

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

Crl.A. No. 24 of 2022

1. The State of Tripura, represented by the learned Public Prosecutor, High Court of Tripura, Agartala, West Tripura.

.....Appellant

-VERSUS-

1. Sri Pradip Das, son of late Gopal Das of Nabagram, P.O. & P.S. Airport, District West Tripura.
2. Dipak Debnath, son of Kajal Debnath of Uttar Ramnagar, Gandhigram, near Mahatma Gandhi Club Station, P.S. Airport, District West Tripura.
3. Sri Radhab Das, son of Sri Durlab Das, Uttar Ramnagar, Gandhigram, near Mahatma Gandhi Club, P.S. Airport, District West Tripura.
4. Sri Priyamanshi Roy @ Mantu, son of Sri Arun Kumar Roy of Narshingarh, Maheshkhola P.S. Airport, District West Tripura.
5. Sri Prasenjit Adhikari @ Mana, son of Sri Sushankar Adhikari, Gandhigram, P.S. Airport, District West Tripura.
6. Sri Ashoke Deb @ Bashu, son of late Tapan Deb of Nabagram, P.S. Airport, District West Tripura.

..... Respondents.

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Debnath, Addl. P.P.
For Respondent(s)	:	Mr. S. Sarkar, Sr. Advocate. Ms. V. Poddar, Advocate.
Date of hearing	:	01.08.2023
Date of delivery of judgment and order	:	09.08.2023
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. S. Debnath, learned Additional Public Prosecutor appearing for the appellant-State also heard Mr. S. Sarkar, learned senior counsel and Ms. V. Poddar, learned counsel appearing for the respondents.

[2] This appeal is directed against the judgment and order of acquittal dated 29.04.2022 passed by the learned Addl. Sessions Judge, West Tripura, Agartala, Court No.5 in connection with ST(T-1) 108 of 2019, whereby and whereunder, the learned Court below has acquitted the above mentioned respondents from the premises of the charges under Sections-366/376D/120B of Indian Penal Code.

[3] The brief fact of the prosecution case, as revealed from FIR is that on 24.09.2019 at about 4.30 pm victim, aged about 32 years went to GBP Hospital for personal work and after completion of work at 5.00pm she called her known auto driver namely, Pradip Das, resident of Narsingharh, to pick her from GBP and to drop her at Beltala. At about 5.40pm Pradip Das came with his auto and taken victim towards Circuit house and at circuit house one co-passenger got down and suddenly accused Pradip Das turned auto towards Narsingharh. Victim asked for the reason thereafter, Pradip Das replied that he has some little work ahead and after finishing his work he would go towards Beltala. Thereafter, when auto crossed Gurkhabasti traffic point other two passengers boarded the auto and accused Pradip called the name of Mantu and victim came to know that person sitting beside her are Mantu.

[4] Suddenly, Mantu pressed the mouth of victim and another passenger caught both the hands of the victim tightly. Victim noticed that one white colour Eco car was following behind them and at that time it was dark. After crossing of Agartala Airport, accsued Pradip Das, the driver of the auto took right hand side road and it was deep jungle and victim could not recognize the place. After some time the auto and Ecco car stopped and the accused persons took the victim inside the Ecco car and Ecco car went to deep jungle. Inside the Ecco car there were seven persons and accused persons called each other name and victim could remember some of the names such as Pradip, Mantu, Bishal, Akash, Barun and victim could not recognize more.

[5] When the car reached inside deep jungle the accused persons stopped the car and all of them started committing rape upon her forcibly. Thereafter, accsued persons put the victim inside the auto of Pradip, Mantu and Pradip brought the victim to circuit house and pushed down her from the auto at circuit house. Victim called one of her brother in law namely, Prasenjit Saha @ Suman who was staying near circuit house and he dropped the victim to her rented house at Surjapara, A. D. Nagar. When they reached home it was 11.45 hours. Victim disclosed the incident to all the persons who were present in the house at that time and lastly they came to the TMC Hospital, Hapania for treatment and at that time of filing of FIR victim was under treatment at TMC Hospital, Hapania. The oral statement of the victim was recorded by WSI L.N. Puli of Amtali P.S. FIR was read over and explained to victim and victim put her signature admitting the same as correct.

