
(2014) 06 SHI CK 0072

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 553 of 2008

Rajnish Awasthi

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 313, 374

Evidence Act, 1872 — Section 118, 157, 6, 8

Penal Code, 1860 (IPC) — Section 307, 323, 342, 376

Citation : (2014) 2 ShimLC 1060

Hon'ble Judges : Sanjay Karol, J; Piar Singh Rana, J

Bench : Division Bench

Advocate : N.S. Chandel, Advocate for the Appellant; B.S. Parmar, Addl. Advocate General, Mr. Ashok Chaudhary, Addl. A.G. and Mr. Vikram Thakur, Dy. A.G, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Karol, J.—Assailing the judgment dated 29.8.2008, passed by learned Addl. Sessions Judge-II, Kangra at Dharamshala, H.P., in Sessions Case No. 29-K/ VII/2007, titled as State of H.P. vs. Rajnish Awasthi @ Rajju, whereby appellant-accused stands convicted for having committed offences punishable under the provisions of Sections 376, 342 and 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of ten years and pay fine of Rs. 25,000/- for an offence punishable u/s 376 IPC, simple imprisonment for a period of one year and fine of Rs. 1000/- for each of the offences punishable under Sections 342 and 323 IPC, accused has filed the present appeal under the provisions of Section 374 of the Code of Criminal Procedure, 1973.

2. It is the case of prosecution that victim (PW-4), aged 9 years, was residing with her parents in Purana Kangra, Tehsil and District Kangra, H.P. On 23.6.2007, mother of the victim had gone to the house of her sister to condole the death of her relation. Father of the victim was in his shop at Kangra. Only victim and her

younger brother and sister were at home. At about 2.00 p.m. accused, aged 24 years, asked two younger children to leave the house. Thereafter he took the victim inside his room and bolted the door from inside. Thereafter, he ravished her as a result of which blood started oozing from her private parts. Accused also assaulted the victim with a belt and knife and she sustained injuries. After ravishing the child, accused ran away bolting the door of the room from outside. Victim cried for help by which time her mother arrived and rescued her. Witness Richa (PW-9) was present at that time. Immediately victim was taken to the hospital. Medical Officer, Zonal Hospital Dharamshala telephonically informed the police about the incident, which information was incorporated in the Daily Diary dated 23.6.2007 (Ext. PW-15/A). Investigating Officer-Surinder Sharma (PW-18) reached the hospital and recorded statement (Ext. PW-18/A) of the victim u/s 154 Cr.P.C., which was sent to Police Station Kangra, Distt. Kangra, where F.I.R. No. 250/07, dated 24.6.2007 (Ext. PW-16/A) was registered against the accused under the provisions of Sections 376, 307 and 342 of the Indian Penal Code. The victim was medically examined by Dr. Kiran Malhotra (PW-2) who issued MLC (Ext. PW-2/B). The Investigating Officer (PW-18) visited the spot of crime; prepared spot map (Ext. PW-18/E) and collected blood stained frock (Ext. P-3) of the victim vide memo (Ext. PW-6/A). Also from the room where crime took place, belt (Ext. P-1), knife (Ext. P-2), bed sheet (Ext. P-4), towel (Ext. P-5), underwear (Ext. P-6), baniyan (Ext. P-7) and screw driver (Ext. P-8) were recovered vide memo (Ext. PW-6/B). Sealed articles as also the sample given by the Doctor were sent for chemical analysis and report of the State F.S.L., Junga (Ext. PW-18/C) was obtained by the police. After arrest, accused was got medically examined by Dr. Sunil Bhatt (PW-17) who issued MLC (Ext. PW-17/B). With the completion of investigation, which revealed complicity of the accused in the crime, challan was presented in the Court for trial.

3. Accused was charged for having committed an offence punishable under the provisions of Sections 376, 307 and 342 of the Indian Penal Code, to which he did not plead guilty and claimed trial.

4. In order to prove its case, in all, prosecution examined as many as eighteen witnesses and statement of the accused u/s 313 Cr.P.C. recorded, in which he took up a plea of witnesses having falsely deposed under police pressure. In effect he pleads innocence and false implication. To probablize his defence, accused examined two witnesses.

5. Appreciating the material on record, including the testimonies of witnesses, trial Court convicted the accused for having committed offences punishable under the provisions of Sections 323, 342 and 376 of the Indian Penal Code and sentenced as aforesaid. Hence, the present appeal.

