
(2014) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Cr. Appeal No. 133 of 2010

Vijay Kumar

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 07-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 173, 313
Penal Code, 1860 (IPC) — Section 27, 376

Citation : (2014) 08 SHI CK 0005

Hon'ble Judges : Sureshwar Thakur, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : Ashwani Pathak, Advocate for the Appellant; Parmod Thakur, Additional Advocate General and Ramesh Thakur, Assistant Advocate General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.—The instant appeal, is, directed by the appellant/accused, against the impugned judgment, rendered, on, 6.5.2010, by the learned Additional Sessions Judge, FTC, Kullu, in, Sessions trial No. 61 of 2009, whereby, the learned trial Court convicted and sentenced the accused appellant to undergo rigorous imprisonment for a period of 20 years and to pay a fine in a sum of Rs. 50,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of one year for the commission of offence punishable u/s 376 of the Indian Penal Code.

2. Brief facts of the case, are, that, on 12.9.2009 at about 6.00 p.m. an intimation was received in the police Station, that, a girl, aged about 8 years, has been brought to the hospital with an alleged history of rape. An entry comprised, in, Ex. PW-15/A was recorded, in, the police Station and ASI Daya Ram was sent for verification of the same. ASI Daya Ram moved an application Ex. PW-15/B for ascertaining whether the victim was capable of making statement or not. The Medical Officer certified that she was not capable of

making a statement. Statement of Malia Sherpa (PW-1) comprised in Ex. PW-1/A was recorded u/s 154 of Cr.P.C., wherein, he disclosed that the mother of the prosecutrix (name being withheld to protect her identity) revealed to him that the prosecutrix was subjected to rape by some unknown person. The said statement was sent to the police Station, on the basis of which, FIR came to be registered. During the course of the investigation, the statements of the witnesses were recorded.

3. On conclusion of the investigation, into the offence, allegedly committed by the accused, report u/s 173 of the Code of Criminal Procedure was prepared and presented in Court.

4. The accused was charged, for, his having committed an offence punishable u/s 376 of the Indian Penal Code, by the learned trial Court, to, which he pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined 17 witnesses. On closure of prosecution evidence, the statement of accused, u/s 313 of the Code of Criminal Procedure, was recorded, in, which he pleaded innocence and claimed false implication.

6. On appraisal of the evidence on record, the learned trial Court, returned findings of conviction against the accused.

7. The accused/appellant, is, aggrieved by the judgment of conviction, recorded by the learned trial Court. The learned counsel appearing for the appellant has concertedly, and, vigorously contended, that, the findings of conviction, recorded by the learned trial Court, are, not based on a proper appreciation of evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he, contends that the findings of conviction, be, reversed by this Court, in, exercise of its appellate jurisdiction, and, be replaced by findings of acquittal.

8. On the other hand, the Additional Advocate General, has, with considerable force and vigour, contended that the findings of conviction, recorded by the Court below, are, based on a mature and balanced appreciation of evidence on record, and, do not necessitate interference, rather merit vindication.

9. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

10. The first witness, who stepped into the witness box, in, proof of the prosecution case, is, PW-1, Maila, who, deposed, that, he is working as a Mason. He, deposes that Supa is his cousin. He continues to depose that he is residing in the house of Prem Singh, alongwith his family members. He deposes that he and his family had gone to keylong, in the month of May and returned in the month of October. He has been unable to disclose the date of their return. He deposes that Kanchi, mother of the girl, told him that some person had done some wrong (Galat Kaam) with the girl. The girl was taken to the Mission Hospital, Manali. He

further deposes that he had visited the Mission Hospital and found the girl to be unconscious. The mother of the girl, has been deposed by him to have disclosed to him that some Bihari had perpetrated this act with her daughter. The police recorded his statement comprised in Ex. PW-1/A, which bears his signatures.

