

Testimony of the prosecutrix in rape cases

Let's begin with the definition of rape in Section 375 of the Indian Penal Code,

A man is said to commit "rape" if he—

- a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- b) Inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First - Against her will.

Secondly - Without her consent.

Thirdly - With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly - With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under sixteen years of age.

Sevently - When she is unable to communicate consent.

Explanation 1 - For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2 - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act;

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Explanation 1 - A medical procedure or intervention shall not constitute rape.

Explanation 2 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Before amendment to the definition of rape under section 375 of the Indian Penal Code the sexual act of penetration of penis by man in vagina of women if done under the seven descriptions in section 375 amounted to rape. It has been noticed that sexual excesses committed by men on women are not restricted to the above said act and therefore the definition of rape brings penetration of penis in vagina, mouth, urethra or anus and insertion of any object in any of the above cavities in its ambit. Manipulating any part of the body of woman so as to cause penetration in the above cavities of women and applying mouth to vagina and urethra of women are the acts which are also included in the definition of rape. Making any woman to do all these acts by a man is also in the ambit of rape. Forcing any women to do all these acts with any other person is also included in the definition of rape. Though the dimension of sexual activities included in the definition of rape enlarged, the six descriptions existence of any of which shall bring the above sexual activity under the definition of rape remains same except for change of age of giving consent from 16 years to 18 years in description 6. 7th description is added under which the eventuality of the victim unable to communicate her consent is considered as no consent.

Out of the seven descriptions 6th description is in respect of rape on minor. In this eventually the aspect of consent becomes irrelevant and the prosecution only has to prove that the victim was minor at the time of sexual act committed with her and the alleged sexual act was indeed committed. In newly added description the prosecution has to prove that the victim was unable to communicate consent and if it is so the defence of sexual activity committed by consent becomes irrelevant. Except 6th description all descriptions are respect of sexual excesses committed on adult women. In respect of 5th description, the prosecution has to prove that the consent of the woman was obtained as she was of unsound mind or her soundness of mind was temporarily disrupted because of administration of intoxicating substance which made her unable to understand nature and consequences of the act for which she has given consent. 4th description requires proof of deception exercised by the offender to procure consent of the woman by making her believe that the person having sexual intercourse with her or sexual activity with her is her husband or the person to whom she believes to have married. In respect of above three descriptions in the definition of rape, apart from placing testimony of the prosecutrix on record, the prosecution has to give other evidence to prove deception for obtaining consent, unsoundness of mind of the victim, permanent or, temporary due to intoxication, where consent given is not legal consent or inability of the victim to communicate the consent.

First three descriptions, however, can be proved on the basis of testimony of the prosecutrix with or without supplement of medico-legal evidence and attending evidence to corroborate her testimony because in many sets of circumstances such evidence may be missing. The sexual act mentioned in definition of rape whether committed without the consent of victim, against her will or her consent or her consent was obtained by putting her in fear of death or hurt to herself or to any other person in which she's interested can be proved by the evidence of the prosecutrix.

In first 2 descriptions it should be the case of the prosecution that sexual excesses have been committed by one man on one adult woman, who was in her senses, against her will or without her consent.

In natural course of event the following evidence will be created in case of a sexual intercourse by a man with woman without her consent or against her will,

1. The woman resists to avoid the excesses by throwing certain articles, by using anything as weapon to hit the man and by assaulting him with nails, teeth etc.;
2. The description of place of incident will disclose this evidence;
3. Signs of such assault will be found on the person of the offender in form of injuries;
4. Blood, skin and flesh of offender will be found in the nail clippings of the victim;
5. Tearing of hymen will be noticed, if the victim is not habitual to sexual intercourse, injury to vagina, peritoneum to the victim may be noticed;
6. Presence of semen in vaginal swab in case of ejaculation on penetration;
7. Absence of smegma under the ridge of glans of the offender;
8. Presence of semen on the clothes of victim on the clothes and offender victim and at the place where crime committed;
9. Mating of pubic hair.