[6] On the basis of FIR, Zero FIR was registered at Amtali P.S. dated 25.09.2019 under Sections-341/342/376D/120B of IPC and forwarded to the O/C East Agartala Women P.S. Thereafter, on the basis of FIR, East Agartala Women P.S. case was registered vide No.72 of 2019 dated 25.09.2019 under Sections-341/342/376D/120B against the five accused persons named by the victim and five other unknown persons. O/C of Amtali P.S. namely Mamataj Hasina herself took up the investigation. On completion of the investigation and finding sufficient materials charge sheet vide No.71/2019 dated 21.11.2019 is filed against nine accused persons namely, Pradip Das, Priyamanish Roy @ Mantu, Radhab Das, Dipak Debnath, Ashok Deb @ Bashu, Prasenjit Adhikari @ Mona and three child of conflict with law/juvenile namely, Sri Subhankar Saha @ Gadaj, Sri Ajoy Saha @ Akash and Sri Bishal Das for offence punishable under Section-376D/120B of IPC.

[7] Subsequently, I.O. filed supplementary charge sheet vide No.01/2020 dated 21.01.2020 and submitted further materials collected

during further investigation. Out of nine accused persons three are juvenile and inquiry is going on before the JJB, Agartala, West Tripura. On receipt of charge-sheet, the committal Court took cognizance of the offences and finding the offence under Sections-366/376D of IPC is exclusively triable by the Sessions Court, committed the record to the Court of the learned Sessions Judge, West Tripura, Agartala, learned Sessions Judge, West Tripura, Agartala received the record and transferred it to this Court for disposal in accordance with law.

[8] After hearing of both sides, charges were framed by this Court against six accused persons for offence under Sections-366/376D read with Section-120B of IPC against the accused Pradip Das and Priyamanish Roy and under Section-376D read with Section-120B of IPC against the Radhab Das, Dipak Debnath, Ashike Deb and Prasenjit Adhikari and was read over and explained to accused persons but, pleaded not guilty and claimed to be tried.

[9] To prove the charge the prosecution side examined as many as 40 witnesses including the I.O and after completion of prosecution witnesses the present accused persons were examined under Section-313 of Cr. P.C. to which he declined to adduce any DWs and responded in the negative to almost all the questions that were put to them. Thereafter, the arguments from both sides were heard and after hearing the arguments at length the judgment was delivered on 29.04.2022 whereby, it has been observed as under:

“In view of above, I am of the considered opinion that prosecution has failed to bring home the charge beyond reasonable doubt for which accused persons entitled to be acquitted from the alleged charge on the basis of benefit of doubt. Accordingly, I do the same.

In the result, accused persons namely Sri Pradip Das, Dipak Debnath, Radhab Das, Priyamanish Roy @ Mantu, Prasenjit Adhikari and Sri Ashoke Deb are hereby acquitted from the charge framed under Sections-366/376D/120B of IPC respectively.

They be set at liberty at once.

The surety of the accused person stands discharged from the liabilities of this case, except the surety who furnished the bail bond in terms of Sections-437A of Cr. P.C.

Seized alamata, if any, be destroyed/released, as the case may be, after expiry of appeal period.

Thus, the case is disposed of on contest.

Make entry in the TR and CIS.”

[10] Being aggrieved and dissatisfied with the said judgment and order of acquittal dated 29.04.2022 passed by the learned Addl. Sessions Judge, West Tripura District, Agartala, Court No.5, the present appellant representing the State authorities preferred this appeal against the acquittal.

[11] Mr. S. Debnath, learned Addl. P.P. appearing for the appellant-State has submitted that the finding of the learned Court below is perverse unjustified, unreasonable, arbitrary, unwarranted in law and facts and as such, not tenable in the eyes of law. The learned Court below by way of non-reading and improper appreciation of evidence on record and the facts circumstances of the case arrived at absolutely illegal, wrong and unwarranted findings causing grave miscarriage of justice in the said judgment. The incident occurred on 24.09.2019 at around 1940 hrs and the information was received in the police station which shows that there was absolutely no delay in lodging the FIR and therefore there was no chance of contamination and development of any false and fabricated case. This fact was never appreciated by the learned Court below and as such, the impugned judgment and order of acquittal is liable to be quashed.

[12] The learned Court below while deciding the prosecution case relying on the deposition of the victim i.e. PW-1 miserably failed to consider that victim herself came up with the allegation of her kidnapping, gang rape and subsequently thrown on the road by the accused respondents and who also reiterated the same before the

learned Magistrate i.e. PW-21 but, only relying on her deposition during her examination in the witness who turned hostile acquitted the accused respondents from the charges labeled against them. The learned Court below while deciding the case in favour of the respondents relying on the evidence of the victim who subsequently, turned hostile, ought to have considered that it is the victim i.e. PW-1 is the 1st person came up with the allegation of kidnapping and rape upon her by the accused respondents.