11. PW-2 Kanchi, is, the mother of the prosecutrix. She deposes that she has three daughters and one son. The eldest daughter i.e. the prosecutrix, is, deposed to be aged 8 years, Dolma is deposed to be aged 7 years, Furgyamo is deposed to be aged 6 years and son is aged deposed to be 1-1/2 years. She further deposes that about three months ago, she had gone to a Depot at Shimsha, to, which place Dolma accompanied her. Both her daughters, the prosecutrix, and, Furgyamo have been deposed to be present at home. When she returned, she found both her daughters missing. When the prosecutrix came home after about 30 minutes, she was not wearing Payjama and chappals, and, was bleeding profusely. She deposes that her clothes were stained with blood. She further deposes that she washed her with the help of water. Thereafter she took the victim to Mission Hospital. The victim became unconscious and regained her consciousness on the next date. The victim has been deposed to have apprised PW-2, that, when she was playing near the gate, one person asked her to accompany him for catching the fish. She deposes that she was apprised by the prosecutrix that the said person was having a dark complexion and red hair, and, was wearing T-Shirt and Muffler. The victim apprised her mother PW-2 that the said person had taken her to the orchard and had forcibly raped her. She deposes that her husband had gone to keylong. She had revealed all these facts to Maila and thereafter to her husband, who came on the next day from Keylong. The police arrested the accused after four days. The accused present in the Court has been identified by this witness to be the same. She further deposes that the accused got recovered the salwar and chappals of her daughter, which were identified to be the belonging to her daughter/victim. Recovery memo comprised in Ex. PW-2/A has been deposed by her to be bearing her thumb impression.

12. PW-3 Makan Singh deposed qua the fact that he has taken three hotels, namely, Hotel Victoria Palace, Hotel Chandermukhi, Hotel New Royal and Punam Cottage, on lease, and, 15-16 persons have been employed by him in Hotel Chandermukhi. Accused Vijay Kumar has been deposed to have come to his Hotel in July, 2009 and was employed by him as a helper in the kitchen and thereafter as a gardener. He further deposes that he, is, maintaining, an, attendance register regarding the persons employed by him. Abstract of the register, is, comprised in Ex. PW-3/A. In his cross-examination, he concedes to the fact that there, is, overwriting in the column of 12th as the letter P has been substituted by letter A. He also deposes that accused was absent from the duties w.e.f. 15th.

13. PW-4 Dr. Balbir Rewal deposes that he conducted the medical examination of accused Vijay Kumar S/o. Maghu Lal, on 15.9.209 at about 7.30 P.M., and, found that the sexual organs were well developed and normal. No sign of injury was

found on the body or on external genitalia. Penis prepuce and glands clean. No smegma, no sign of injury and no stains, and, frenulum was intact. In his opinion, the accused is capable to perform sexual intercourse. He also deposes that sample of pubic hairs, blood and undergarments was taken and handed over to the police for chemical examination, and, that he issued MLC comprised in Ex. PW-4/A.

14. PW-5 Bimla Devi deposes that certificate comprised in Ex. PW-5/A has been issued by her, and, is correct as per the original record. She further deposes that the date of birth of the prosecutrix is 15.8.2001, as, per the entry in the school record.

15. PW-6 HC Narian Singh deposes, that the accused was arrested from Hotel Chandermukhi on 15.9.2009 by the police, in his presence. The accused has been deposed by this witnesses to have made a statement in his presence and in the presence of Luder Chand, to the effect, that, he could show the place, where he had raped the prosecutrix, and, could get her trousers and slippers recovered. The statement comprised in Ex. PW-6/A was reduced into writing and has been deposed to be bearing his signatures and signatures of Luder Chand. The accused had also put his thumb impression on the memo. Subsequently, he, deposes that the accused led the police to an apple orchard from where a pair of chappal and trousers of the prosecutrix recovered at the instance of the accused. The aforesaid articles were identified by Kanchi at the spot. The same were seized vide seizure memo Ex. PW-2/A, which has been deposed to be bearing his signatures as well as of Luder Chand. The aforesaid articles have been deposed to have been wrapped in a parcel and sealed with seal "T". Seal impression Ex. PW-6/B has been deposed to have been taken on a separate piece of cloth, and, seal after its use, has been deposed to have been handed over to witness Luder Chand. He deposes that a mask was put on the face of the accused and site plan was prepared.