This entire evidence is collected from the scene of the offence and at the time of medical examination of the victim and offender and elaborated by forensic evidence.

Dr Hari Singh Gour in his Penal Law of India distinguishes the phrases 'against the will' and 'without the consent' by mentioning that every act done against the will of a person is an act done without his consent but an act done without the consent of a person is not necessarily done against his will which expression imports that the act is done in spite of the opposition of the person to the doing of it. While the term will refers to the previous or concurrent consent, the second clause may include also a subsequent consent. Again, in case of the word 'consent' definition under section 90 of the Indian Penal Code is attracted which reads as under,

Section 90 of IPC:-

Consent known to be given under fear or misconception. — A consent is not such a consent as it intended by any section of this code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

consent of insane person. — if the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or

consent of child. — *unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*

Dr Hari Singh Gaur explains that there is a difference between submission and consent. Every consent involves a submission but the converse does not follow. Act of submission doesn't involve consent. Consent of the girl in order to relieve act of criminal character like rape must be an act of reason, accompanied with deliberation, after the mind has weighed in a balance the good and evil on each side, with the existing power and capacity to withdraw the assent according to one's will or pleasure. A woman is said to consent only when she agrees to submit herself while in free and unconstrained possession of her physical and moral power to act in the manner she wanted. Consent implies the exercise of a free and untrammelled right to forbid or withhold what is being consented to, it is always a voluntary and conscious acceptance of what is proposed to be done by another and concurred in by the former. Considering this intricate exposition of these two terms one thing is clear that it is the testimony of victim which can only explain whether the act done with her was against her will or without her consent. In case of rape on adult women the prosecution has to prove that the act contemplated in the section was done against her will or without her consent or her consent was obtained in the circumstances mentioned in the other descriptions of the section. Generally, the testimony of the victim is associated with all are some of the physical and medico legal evidence described above, however there are circumstances when some or all of the above evidence is missing. There may not be any mark of resistance on the person of victim and offender when the victim is unable to protect herself say by intoxication or when she is made defenceless say by tying her hands and legs or because of threat of a weapon given to her by the offender or to her child younger brother sister are old parents. Tearing of hymen may not be there when the victim is married or habitual to sexual intercourse. The physical evidence of presence of semen in vaginal swab, clothes of victim and offender, on pubic hair of either of them and on the place of crime in the circumstances of non collection of evidence in time that is before the victim has or offender washed their private parts and evidence of place of crime is destroyed in the normal circumstances like sending clothes to laundry or wiping off the floor where crime is committed.

In a given case when there is absence of physical and medical legal evidence and the prosecution case rests on testimony of the prosecutrix, how uncorroborated testimony of the prosecutrix be appreciated and whether conviction can be based on her uncorroborated testimony? Let us find answer by examining the precedents as to how the testimony of the prosecutrix be appreciated in such eventualities.

In the case of **State Of Punjab Vs. Gurmit Singh, (1996) 2 SCC 384** the facts as narrated by the apex court are as under,