[13] PW-2 is the brother of the victim who turned hostile but, supported the initial version of the victim he picked her from circuit house and then dropped her at her home. PW-3, the husband of the victim though deviated from his earlier statement turned hostile but, supported the prosecution story who during his examination in the witnesses box clearly stated that while deviating from his earlier versions i.e. from his 161 statement stated that his wife on the alleged date of incident was dropped by Prasenjit Saha at his home at 11.30 pm and also being asked the victim stated to him that she was tortured and subsequently, she lodged a complaint against the Pradip, Ashok, Akash and three others.

[14] The victim i.e. PW-1 was also admitted in the hospital for 5 to 6 days but, the learned Court below without considering this aspect of the matter decided that matter in favour of the accused respondents from the charges under Sections-366/376D and 120B of IPC. PW-4 i.e. the mother of the victim deposed that on the alleged date of incident on receipt of the information from her son in law she came to their house and found the victim in a miserable condition and also gave vivid description of the incident which she learned directly from her victim daughter i.e. PW-1 on the date of incident dated 24.09.2019 in the manner the victim was kidnapped and raped but, the learned Court below without considering this evidence denied justice to the victim and the society in large.

[15] PW-5 i.e. the father of the victim who in *toto* corroborated the PW-4 that is the commission of the alleged incident upon his daughter but, the learned Court below discarded the depositions of the evidences on the ground of contradiction. PWs.6 and 7 who are the independent witnesses of this case and supported the prosecution version having heard the alleged incident when they visited the victim in the hospital during her treatment but, the learned Court without considering the evidence of the witnesses most negligently in a very whimsically manner discarded the evidence of this witnesses.

[16] PW-11, the doctor TMC Hospital, who examined the victim on 25.09.2019 in his deposition stated that the hymen is not intact and no injury was seen and no injury mark was found on the private part or any other part of the body of victim and the learned Court below by misunderstanding the statement of the doctor discarded the allegation of rape and by doing so learned Court miserably failed to consider catena of decision laid down by the Hon'ble Apex Court that absence of injury mark is not *sin qae non* to discard the prosecution story of an allegation of rape.

[17] It has been further stated that from the evidence of PW-14 Dy. Director of SFSL, Tripura, the case of the prosecution has been proved beyond reasonable doubt as the samples seized from the vaginal swab and the wearing apparels of the victim matches with the exhibits of semen sample of the accused persons but, the learned Court below took the view that it is a case of consensual relation between the victim and the accused respondents only relying on the hostile evidence of the victim discarding the initial complaint, 164 statements and the report of the TI parade where the victim identified the accused respondents.

[18] The learned Court below ought to have considered that though the victim i.e. PW-1 was the 1st person to bring the allegation of kidnapping and rape by the accused persons on her but, she turned

hostile and in her deposition she did not uttered a single word regarding physical relationship with accused persons but, only stated that she was pushed from the vehicle on her way home from the auto and in her cross by the defence she admitted that on the alleged date of the incident she had physical relationship with the accused persons only to get rid of the PW-14 who determined the samples found in the vaginal swab and in wearing apparels of the victim are the semen samples of the accused persons.

[19] The incident occurred on 24.09.2019 and the FIR was filed on 25.09.2019 when victim was in the hospital and therefore, even though PW-1 the victim, her husband PW-2 and brother in law of victim PW-3 were declared hostile but their 161 statements, statement made before the learned Magistrate. TI parade report and FIR are corroborative to the fact that sexual intercourse with the victim by the accused persons was forcible. It is submitted that even though PW-1 deposed in cross-examination that she did not state to the police that she was raped by any person and physical relationship occurred with her consent and she identified accused persons who raped her and contents of FIR was not read over to her and she made statement before the learned Magistrate as per say and instruction of police but, the same is not believable and forcible sexual intercourse is sufficiently proved from FIR, police statement, statement made before the learned Magistrate and TI parade etc. it is contended that evidence of hostile witness cannot be discarded and can be relied on in favour of the prosecution if supported by other evidence and relied on the decision of the Hon'ble Apex Court in Hemudan Nanbha Gadhvi v. State of Gujrat, 2019 CrIj. 736 and the judgment of this Court in Jilal Uddin v. State of Tripura, 2018 (2) TLR 532.