16. PW-7 Dr. Philip Alexender, has proved Ex. PW-7/A. He deposes that on examination of the prosecutrix, he observed the following injuries on her person:-

1. Minor abrasion-vulva, labia;
2. Abrasion urethral mucosa;
3. Vagina torn;
4. Vagina posterior wall torn;
5. Anterior rectum torn;
6. Pelvic floor disrupted;
7. Peritoneum disrupted;
8. Parnectal space hematoma; and
9. Anal sphincter torn.

In his opinion, he deposed that the injuries noticed by him, on the person of the prosecutrix, on her examination, can be caused by the victim/examinee being subjected to forcible rape.

17. PW-8 Luder Chand deposes, that, on 15.9.2009 the accused made a disclosure statement that he could show the place where the girl was raped and could get the slippers and trousers recovered, place whereof was known to him alone. His statement comprised in Ex. PW-6/A has been deposed to have been reduced into writing. His signatures and signatures of HC Narian Chand were obtained as witnesses, besides, he deposes that the accused also thumb marked the same. Subsequently the accused got recovered trousers and a pair of slippers from an apple orchard. The aforesaid articles were sealed in a parcel. The articles were identified by the mother of the girl as belonging to her daughter. Memo Ex. PW-2/A was prepared. His signatures and signatures of Narian Chand were obtained as witnesses, besides, thumb impression of Kanchi and accused were also obtained on the memo. Seal impression was taken, on, a separate piece of cloth Ex. PW-6/B. He deposes that his signatures were obtained on this memo.

18. PW-9 Kameshwar Kumar deposes that a girl had identified the accused Vijay Kumar, present in the Court, in, an identification parade. He further deposes that then there were ten prisoners and the accused was amongst them. The position of the accused was changed thrice, yet, the girl identified him thrice, by touching him. In cross-examination, he deposes that the JMIC was accompanied by his reader, during the course of Test Identification Parade, during the course whereof the victim had identified the accused.

19. PW-10 H.C. Sher Singh depose, that, on 12.9.2009 at about 7.15 p.m., a statement u/s 154 Cr.P.C., comprised in EX. PW1/A was received, in, the Police Station, through, constable Vikas. He deposes, that, he recorded an FIR which has been deposed to be bearing his signatures. Thereafter, he deposes that he had proceeded on leave w.e.f. 13.9.2009 till 17.9.2009. On return, one parcel stated to be containing the clothes, sealed with six impressions of seal "T", another sealed parcel sealed with six impressions of seal LWH, stated to be containing the clothes of the victim, one envelope sealed with three seal impressions of LWH stated to be containing vaginal swab, one vial sealed with seal LWH, stated to be containing gauze piece found in the vagina, one sealed parcel sealed with six impressions of seal CH stated to be containing underwear and clothes of the accused, one envelope sealed with two impressions of seal CH stated to be containing the blood for grouping, one envelope sealed with two impressions of seal CH stated to be containing pubic hairs of the accused and one envelope sealed with two impressions of seal CH stated to be containing FTA classing card with blood sample of accused Vijay Kumar were found in the malakhana, qua which he made an entry Ex. PW10/B in the register regarding the deposit of these articles and which exhibit has been deposed to be a true copy of the original register. The latter deposes that he handed over all these

articles to HHC Gautam Chand vide R.C. No. 150/09, of 22.9.2009 to deposit the same in the office of FSL, Junga. He continues to depose that the said constable deposited the articles and obtained the receipt on the back of the RC and handed over the receipt to him. The article mentioned at serial number 8 in the RC, was not sealed, therefore, it was brought back to the police station by the said constable.

20. PW-11 HHC Gautam deposes that MHC Sher Singh handed over to him the case property vide R.C. No. 150/09 on 22.9.2009 to deposit the same in the office of FSL, Junga. He deposes that articles mentioned at serial No. 1 to 7 were deposited by him with the FSL, Junga on 23.9.2009 and the article mentioned at serial No. 8 was returned by the FSL. Thereafter, he handed over the receipt of deposit as also the article mentioned at serial No. 8 to the MHC.