6. We have extensively heard learned counsel appearing on both sides and perused the record.

7. Assailing the judgment Mr. N.S. Chandel, learned counsel for the appellant has

argued that (i) Prosecution, without any explanation, has not examined all the cited witnesses; (ii) Witnesses present on the spot were neither cited nor examined; (iii) Case set out by the prosecution is at variance with the testimonies of prosecution witnesses. Contradictions and discrepancies with regard to the victim first having been taken for treatment to the hospital at Kangra renders the version of prosecution witnesses to be doubtful, if not false. As such accused requires to be acquitted, giving him benefit of doubt; (iv) Similarly, there is contradiction with regard to the place of incident and recovery of incriminating articles, rendering the version of prosecution to be totally false; and (v) Possibility of victim, being a child witness, subjected to tutoring cannot be ruled out, as such, her version if not false, required material corroboration, which is none on record.

8. On the other hand, Mr. Ashok Chaudhary, learned Addl. Advocate General has defended the judgment for the reasons set out therein.

9. We find that victim was born on 21.8.1998. Her birth certificate (Ext. PW-11/A) stands proved on record by Sh. Ramakant (PW-11). Her radiological age is determined to be between 6 to 9 years. This fact is evident from reports (Ext. PW-12/A, 12/B, 12/C and 12/D), as proved by Dr. Mukesh Surya (PW-12). Crime took place on 23.6.2007. MLC (Ext. PW-2/A) also records her age to be of nine years. Thus the fact that as on the date of commission of crime, age of the victim was about nine years stands conclusively proved on record.

10. At the Zonal Hospital, Dharamshala where victim was admitted, Dr. Kiran Malhotra (PW-2) attended upon her. On physical examination she found following injuries on the body of the victim:-

1. Abrasions on face multiple in number, each measuring about 1 cm X.5 cm in size. Clotted blood present on and around the area.
2. Both eyelids are swollen. Bruising of both eyelids present. Colour of bruise is reddish blue.
3. One lacerated wound on the right side of the face 2 cm X.5 cm in size. One abrasion on the left side of face 1 cm X 1 cm in size. Both the injuries below the lower eyelids. She is unable to open her both eyes.
4. Swelling of nose present. Bruising present. Clotted blood present in and around both nostrils.
5. Swelling of upper lip present.
6. Bruising on neck present multiple in number, each is about 2.5 cm X 2.5 cm in size.

Secondary sexual character are not present.

11. On advice, victim was further examined by Dr. Arti Sareen (PW-1) an Eye-Specialist and Dr. Harjit Pal Singh (PW-3). As per final opinion of Dr. Kiran

Malhotra (PW-2) signs of "vaginal penetration" were there and as such possibility of sexual intercourse could not be ruled out. In Court this Doctor has specifically deposed that on local examination she found swelling of labia majora. Also bruises were present and blood had clotted on and around labia majora and thighs. Vagina admitted one finger, hymen was torn and bleeding was there from vagina.

12. Thus injuries on body of the victim stand proved on record. She was examined on the date of incident itself. Possibility of sexual assault, from the medical evidence stands proved.

13. Significantly, Doctors were not aware as to whether victim was first taken for treatment to the hospital at Kangra or not. Though it is not the case of prosecution that victim was first taken for treatment there but however Investigating Officer (PW-18), in his cross examination, admits that during the course of investigation it had come that family members of the victim had first taken her to the hospital at Kangra.

14. The crucial question which arises for consideration is as to whether non disclosure of such fact by the police, has rendered the prosecution version to be false/doubtful, entitling the accused for benefit of doubt or not.

15. In Rameshwar Vs. The State of Rajasthan, , the Supreme Court has held that previous statement of the raped girl to her mother, immediately after the occurrence, is not only admissible and relevant as to her conduct, but also constitutes corroboration of her statement under the provisions of section 157 of the Evidence Act. In order to come to the aforesaid conclusions, illustration (j) to section 8 of the Evidence Act was relied upon. In that case, the victim, named Purni, was 7/8 years old. She was not administered oath, but was held to be competent witness and, therefore, duly examined and believed.

16. In The State of Punjab Vs. Jagir Singh, Baljit Singh and Karam Singh, the apex Court held that:-

A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and fantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the Courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures.

(Emphasis supplied)

17. The Apex Court in State of Rajasthan Vs. N.K.-The Accused, has held that:-

...It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the Court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal Courts which gives rise to the demand for death sentence to the rapists. The Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women.