[20] The learned Court below while deciding the case in favour of the accused respondents ought to have considered that it is settled law that evidence of hostile witness can be relied on either in favour of

the prosecution or in favour of the accused or in favour of both if corroborated and supported by other circumstances and evidence, such as FIR, 161 statement, statement made before the learned Magistrate, TI Parade report, medical evidence and evidence of other witnesses etc.

[21] PW-32, Smti. L. N. Puli, WSI of Amtali PS deposed that on 25.09.2019 a requisition was received from Hapania Hospital that a victim of sexual assault was admitted in the said hospital and GD Entry No.3 and 25.09.2019 was made and as per direction of O/C Amtali, she went to the hospital and according to the statement of victim she recorded FIR in English and explained the FIR to the informant cum victim and victim understanding the contents put signature and thereafter she brought FIR and registered Zero FIR and forwarded the FIR to the OC East Amtali Women P.S. which totally corroborated the evidence of PW-34 the attending doctor who 1st attended the victim.

[22] From the FIR marked as Exbt.1/2, the forcible sexual intercourse by accused persons is revealed. From Exbt.5 the police statement of victim, the forcible sexual intercourse on the victim is disclosed. From Exbt.3/1 the statement of victim made before the learned Magistrate forcible sexual intercourse is also established. From Exbt.4 series, the TI Parade report it can be established that victim identified four accused persons and the conduct of victim during TIP is material. Victim during TIP while identifying accused Priyamanish Roy @ Mantu stated that she called the accused as brother and begged for life but accused asked her not to call him brother and victim identified the accused by slapping on the chest of accused and the observation of the learned Magistrate (PW-30) was that the reaction of the victim was instant.

[23] While, identifying the accused Prasenjit Adhikari @ Mana victim stated that she held the leg of accused and begged for mercy but, accused did not listen and victim identified the accused by slapping the

accused and observation of the learned Magistrate is that reaction of the victim was instant and accused stated that he is innocent and he was present but, did not go forward. While identifying accused Dipak Debnath victim stated that accused ruined her life and victim identified the accused by touching the chest of accused. While identifying accused Pradip Das victim stated that she want accused to be hanged and victim identified the accused by slapping on the chest of the accused, but the learned Court below ignoring the evidence on records acquitted the accused persons from the charges labeled against them.

[24] PW-34, Dr. Satarupa Datta deposed that victim was admitted in the hospital at 02.04 am in the history of sexual assault on 24.09.2019 from 06.05.pm to 11.00pm and she sent a requisition to the Amtali PS vide registration No.126189/2019 marked as Exbt.49, meaning thereby, it is the victim who had given the history of the sexual assault upon her and thereafter, the investigation was initiated but the learned Court below miserably failed to consider this aspect of the matter and only relief upon the statement given the victim in the witness box and decided case of consensual physical relation.

[25] Even though the victim deposed that she made statement to the learned Magistrate as per instruction of police as police threatened her but the same is not believable as it is impossible to think that police could make and create such pressure upon the victim to make successive statement to the police and Magistrate. The accused persons failed to give any reply that sexual intercourse was with the consent of victim and they made mere denial during examination under Section-313 Cr. P.C. and the same goes against the accused persons and relied on the decision of the Hon'ble Apex Court in Harivadan Babubhai Patel v. State of Gujrat, 2013 (7) SCC 45 whereby it has been held that “22. *Another facet is required to be addressed to. Though all the incriminating circumstances which point to the guilt of the accused had been put to him, yet he chose not to give any explanation under [Section](#)*

313 CrPC except choosing the mode of denial. It is well settled in law that when the attention of the accused is drawn to the said circumstances that inculpated him in the crime and he fails to offer appropriate explanation or gives a false answer, the same can be counted as providing a missing link for building the chain of circumstances. ([See State of Maharashtra v. Suresh](#)[21]). In the case at hand, though number of circumstances were put to the accused, yet he has made a bald denial and did not offer any explanation whatsoever. Thus, it is also a circumstance that goes against him.”

[26] There are many other material evidence which clearly suggest that the present accused persons has committed the offence and the ingredients of Sections-366/376D/120B of IPC are clearly visible against the present accused persons. Therefore, the impugned judgment and order dated 29.04.2022 should be quashed and set aside and the finding of acquittal against the present accused persons should be interfered with and altered. In view of the matter, the perverse, illegal and arbitrary impugned judgment and order of acquittal dated 29.04.2022 passed by the learned Court below, whereby the Court below most erroneously acquitted the present accused persons from the charges under Sections-366/376D/120B of IPC does not stand in law and is liable to be interfered by this Court.

