate Mr. B.B. Solanki for the accused

(7) It is true that this victim had not come to us with written referred note. It is true that I did not ask history to the victim before starting the treatment and she also did not give. It is not true that I did not get consent of her guardian before starting the treatment as the victim was a minor. It is true that I have not mentioned about taking consent in the certificate of Exh-46. It is not true that when the patient was brought to me, her daily activity such as urination and toilet etc were normal. It is not true that I had not kept a lady nurse present during the treatment. It is true that I have not mentioned about having given treatment in the presence of lady nurse in Exh-46. It is not true that as I am a Professor, most of my time is given in teaching and I do not have to give time for treatment. It is true that if any person gets dashed forcefully with any sharp pointed article or falls upon it, then such the injuries sustained by this patient can be sustained. It is not true that major part of treatment was given by other doctors. Therefore, I do not have information with respect to injuries sustained by this victim. It is not true that I did not give any treatment to the victim and I had only issued certificate. Even then I am stating false facts.

The above reproduction of testimonies of various P.Ws. prove the case of the prosecution beyond reasonable doubt. P.W. 2 is victim aged about 9 yrs. at the time of deposition and being child witness, who is able to understand the

questions and give rational answers and even in her cross-examination, she has stood by her version and therefore, careful scrutiny of evidence of the child witness in this case, not only inspires confidence, but it is trustworthy and therefore, reliable even in absence of any corroboration it is sufficient to establish and prove the guilt of the accused on the basis of which conviction and sentence can be ordered. The Hon'ble Supreme Court in the case of Ratansinh Dalsukhbhai Nayak Vs. State of Gujarat, AIR 2004 SC 23 : (2004) CriLJ 19 : (2003) 8 JT 53 : (2004) 1 SCC 64 : (2003) 4 SCR 1030 Supp : (2004) 1 UJ 156 , considering the nature of evidence of child witness and relying on earlier decision on the case of Dattu Ramrao Sakhare v. State of Maharashtra, which is reproduced herein below and reads as under:

"A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored".

Believe the testimony of child witness, who had given rational answer and simply because child was asked to say about the incident and as to what she saw, was no reason to jump to a conclusion that it amounted to tutoring etc. In the present case also, P.W. 2 has answered rationally and therefore, we are inclined to believe the same. In addition to the above, the testimonies of P.W. 7, Dr. Tarik Baloch, Medical Officer of Community Health Center, who had given testimony about the injuries on the victim and P.W. 12, who carried out surgery and further treatment made by Dr. Nilesh Ahir, confirms the injury and the manner in which such injury could have been inflicted. Testimony of child victim gets fully corroborated and accordingly, it cannot be said that the trial Court erred in law or in appreciating even the evidence, warranting any interference of this Court in exercise of power under Section 374(2) of the Code, 1973.

11. Ordinarily, as so happens about the testimonies of panchas before the trial Court and their tendency is not to support the case of the prosecution, but in the present case, almost all the panchas, scene of offence, recovery of cloths of accused and victim, other Muddamal, collection of sample sent for examination by FSL, despatch and receipt issued by the authority of FSL, procedure adopted for analysis of such sample and receipt of analysis report with serological report lead to inescapable conclusion about the guilt of accused, who allured the victim aged 6 years by offering note of Rs. 10/- and took her to rear of the house, where she was brutally raped. We have carefully perused the testimonies of the complainant and father of the victim, grandmother and victim herself about the nature of incident and the manner in which she was committed, remained

unshaken against poor defence advanced by the accused as noted by us earlier. Conjoint and collective of evidence referred to herein above on which the conviction and sentence is ordered by the learned trial Judge by assigning cogent and convincing reasons, certainly the case of the prosecution was proved beyond reasonable doubt established guilt of the accused and all the circumstances do not pursue us even to exercise discretion in favour of the appellant by reducing the sentence as prayed for in the alternatively. In absence of merit, the appeal is dismissed.

12. In the result, present appeal under Section 374(2) of the Code of Criminal Procedure, 1973, is dismissed. The impugned judgment and order of conviction dated 29.4.2010 passed by the learned Additional Sessions Judge, Fast Track Court, Veraval, Camp at Una in Sessions Case No. 2 of 2009 is hereby confirmed. Record and Proceedings, if any, to be sent back to the concerned trial court forthwith.