21. PW-12, ASI Swarup deposes that he arrested the accused on 15.9.2009 near Chandermukhi hotel. He deposes that the accused made his disclosure statement u/s 27, of the Indian Evidence Act, comprised in Ex. PW6/A, that, he could show the place where he had committed the forcible sexual intercourse with the victim, as, also he could get the pair of slippers and trousers, recovered from the said place, in presence of witnesses Luder Chand and H.C. Naraian Chand. Ex. PW6/A is stated to bearing the signatures of the aforesaid witnesses and the accused. He further deposes that, in, pursuance to the disclosure statement comprise, in, Ex. PW-6/A, the accused led the police and the witnesses, to, an orchard at Chhiyal and got recovered a pair of slippers and trousers, which were identified by Kanchi, the mother of the victim to be the same as were taken into possession vide memo Ex. PW2/A in the presence of the witnesses. He continues to depose that he prepared the site plan Ex. PW12/A and recorded the statements of the witnesses as per their version. Information regarding the arrest of the accused was given to Makan Singh. He further deposes that the victim had participated in the identification parade in Sub Jail, Kullu in the presence of learned JMIC, Manali. On 14.10.2009, the victim identified the place of occurrence and he prepared the site plan Ex. PW12/B. He has denied the suggestion that the photographs of the accused were taken, prior to the test identification parade. He has denied the suggestion that the site plan does not depict the correct position of the spot, as, also the suggestion that no recovery was got effected at the instance of the accused.

22. PW-13 Sanjay Sharma, SHO deposes that on 21.10.2009, ASI Ram Swarup handed over to him the case file. He also deposes that he prepared the challan. He further deposes that on receipt of report Ex. PW13/A from the FSL, he prepared the supplementary challan in the case, on, 1.1.2010 and presented the same in the Court.

23. PW-14 Kharak Bahadur deposes that about 4-5 months ago during the apple season, he had seen the accused going on the foot path. He deposed that the accused was working, as, a Gardener in Chandermukhi Hotel. He has denied the suggestion that his statement was not recorded by the police.

24. PW-15 ASI Daya Ram deposes that on 12.9.2009, at about 6.00 p.m., he recorded an entry comprised in Ex. PW-15/A, regarding a rape victim brought to the Mission Hospital. He went to the Hospital for verification alongwith LC Pinki Devi and C Vikas Kumar in the vehicle bearing registration No. HP34. A 9987, which was being driven by Constable Ganesh Kumar. He further deposes, that, he moved an application Ex. PW-15/B for making an inquiry whether the victim was capable of making statement or not, and, the Medical Officer certified in writing that victim was not capable for making a statement. He recorded the statement of Maila Sherpa comprised in Ex. PW-1/A in the Mission Hospital, which was sent to the Police Station, for, registration of an FIR, through Constable Vikas Kumar. He deposes that the investigation of the case was handed over to me. He recorded the statement of Kanchi Sherpa on the same day and statement of Supa Sherpa on 13.9.2009. MLC comprised in Ex. PW-7/A was received on 14.9.2009 and case file was handed over to ASI Ram Swarup for further investigation.