The prosecutrix (name withheld by us), a young girl below 16 years of age, was studying in the 10th class at the relevant time in government high school, Pakhowal. The matriculation examinations were going on at the material time. The examination centre of the prosecutrix was located in the boy's high school, Pakhowal. On 30th March, 1984 at about 12.30 p.m. After taking her test in geography, the prosecutrix was going to the house of her maternal uncle, Darshan Singh, and when she had covered a distance of about 100 karmas from the school, a blue ambassador car being driven by a Sikh youth aged 20/25 years came from behind. In that car Gurmit Singh, Jagjit Singh @ Bawaand Ranjit Singh accused were sitting. The car stopped near her. Ranjit Singh accused came out of the car and caught hold of the prosecutrix from her arm and pushed her inside the car. Accused Jagjit Singh @ Bawaput his hand on the mouth of the prosecutrix, while Gurmit Singh accused threatened the prosecutrix, that in case she raised an alarm she would be done to death. All the three accused (respondents herein) drove her to the tube well of Ranjit Singh accused. She was taken to the 'kotha' of the tubewell. The driver of the car after leaving the prosecutrix and the three accused persons there went away with the car. In the said kotha Gurmit Singh compelled the prosecutrix to take liquor, misrepresenting to her that it was juice. Her refusal did not have any effect and she reluctantly consumed liquor. Gurmit Singh then got removed her salwar and also opened her shirt. She was made to lie on a cot in the Kotha while his companions guarded the Kotha from outside. Gurmit Singh committed rape upon her. She raised a cry as she was suffering pain but Gurmit Singh threatened to kill her if she persisted in raising alarm. Due to that threat, she kept quiet. After Gurmit Singh had committed rape upon her, the other two accused, who were earlier guarding the Kotha from outside, came in one by one, and committed rape upon her. Jagjit Singh alias Baw committed rape on her after Gurmit Singh and thereafter Ranjit Singh committed rape on her. Each one of the accused committed sexual intercourse with the prosecutrix forcibly and against her will. They all subjected her to sexual intercourse once again during the night against her will. Next morning at about 6.00 a.m., the same car arrived at the tubewell kotha of Ranjit Singh and the three accused made her to sit in that car and left her near the boys high school, Pakhowal near about the place from where she had been abducted. The prosecutrix had to take her examination in the subject of hygiene on that date. She, after taking her examination in hygiene, reached her village Nangal- Kalan, at about noon time and narrated the entire story to her mother, Smt. Gurdev Kaur, pw7. Her father Trilok Singh pw6 was not present in the house at that time. He returned from his work late in the evening. The mother of the prosecutrix, Smt. Gurdev Kaur pw7, narrated the episode to her husband Trilok Singh pw6 on his arrival. Her father straightaway contacted sarpanch Joginder Singh of the village. A panchayat was convened. Matter was brought to the notice of the sarpanch of village Pakhowal also. Both the sarpanches, tried to affect a compromise on 1.4.1984 but since the panchayat could not give any justice or relief to the prosecutrix, she along with her father proceeded to the police station Raikot to lodge a report about the occurrence with the police. When they reached at the bus adda of village Pakhowal, the police met them and she made her statement, ex. Pd, before ASI Raghubir Chand pw who made

an endorsement, ex. Pd/1 and sent the statement ex. Pd of the prosecutrix to the police station Raikot for registration of the case on the basis of which formal fir ex. Pd/2 was registered by SI Malkiat Singh. ASI Raghubir Chand then took the prosecutrix and her mother to the primary health centre Pakhowal for medical examination of the prosecutrix. She was medically examined by lady doctor Dr. Sukhwinder Kaur, pw1 on 2.4.84, who found that the hymen of the prosecutrix was lacerated with fine radiate tears, swollen and painful. Her pubic hair were also found mated. According to pw1 intercourse with the prosecutrix could be "one of the reasons for laceration which i found in her hymen". She went on to say that the possibility could not be ruled out that the prosecutrix "was not habitual to intercourse earlier."

During the course of investigation, the police took into possession a sealed parcel handed over by the lady doctor containing the salwar of the prosecutrix along with 5 slides of vaginal smears and one sealed phial containing pubic hair of the prosecutrix, vide memo ex. Pk. On the pointing out of the prosecutrix, the investigating officer prepared the rough site plan ex. Pf, of the place from where she had been abducted. The prosecutrix also led the investigating officer to the tube well kotha of Ranjit Singh where she had been wrongfully confined and raped. The investigating officer prepared a rough site plan of the kotha ex. Pm. A search was made for the accused on 2.4.1984 but they were not found. They were also not traceable on 3.4.1984, inspite of a raid being conducted at their houses by the ASI. On 5.4.1984 Jagjit Singh alias Bawaand Ranjit Singh were produced before the investigating officer by Gurbachan Singh and Jagjit Singh on the same day were produced before dr. B.l.bansal pw3 for medical examination. The doctor opined that both the accused were fit to perform sexual intercourse. Gurmit Singh respondent was arrested on 9.4.1984 by SI Malkiat Singh. He was also got medically examined on 9.4.1984 from Dr. B.l.Bansal pw3 who opined that Gurmit Singh was also fit to perform sexual intercourse. The sealed parcels containing the slides of vaginal smears, the pubic hair and the salwar of the prosecutrix, were sent to the chemical examiner. The report of the chemical examiner revealed that semen was found on the slides of vaginal smear though no spermatozoa was found either on the pubic hair or the salwar of the prosecutrix.