(Emphasis supplied)

18. It is also a settled position of law that victim of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. If for some reason Court is hesitant to place implicit reliance on the testimony of the victim it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the victim must necessarily depend on the facts and circumstances of each case. If the totality of the circumstances appearing on the record of the case disclose that victim does not have a strong motive to falsely involve the person charged, Court should ordinarily have no hesitation in accepting her evidence. [State of Maharashtra Vs. Chandraprakash Kewalchand Jain, and O.M. Baby (Dead) by L.Rs. Vs. State of Kerala,].

19. The Apex Court in State of Punjab Vs. Gurmit Singh and Others, has held that:-

...The Courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a

victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?

21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault-it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case....

(Emphasis supplied)

20. In State of Madhya Pradesh Vs. Dharkole @ Govind Singh and Others, the Apex Court has held that:-

9... Eye witnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be credit-worthy; consistency with the undisputed facts; the "credit" of the witnesses; their performance in the witness-box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.

10. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case?

The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal

case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A junior may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions and guilty rather than innocent people who run away, the two doubts are not to be multiplied together. The one piece of evidence may confirm the other.

11. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and commonsense. It must grow out of the evidence in the case.

(Emphasis supplied)

21. That the victim was first taken for treatment to a hospital at Kangra has also surfaced in the testimonies of PW-4 and PW-9. We are dealing with a case of a victim and witnesses, who hail from a rural background. Faulty investigation in no manner entitles the accused for acquittal if otherwise substantive evidence on record leads to the only irresistible conclusion of his guilt in relation to the charged offence.

22. Victim was taken from the spot to the hospital by Richa (PW-9). She states that finding the condition of victim, who was bleeding from her injuries, which were serious in nature, she took her on a scooter from Purana Kangra (place of occurrence of the incident) to the hospital at Kangra where father of the victim was already present. Though father has not been examined in Court, but mother of the victim (PW-5) categorically states that she did not accompany PW-9 to the hospital. She reached later on. From the suggestion put to the victim, accused wants us to believe that injuries were either self inflicted or sustained on account of fall. At this juncture we may observe that incident took place on 23.6.2007 between 2.30 p.m. to 4.00 p.m. and same day victim was examined at Zonal Hospital, Dharamshala at 10.20 p.m. She had to be taken to the hospital from a village. The gap between the time of occurrence of the incident and the victim having been examined in the hospital at Dharamshala is not much. In our considered view, simply because the Investigating Officer did not take on record material pertaining to the treatment administered to the victim at the hospital at Kangra, would not render the prosecution story to be doubtful or false in any manner. We are dealing with a case of rape. Both the victim and her family members were under stress and great trauma. Victim was seriously injured. She was medically examined same day at Zonal Hospital, Dharamshala where better facilities for administering treatment were available. Kangra and Dharamshala are also not far off. In fact, they are at close distance. As such, this fact alone

cannot be said to be fatal to the prosecution case at all, more so, in the light of inspiring testimonies of relevant prosecution witnesses.

23. An attempt was made by the accused to establish that victim was examined in the hospital at Kangra by Dr. Satish Sharma (DW-1) and Dr. Swati Agarwal (DW-2). One Doctor (DW-1) states that he had examined Anchal, whereas, the other Doctor (DW-2) states that he had examined Anjali. But what is important is that both of them do not state the cause of injury sustained by the person whom they examined to be by fall. It cannot be said that with the examination of these witnesses, defence of the accused stands probalilized.

24. In *Gentela Vijayavardhan Rao and another Vs. State of Andhra Pradesh*, considering the law embodied in Section 6 of the Evidence Act, the apex Court held thus:

15. The principle of law embodied in Section 6 of the Evidence Act is usually known as the rule of *res gestae* recognised in English law. The essence of the doctrine is that a fact which, though not in issue, is so connected with the fact in issue "as to form part of the same transaction" becomes relevant by itself. This rule is, roughly speaking, in exception to the general rule that hearsay evidence is not admissible. The rationale in making certain statement or fact admissible u/s 6 of the Evidence Act is on account of the spontaneity and immediacy of such statement or fact in relation to the fact in issue. But it is necessary that such fact or statement must be a part of the same transaction. In other words, such statement must have been made contemporaneous with the acts which constitute the offence or at least immediately thereafter. But if there was an interval, however slight it may be, which was sufficient enough for fabrication then the statement is not part of *res gestae*.

25. In *Dattu Ramrao Sakhare and Others Vs. State of Maharashtra*, it held that:

5....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 u/s 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". The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher Court if from what is preserved in the records, it is clear his conclusion was erroneous. This precaution is necessary because child witnesses are amenable to

tutoring and often live in a world of make beliefs. Though it is an established principle that child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaped and moulded, but it is also an accepted norm that if after careful scrutiny of their evidence the Court comes to the conclusion that there is an impress of truth in it, there is no obstacle in the way of accepting the evidence of a child witness.