25. PW-16, is, the deposition of Shri Ranjit Singh, Judicial Magistrate, Ist Class, Manali, in, whose presence the Test Identification Parade, of, accused was carried out. He deposes that an application was filed before him for conducting the test identification Parade of the accused in sub Jail, on, which he passed an order comprised in Ex. PW-16/A. He deposes that he wrote a letter comprised in Ex. PW-16/B to the learned District and Sessions Judge, Kullu seeking permission to visit Sub Jail, Kullu. The permission was accorded to him by the learned District and Sessions Judge vide communication comprised in Ex. PW-16/C. Thereupon, he proceeded to render an order comprised in Ex. PW-16/D, directing the Superintendent Sub Jail, Kullu, to, make arrangements for the test identification parade by associating 10 persons of same age and stature as of the accused. On 17.10.2009, he deposes that he conducted the test identification parade, and, the proceedings were sealed by him in a sealed cover. The sealed cover was shown to him in the Court and which has been deposed to be the same sealed cover, which was prepared by him. It was in an intact position. The said sealed cover is Ex. PW-16/D. Sealed cover whereof was opened. He deposes that he recorded the statement of accused and the victim/prosecutrix D/o. Supa Sherpa, which is Ex. PW-16/F. Victim was identified by the Investigating Officer, P.S. Manali. He deposes that he recorded the statement of accused Vijay Kumar regarding his willingness to undergo test identification parade. The said statement is Ex. PW-16/G. On 14.10.2009, he visited the premises of Sub Jail, Kullu. Ten persons of the same age and stature were made available for Test Identification Parade including accused Vijay Kumar. A list of such persons was prepared which is Ex. PW-16/H, and, their signatures were obtained. Thumb impression of accused Vijay Kumar was also obtained. Accused Vijay Kumar has been deposed by him to be identified by Superintendent, Sub Jail, Kullu. The prosecutrix was made to sit in the first room i.e. room adjoining to Dispensary and the room was closed. Nothing was visible from inside the room. Subsequently, in front of the verandah of Barake No. 1 and 2 of the premises of

Sub Jail, Kullu, 10 persons made available for conducting test identification parade, were, lined up in a row and the accused was made to stand at Sr. No. 3 of the line. Subsequently, the prosecutrix was called out, to, identify the accused and she identified the person standing at Sr. No. 3, who was the accused Vijay Kumar. Thereafter the prosecutrix was asked to leave the hall and the door of the hall was closed and the placement of the accused was changed and he was made to stand at Sr. No. 6. Again, the prosecutrix was called inside the hall and she was asked to identify the accused, and, again in the second round, the prosecutrix identified accused Vijay Kumar, who was standing at Sr. No. 6 in the row. Thereafter, the prosecutrix was asked to leave the hall and the placement of the accused in the line was again changed and he was made to stand at Sr. No. 9 in the row and the prosecutrix was against called to identify the accused and she again identified the person who was standing at Sr. No. 9 in the row. The prosecutrix identified the accused Vijay Kumar, who was standing at Sr. No. 9 in the row by touching his T-shirt. He deposes that he passed an order Ex. PW-16/J regarding the proceedings of Test Identification Parade. He prepared Memo Ex. PW-16/K of the proceedings. He further deposes that the victim prosecutrix had identified the accused in all three rounds/times. He had correctly identified the accused who was present in the Court. Lastly, he deposes that proceedings of the Test Identification Parade were sealed in an envelope and tagged with FIR.

26. PW-17 is the deposition of the prosecutrix. She was examined without oath. In her examination-in-chief, she deposes that she can identify the person who had asked her to go for fishing. She continues to depose that the accused put his hand on her hips and took her to the fields and took off her salwar. She deposes that she had seen the accused outside the Court. She deposes when the accused did all those things to her, she cried. She was taken to Hospital for being operated. During her cross-examination, she deposes that she told her mother that she had fallen. She continues to depose that she had not seen the accused prior to the incident at Chhiyal, to which place she was taken to catch fish. She also deposes that the police had shown the photograph of the accused to her. However, She deposes that she can identify the accused herself, without the photograph.

27. The disclosure to the police, of the prosecutrix victim, having been subjected to purported forcible sexual intercourse by the accused, was, made by PW-1, who had qua it received intimation from PW-2, the mother of the prosecutrix. The prosecutrix was aged about 8 years, at, the time of the alleged occurrence, hence, was a minor. The prosecutrix in her examination in chief, deposes that the accused asked her to accompany him for fishing. She has deposed that the accused put his hand on her hips and took her to the fields, where he took off her salwar and perpetrated forcible sexual intercourse upon her. The deposition of the prosecutrix unveils the factum, that, the accused present in the Court who was identified by her to be the same person, even preceding, to, the recording of her deposition, in as much, as, in the Test Identification Parade proven, by PW-16, on, the strength of, as communicated by the record, on hers having at