[27] He has further contended that in this case victim is the only eye witness and others heard about the incident from the victim and as the victim, her husband and brother in law did not support the case or prosecution about the forcible sexual intercourse upon the victim by accused persons and as the same is corroborative with the medical report of having no injury on the victim and also by the conduct of the parties, it cannot be said beyond reasonable doubt that accused persons kidnapped and raped on the victim.

[28] In support of his submissions, reliance has been placed in a decision of the Apex Court in *Hemudan Nanbha Gadhvi v. State of Gujarat*, reported in (2019) 17 SCC 523, wherein, the Court has observed as under:

“9. The family of the prosecutrix was poor. She was one of the five siblings. The assault upon her took place while she had taken the buffalos for grazing. Her deposition was recorded nearly six months after the occurrence. We find no infirmity in the reasoning of the High Court that it was sufficient time and opportunity for the accused to win over the prosecutrix and PW1 by a settlement through coercion, intimidation, persuasion and undue influence. The mere fact that PW2 may have turned hostile is not relevant and does not efface the evidence with regard to the sexual assault upon her and the identification of the appellant as the perpetrator. The observations with regard to hostile witnesses and the duty of the court in *State vs. Sanjeev Nanda*, 2012 (8) SCC 450 are also considered relevant in the present context:

101....If a witness becomes hostile to subvert the judicial process, the court shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal justice system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 IPC imposes punishment for giving false evidence but is seldom invoked.”

10. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in *Zahira Habibullah Sheikh vs. State of Gujarat*, (2006) 3 SCC 374 and *Mahila Vinod Kumari vs. State of Madhya Pradesh*, (2008) 8 SCC 34. If the medical evidence had not confirmed sexual assault on the prosecutrix, the T.I.P. and identification therein were doubtful, corroborative evidence was not available, entirely different considerations may have arisen.

11. It would indeed be a travesty of justice in the peculiar facts of the present case if the appellant were to be acquitted merely because the prosecutrix turned hostile and failed to identify the appellant in the dock, in view of the other overwhelming evidence available in *Iqbal v. State of U.P.*, 2015 (6) SCC 623, it was observed as follows:

“15. Evidence of identification of the miscreants in the test identification parade is not a substantive evidence. conviction cannot be based solely on the identify of the dacoits by the witnesses in the test identification parade. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime, like recovery of articles which are the subject matter of dacoity and the alleged weapons used in the commission of the offence.”

[29] Ms. V. Poddar, learned counsel appearing for the respondents in her defence has stated that from Exbt.4 series, the TIP report and from the evidence of PW-30, the learned Magistrate who conducted TI parade, have found that the fictim identified four accused persons namely, Priyamanish Roy, Prasenjit Adhikari @ Manna, Dipak Debnath and Pradip Das but, could not identify accused Ashoke Deb @ Bashu and Radhab Das.

[30] In the cross-examination of PW-1 it has been stated that the day she was admitted in the hospital she did not make any complaint either to the doctor or to the police and she did not state to the police that she was raped by any person and she identified accused persons in the jail as accused persons were identified to her by government officials and she make statement to the Magistrate as per version of police who instructed her to depose what they have said else action would be taken against her as a case has already been registered. PW-1 also deposed in cross that she had physical relationship on 24.09.2019 with Pradip, Gadai, Bishal and Akash with her consent and she did not state to her parents, parents in law or to any relatives about the incident occurred with her and accused persons were known to her whom she identified and on that day whatever happened had happened with her consent and she has no grievance against the accused persons.

[31] Ms. Poddar, learned counsel has further stated that PW-11 Dr. Priyanka Poddar, who examined the victim on 25.09.2019 and from Exbt.18 the injury report, it can be found that no injury was found on the private part or any other part of body of the victim. Injury on the

body of the victim is at all not necessary to determine whether the sexual intercourse was forcible or consensual but, in this case where it is the prosecution case and PW-1, the victim stated in the FIR, police statement and before the Magistrate that nine persons raped her and among them three persons raped her twice or thrice forcibly and at the time of commission of rape mouth and hands of PW-1 were tied as stated in the police statement, sustaining of injury is natural. Non having of any injury either in the private part or in any other part of the body of the victim specially in the mouth and hands, which were tied during the commission of rape by nine persons creates a doubt against the prosecution.