26. In *Radhu Vs. State of Madhya Pradesh*, , the Apex Court has held that "... Even if there is consent, the act will still be a "rape", if the girl is under 16 years of age" and "There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case".

27. Further, in *Sukhar Vs. State of Uttar Pradesh*, the apex Court held that:

6. Section 6 of the Evidence Act is an exception to the general rule whereunder the hearsay evidence becomes admissible. But for bringing such hearsay evidence within the provisions of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there should not be an interval which would allow fabrication. The statements sought to be admitted, therefore, as forming part of *res gestae* , must have been made contemporaneously with the acts or immediately thereafter. The aforesaid rule as it is stated in Wigmore's Evidence Act reads thus:

Under the present Exception [to hearsay] an utterance is by hypothesis, offered as an assertion to evidence the fact asserted (for example that a car brake was set or not set), and the only condition is that it shall have been made spontaneously, i.e. as the natural effusion of a state of excitement. Now this state of excitement may well continue to exist after the exciting fact has ended. The declaration, therefore, may be admissible even though subsequent to the occurrence, provided, it is near enough in time to allow the assumption that the exciting influence continued.

28. Law with regard to testimony of a child witness is not well established. In *Golla Yelugu Govindu Vs. State of Andhra Pradesh*, , while reiterating its earlier view the Apex Court held that:-

11. 6. Indian Evidence Act, 1872 (in short the "Evidence Act") does not prescribe any particular age as a determinative factor to treat a witness to be a competent one. On the contrary, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to these questions, because of tender years, extreme old age, disease whether of mind, or any other cause of the same kind. A child of tender age can be allowed to testify if he has intellectual capacity to understand questions and give rational answers thereto. This position was concisely stated by *Brewer J* in *Wheeler v.*

United States (159 U.S. 523). The evidence of a child witness is not required to be rejected per se; but the Court as a rule of prudence considers such evidence with close scrutiny and only on being convinced about the quality thereof and reliability can record conviction, based thereon. (See *Surya Narayana v. State of Karnataka* (2001 (1) Supreme 1).

29. In *State of H.P. Vs. Suresh Kumar @ DC*, the Apex Court was dealing with a case where victim was ravished by the accused on 15.3.2000 which incident was narrated by the victim to her sister later during the day. She also narrated the incident to her parents the following day and later on to the Doctors. Court accepted the statement of the sister, parents and the doctors while holding the accused guilty. Importantly, Apex Court reversed the finding recorded by the High Court wherein it was held that statement of the victim being minor was not worthy of credence.

30. The apex Court in *Radhakrishna Nagesh Vs. State of Andhra Pradesh*, had an occasion to deal with a case of a child victim. After considering its earlier decisions, the Court held that Court must examine the evidence of the prosecution in its entirety and then see its cumulative effect to determine whether offence of rape stands committed or not. The Court further held that slight penetration was enough to constitute an offence of rape. In the instant case there is injury on the private parts of the victim. It could not have been sustained on account of fall as is so suggested by the accused.

31. We shall now discuss the evidence in view of the aforesaid settled proposition of law.

32. In her totally inspiring testimony, we find that in Court, victim has clearly deposed that on 23.6.2007 at about 2.00 p.m., she was playing with her younger brother and sister in the courtyard of her house. Her mother had gone to the house of her aunt (maasi) as her grand father had died. Her father was in his shop at Kangra. At that time, accused came and asked her younger brother and sister to come out of the house. On his asking, she came inside the house. Accused took her to a room and bolted the door from inside. It is not in dispute that houses of the victim and the accused are just adjacent to each other. Accused resides with his mother, as a tenant of Smt. Usha Devi (PW-7). Thereafter accused opened her salwar, his pant and committed "bad act" over her organ from where she "urinate". She felt pain and bled from her vagina. Also accused gave her beatings with a belt and knife. He threatened to kill her. She cried. Thereafter accused ran away. Her mother came and rescued her.