the outset fathomed the physical traits/characteristics of the accused, qua which she, as emanating on a reading of the testimony of her mother, had vividly narrated to her of the accused to be having a dark complexion and red hair. The said testimony of PW-2, of the mother of the prosecutrix, of the prosecutrix having immediately and in quick spontaneity to the occurrence, on, her reaching home having communicated to her of the accused bearing the aforesaid physical traits/characteristics, also voices the fact of the prosecutrix having during the course of the incident, gathered an enduring impression of the physical traits/characteristics of the accused, which remain firmly etched in mind, so, as, to enable as well as empower her to identify the accused both in the Test Identification Parade, as well as in the Court. Hence, it cannot be argued before the Court by the learned counsel for the appellant that she was incapacitated, to, identify the accused during the course of the Test Identification Parade, in, which the accused alongwith other persons of similar age and stature were present. Apart from the fact, that, the disclosure of the physical traits of the accused, by the prosecutrix, to, PW-2, as such, gathers an aura of truth, the further factum of PW-9 having deposed, that, during the Test Identification parade, carried out in sub Jail, Kullu, under the supervision of JMIC, Manali, in which 10 persons alike to the age and stature of the accused, were present, wherein, the victim in three rounds correctly identified the accused, even when the accused had changed his positions, construed in tandem with the deposition of PW-16, the JMIC, under, whose, supervision the Test Identification Parade was carried out, in, Sub Jail, Kullu, and, who too, while proving PW-16/J and PW-16/K, has also unanimously voiced, that in three rounds or in three spells, preceding which spells, the accused remained screened, shielded or hidden from the view of the prosecutrix so as, to, obviate hers observing/noticing the changed/alterd position of the accused, during each spell or round, the victim prosecutrix had correctly identified him. Consequently, squares the conclusion, that, with the enduring impression of the physical traits of the accused, as, initially gained by the prosecutrix, she had come, to, without being tutored or without being prompted, hence, had voluntarily identified the accused to be the same person, who had perpetrated the forcible sexual intercourse on her person. On a close reading of the testimony of PW-16, no, unfoldment there exists qua the fact of the police, having prior to the carrying out of the Test Identification Parade, produced before the victim, the photograph of the accused so, as, to, empower her, to, identify the accused. Consequently, the identification of the accused by the victim, is, to be construed to be made by her, on, the strength of the initial impression formed by her of the physical traits, of the accused, which were promptly revealed by her to her mother, PW-2, even besides she, when during the course of the accused being subjected, to, Test Identification Parade, under the supervision of a Judicial Magistrate, who, has deposed as PW-16, correctly identified the accused, in, three spells, in, which each spell the accused had altered his position thrice and preceding which each spell or round, the accused was obscured, from the view of the prosecutrix, it, hence also concomitantly boosts an inference that the jail authorities did not facilitate the prosecutrix to

identify the accused comprised in theirs having allowed the prosecutrix to have a glimpse of the accused, preceding each of the spells, so, as, to, render the identification of the accused by the prosecutrix in the subsequent spells of the Test Identification Parade, to, mere a sham or a charade. Accordingly, it has to be forthrightly concluded that the Test Identification Parade of the accused carried out under the supervision of JMIC, in, which the victim identified the accused has acquired probative value and strength. When it has been concluded to be bearing immense evidentiary value, consequently, the victim having naively stated during her cross-examination, that, the police had shown to her, prior to the holding of the Test Identification Parade, the photograph of the accused has, no, vigour, in as much, as, when the said fact has not been suggested to either PW-16 or PW-9, both, of whom, were present at the time of the victim identifying the accused. As a concomitant omission on the part of defence to make an apposite suggestion to both aforesaid, benumbs the contention of learned defence counsel anvilled upon a naive statement of the prosecutrix, of, the police having shown to her the photograph of the accused and that hence, she was facilitated to identify the accused, which identification, as such, is manipulated as well as tutored. Moreover the said contention is also benumbed by the factum of a denial in the deposition of PW-2 of the photograph having been taken prior to the Test Identification Parade. The denial by PW-2 of the said suggestion put to him by the learned defence counsel forcefully conveys that the deposition of the prosecutrix in her cross examination, of the photograph of the accused having been shown by the police to her is merely a naive disclosure, on, which no capital can be made by the learned counsel for the appellant.