Course of events after commission of crime reveal that FIR could not be lodged immediately after the incident for explainable reasons and accused were arrested after several days. So most of the physical and medical evidence was lost. Besides this the age of the prosecutrix is 16 years and she is school going teenager. All these factors were required to be looked into while appreciating evidence of the prosecutrix.

In the opening para of the judgement the apex court expressed displeasure about appreciation of evidence of the victim by the court of sessions. Apex court observed as under,

"For what follows, the judgment impugned in this appeal, presents a rather disquietening and a disturbing feature. It demonstrates lack of sensitivity on the

part of the court by casting unjustified stigmas on a prosecutrix aged below 16 years in a rape case, by overlooking human psychology and behavioral probabilities. An intrinsically wrong approach while appreciating the testimonial potency of the evidence of the prosecutrix has resulted in miscarriage of justice. First a brief reference to the prosecution case:

As observed by the apex court the sessions court refuse to act upon the testimony of the prosecutrix on following grounds,

- 1."she is so ignorant about the make etc. Of the car that entire story that she was abducted in the car becomes doubtful" particularly because she could not explain the difference between a fiat car, ambassador car or a master car;
- 2.the investigating officer had "shown pitiable negligence" during the investigation by not tracing out the car and the driver;
- 3.that the prosecutrix did not raise any alarm while being abducted even though she had passed through the bus adda of village pakhowal
- 4.that the story of abduction" has been introduced by the prosecutrix or by her father or by the thanedar just to give the gravity of offence" and (v) that no corroboration of the statement of the prosecutrix was available on the record and that the story that the accused had left her near the school next morning was not believable because the accused could have no "sympathy" for her. "

The trial court also disbelieved the version of the prosecutrix regarding rape. It found that the testimony of the prosecutrix did not inspire confidence for the reasons

- (i)That there had been delay in lodging the fir and as such the chances of false implication of the accused could not be ruled out.
- (ii)according to the trial court Trilok Singh pw6 became certain on 1.4.84 that there was no outcome of the meeting between the panchayats of nangalkhurd and pakhowal therefore there was no justification for him not to have lodged the report on 1.4.84 itself and since Trilok Singh had " entered into consultations with his wife as to whether to lodge the report or not, it rendered the matter doubtful."
- (iii) that the medical evidence did not help the prosecution case. The trial court observed that in her cross-examination pw1 lady doctor had admitted that whereas inter-course with the prosecutrix could be one of the reasons for the laceration of the hymen "there could be other reasons also for that laceration".

(iv) the trial court noticed that the lady doctor had inserted a vaginal speculum for taking swabs from the posterior vaginal fornix of the prosecutrix for preparing slides and since the width of the speculum was about two fingers, the possibility that the prosecutrix was habituated to sexual inter-course could not be ruled out".

(v) the trial court observed that the prosecutrix was "fighting her imagination in order to rope in the accused persons" and that implicit reliance could not be placed on the testimony "of such a girl";

(vi) there was no independent corroboration of her testimony and

(vii) that the accused had been implicated on account of enmity as alleged by the accused in their statements recorded under section 313 cr. P.c.