33. We find the witness to be intelligent. She understands what she is saying. She categorically denies having been tutored by anyone. We are dealing with a case where accused is not a stranger. He was known to the children. She had implicit faith and trust in him. On his asking, younger brother and sister left the spot. After all children had no reason to know or understand what the accused, aged 24 years, was to do with the victim. She denies that accused had

altercation with her mother under the influence of alcohol and liquor. Significantly, it stands suggested to this witness that accused was in a habit of taking liquor even during day time. She denies having sustained injuries as a result of fall. She sufficiently explains the injuries on her knee and foot which she sustained while playing with children. But these injuries are not the ones which the Doctor has opined to have sustained in the incident in question. We find her testimony to be absolutely inspiring in confidence. There are neither any aberrations, exaggerations, improvements, embellishments nor any material contradictions which would make us believe that the child is telling lies on the asking of police or her parents. In fact why would she do so. There is no animosity/dispute between the families. Complainant had no reason to falsely implicate the accused. As such, stand taken by the accused that victim falsely deposed on the asking of police only merits rejection.

34. We find testimony of the victim to have been fully corroborated by her mother Smt. Nirmla Devi (PW-5) who states that hearing cries of the victim, she opened the room bolted from outside and saw the victim smeared in blood. Victim narrated the events to her. Witness clarifies that she immediately called Richa (PW-9) who took the child in her lap. Also victim became unconscious. She denies the suggestion that injuries were sustained on account of fall. We find version of this witness to have been further corroborated by Richa (PW-9).

35. Thus on material facts, prosecution has been able to establish the guilt of the accused in relation to the charged offences.

36. According to learned counsel for the accused, following contradictions render the testimony of prosecution witnesses to be doubtful, if not false:

1. Victim (PW-4) states that she was first taken to the hospital at Kangra which version stands belied by her mother (PW-5); and
2. Suman Verma (PW-6) states that recovery was effected from the house of the victim whereas according to the prosecution, recovery was effected from the house of the accused.

37. We do not find these to be contradictions at all, rendering substantive testimonies of the witnesses and the evidence to be false, incorrect or doubtful. Though victim has deposed that her mother took her to the hospital at Kangra but Richa (PW-9) has explained that it was she who took the victim on a scooter to the hospital at Kangra where father of the victim was present and mother has explained that she left for the hospital later on. Statement of the child is to be seen in the backdrop of the events which surfaced. Can it be said that this contradiction is fatal to the prosecution case? In our considered view-no. There is no contradiction with regard to the actual incident. Contradictions, if any, with regard to subsequent events would not render the prosecution case to be doubtful.

38. When examined the case in totality we find that discrepancies in the

statements of the witnesses are not contradictions. After all victim was examined by the Doctors at hospital at Dharamshala on the day of occurrence of the incident itself. We are dealing with a case where complainant-parties come from a rural background. Finding the child to have been subjected to sexual assault, mother cried for help. Her neighbour arrived on the spot, who immediately took her to the nearest hospital. Victim has clearly deposed the manner in which accused not only ravished her but also, as an act of perversion, brutally assaulted her.

39. According to Suman Verma (PW-6) recovery was effected from the residential room of the victim whereas there is evidence to the contrary on record. We do not find this contradiction to be material at all. Victim who is a trustworthy witness has clearly deposed that accused committed the act in his house. Significantly in the spot map, place of occurrence is clearly depicted and the Investigating Officer was also not cross examined on this point.

40. Discrepancies of minor character which do not go to the root of the prosecution story are not required to be given undue importance. Also mere congruity or consistency is not the sole test of truth in the depositions. [See: Jagdish Vs. State of Madhya Pradesh,]

41. Normal discrepancies are bound to arise due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person. [See: State of Rajasthan Vs. Smt. Kalki and Another,].

42. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. In order to ascertain as to whether discrepancy pointed out is minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness is making the statement. [State of Himachal Pradesh Vs. Lekh Raj and Another,].

43. Cited witnesses were given up only to avoid repetition. It is the quality and not the quantity/number of evidence which is necessary for proving or disproving a fact. [Namdeo Vs. State of Maharashtra, and Chittar Lal Vs. State of Rajasthan,] In any event, prosecution case cannot be faulted on this count alone. Brother and sister of the victim were younger to her. Victim has clearly deposed that they had gone away on the asking of the accused. As such, there was no need to have examined them in Court. Neighbour Richa was examined.

44. Thus from the material placed on record, it stands established by the prosecution, by leading clear, cogent, convincing and reliable piece of evidence, that the accused committed rape on the victim (a minor), wrongfully restrained her and voluntarily caused hurt to her.

45. For all the aforesaid reasons, we find no reason to interfere with the judgment passed by the trial Court. The Court has fully appreciated the evidence placed on record by the parties. There is no illegality, irregularity, perversity in correct and complete appreciation of the material so placed on record by the parties. Findings of conviction cannot be said to be erroneous or perverse. Hence, the appeal is dismissed.

Records of the Court below be immediately sent back.