28. The medical evidence on record, as, deposed by PW-7, conveys that the injuries, as, deposed by him, to be existing on the person of the prosecutrix, empowered him to render an opinion that they owe their existence to the victim being subjected to forcible sexual intercourse. Obviously, it constrains this Court to conclude, that, medical evidence, hence, connects the accused in the commission of offence alleged. Even though, the prosecutrix has deposed in her cross-examination, that she had apprised her mother on her returning home, that she had fallen, however, on the strength of the said fact existing in her deposition, the learned counsel for the appellant, cannot, draw any leverage, that, existence of injuries on her person overrule the factum of theirs owing theirs existence to the prosecutrix/victim having been subjected to forcible sexual intercourse. Therefore, also, he cannot contend that the accused is not guilty of the offence for which he came to be charged, tried and convicted, for, the simple reason that the medical expert PW-7 has deposed, that, in case the injuries were sequelled by her falling on a sharp object, she ought to be impaled on the sharp object and in case the injuries were caused to her by the horn of the animals, again, the patient ought to be impaled on the horn, for sustaining such injuries. However, when the said purported defence qua the manner of sustaining of injuries, on, the body of the victim/prosecutrix, has not been put either to the mother of the prosecutrix or to the prosecutrix, therefore, hers,

having deposed that she had sustained injuries by fall, is, of no consequence and appears to have been deposed under the fear of the presence of the accused. Even otherwise, when this Court has construed the Test Identification Parade to be both valid and tenable, hence, acceptable, as of natural corollary then, the identification of the accused by the victim/prosecutrix, also smothers the aforesaid fact, of the injuries, on, the person of the prosecutrix/victim occurring for the reason other than theirs arising from hers having been subjected to forcible intercourse by the accused.

29. Even otherwise, the deposition of PW-2 of hers having, on returning home, of the prosecutrix, noticed her to be not wearing her payjama and chappalls and having been noticed her to be bleeding profusely, besides, her clothes having been noticed by her to be stained with blood, too, dispels the factum of the injuries being attributable to fall, especially in case, she had fallen and sustained injuries on her person and was bleeding profusely, she would never have taken to take off her payjama as she did, obviously, the fact of hers being unstripped when returning home, is, an act to be construable to be attributable to the accused. Moreover, when Kharak Bahadur had stated that he had seen the accused on the foot path. The said inference gains accentuation and fortification in the face of both recovery witnesses, to, Pajama and Chappals, PW-6 and PW-8 having in harmony, and, unanimity deposed, that, preceding to the accused having got recovered Pajama and slippers of the prosecutrix, he, had recorded his disclosure statement, in, their presence comprised, in, Ex. PW-6/A, which bears the signatures of both. When in consequence whereeto, the pair of slippers and pajama of the prosecutrix were recovered, under memo Ex. PW-2/A, which, too, has been proved to be bearing their signatures as witnesses, unbendingly closes the conclusion that the accused had unstripped the prosecutrix and has perpetrated forcible sexual intercourse upon her and had subsequently hidden her clothes as well as chappals at a place known to him, which he had subsequently got recovered in pursuance, to, his statement comprised, in, Ex. PW-6/A. The said efficacious proof qua the recovery of the aforesaid, articles/items, does also conclusively portray the guilt of the accused. The accused having identified the place of occurrence, in, pursuance whereof Sketch of the spot comprised in Ex. PW-12/A was prepared, is also a vital link in the chain of circumstances, which proves the guilt of the accused.

30. The summum bonum of the above discussion is that the prosecution has been able to adduce cogent and emphatic evidence in proving the guilt of the accused. The appreciation of the evidence as done by the learned trial Court does not suffer from any infirmity, or, perversity. Consequently reinforcingly, it can be formidably concluded, that, the findings of learned trial Court, are, well merited, and, do not merit interference.

31. In view of above discussion, we find no merit in this appeal, which is accordingly dismissed, and, the judgment of the learned trial Court is affirmed. Record of the learned trial Court be sent back forthwith.