Disagreeing with these reasons the apex court observed as to what could have been at the back of the mind of a Judge while appreciating victim's evidence in such circumstances,

"The grounds on which the trial court disbelieved the version of the prosecutrix are not at all sound. The findings recorded by the trial court rebel against realism and lose their sanctity and credibility. The court lost sight of the fact that the prosecutrix is a village girl. She was a student of xth class. It was wholly irrelevant and immaterial whether she was ignorant of the difference between a fiat, an ambassador or a master car. Again, the statement of the prosecutrix at the trial that she did not remember the colour of the car, though she had given the colour of the car in the fir was of no material effect on the reliability of her testimony. No fault could also be found with the prosecution version on the ground that the prosecutrix had not raised an alarm while being abducted. The prosecutrix in her statement categorically asserted that as soon as she was pushed inside the car she was threatened by the accused to keep quiet and not to raise any alarm otherwise she would be killed. Under these circumstances to discredit the prosecutrix for not raising an alarm while the car was passing through the bus adda is travesty of justice. The court over-looked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. Trial court fell in error for discrediting the testimony of the prosecutrix on that account.

It appears that the trial court searched for contradictions and variations in the statement of the prosecutrix microscopically, so as to disbelieve her version. The

observations of the trial court that the story of the prosecutrix that she was left near the examination center next morning at about 6 a.m. Was "not believable" as "the accused would be the last persons to extend sympathy to the prosecutrix" are not at all intelligible. The accused were not showing "any sympathy" to the prosecutrix while driving her at 6.00 a.m. Next morning to the place from where she had been addicted but on the other hand were removing her from the kotha of Ranjit Singh and leaving her near the examination center so as to avoid being detected. The criticism by the trial court of the evidence of the prosecutrix as to why she did not complain to the lady teachers or to other girl students when she appeared for the examination at the center and waited till she went home and narrated the occurrence to her mother is unjustified. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court overlooked that a girl, in a tradition bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Her not informing the teachers or her friends at the examination center under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking about it to any one, lest the family name and honour is brought into controversy. Therefore her informing to her mother only on return to the parental house and no one else at the examination center prior thereto is in accord with the natural human conduct of a female."

Considering the factum of delay in lodging fir and laying down a precedent the apex court observed,

"In our opinion, there was no delay in the lodging of the fir either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot over-look the fact that in sexual offences delay in the lodging of the fir can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. "

Laying down ratio regarding appreciation of evidence of the prosecutrix the apex court ruled,

"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 over-look. 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 of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

After reference to the above landmark judgment there is no need for further endorsement to the above view however following are some other cases where the apex court made guiding observation.

In the case of Sheikh Zakir Vs. State Of Bihar, (1983) 4 SCC 10, it has been held:-

"insofar as non-production of a medical examination report and the clothes which contained semen, the trial court has observed that the complainant being a woman who had given birth to four children it was likely that there would not have been any injuries

on her private parts. The complainant and her husband being persons belonging to a backward community like the santhal tribe living a remote area could not be expected to know that they should rush to a doctor. In fact the complainant has deposed that she had taken bath and washed her clothes after the incident. The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation the non-production of a medical report would not be of much consequence if the other evidence on record is believable. It is, however, nobody's case that there was such a report and it had been withheld."

In the case of **Ranjithazarika vs. State of Assam (1998) 8 SCC 635**, it was pointed out as under:- "the argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

In the case of **State Of Rajasthan Vs. N.K, the accused (2000) 5 SCC 30**, it was pointed out as under: -

"having heard the learned counsel for the parties we are of the opinion that the high court was not justified in reversing the conviction of the respondent and recording the order of acquittal. 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 given benefit thereof where none exists. A doubt, as

understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the 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."

In **Bharwada Bhoginbhai Hirjibhai V. State Of Gujarat (1983) 3 SCC217**, the Supreme Court observed that refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. The Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion."

Conclusion

The Indian Express in its edition of 26th April 2021 published an article on poor conviction rate in rape cases and referred data concluding that on an average, 88 rapes take place every day in India according to the National Crime Records Bureau (NCRB) data for 2019. However, the conviction rate is as low as 27.8%. This means, out of 100 accused, only 28 gets convicted. The NCRB data reveal the rate of crimes against women increased from 58.8 in 2018 to 62.4 in 2019. The cases like Nirbhaya case and Shaktimill case shake the psyche of the citizen throughout India but nobody bothers for the 62 victims out of hundred who on acquittal of offender realize futility of raising voice against the rapist. The judges of the trial may make some change in the scenario by acting upon the above observations.