[32] It has been further stated that the seized mobile of the accused Mantu there is naked video file of victim and the said CD is marked as Exbt. MO.7. On perusal of the said videos it does not appears that the sexual intercourse with the victim is not consensual. That apart, PW-1, the victim stated to the Magistrate that during the commission of rape her mouth and hands were tied and she was unable to shout but, in the video file of the said CD, the mouth and hands of the victim were not tied.

[33] PW-1 did not state in the FIR that 3/5 accused persons raped her twice or thrice but in the police statement of PW-1 stated that Pradip, Mantu, Bishal, Bashu and Akash raped her twice and PW-1 stated before the Magistrate that Bashu, Pradip and Mantu raped her thrice. The above mentioned contradiction is material and creates a doubt as to the truthfulness of statement made in the FIR, police statement and statement made before the Magistrate.

[34] PW-2, the brother in law of victim merely deposed that on receipt of message from victim he picked the victim and dropped her to the house and failed to depose anything further. PW-2 was declared hostile and his police statement brought into record. From Exbt.7 it can

be found that PW-2 stated to the IO that victim told to him when victim was dropped to her house that she was raped by the accused persons. On the contrary, from Exbt.6/1, the statement of PW-2 made before the Magistrate, PW-2 did not state anything to the Magistrate that victim told to PW-2 and others when victim was dropped to her house about the commission of rape upon victim by accused persons. Hence, police statement of PW-2 cannot be relied on being doubtful rather the evidence of PW-2 before the Court appears to be truthful to the effect that PW-2 merely picked the victim from circuit house and dropped her to her house as the same is also stated before the Magistrate.

[35] PW-4 deposed that she saw the miserable condition of her daughter and victim was bleeding and was in pain but no such condition is supported and corroborated by PW-5, 6 and 7. That apart, the fact that victim was bleeding and was in pain is also not supported by medical evidence as discussed earlier. PW-9, is the owner of the Eco vehicle and deposed for the seizure of the said vehicle and that the said vehicle was given on rent to the Electric Department and accused Bishal Das was the driver of the said vehicle. PW-12, Sri Sunil Bhowmik, BGM of Electric Office also deposed that Eco car was hired in their office and owner was one Raju Bhowmik, PW-9 and driver was accused Bishal Das. PW-22 Sri M. Mog deposed that on 04.11.2019 he verified the driving licence of Bishal Das marked as Exbt.40. From the evidence of PW-9 and 12 it can be said that accused Bishal Das was in control of the Eco vehicle on the date of accident but, the same would be of no help to the prosecution to determine the fact that whether sexual intercourse with the victim was forcible or consensual. It cannot be said that accused Pradip Das and Priyamanish Roy made criminal conspiracy and abducted victim on 24.09.2019 and accused Pradip Das, Priyamanish Roy, Radhab Das, Dipak Debnath, Ashoke Deb, Prasenjit Adhikar and other three persons made criminal conspiracy and gang raped on victim on 24.09.2019.

[36] In support of her case, Ms. Poddar, learned counsel appearing for the respondents has placed her reliance on a decision of the Apex Court in *Ravi Sharma v. State (Government of NCT of Delhi) and Another*, reported in (2022) 8 SCC 536, wherein, the Court has held thus:

8. Before venturing into the merits of the case, we would like to reiterate the scope of [Section 378](#) of the Code of Criminal Procedure (for short ‘Cr.P.C.’) while deciding an appeal by the High Court, as the position of law is rather settled. We would like to quote the relevant portion of a recent judgment of this Court in [Jafarudheen and Others v. State of Kerala](#) (2022 SCC Online SC 495) as follows:

25. While dealing with an appeal against acquittal by invoking [Section 378](#) of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters.

9. This Court in the aforesaid judgment has noted the following decision while laying down the law:

Precedents:

26. *Mohan v. State of Karnataka* as hereunder:

“20. [Section 378](#) CrPC enables the State to prefer an appeal against an order of acquittal. [Section 384](#) CrPC speaks of the powers that can be exercised by the Appellate Court. When the trial court renders its decision by acquitting the accused, presumption of innocence gathers strength before the Appellate Court. As a consequence, the onus on the prosecution becomes more burdensome as there is a double presumption of innocence. Certainly, the Court of first instance has its own advantages in delivering its verdict, which is to see the witnesses in person while they depose. The Appellate Court is expected to involve itself in a deeper, studied scrutiny of not only the evidence before it, but is duty bound to satisfy itself whether the decision of the trial court is both possible and plausible view. When two views are possible, the one taken by the trial court in a case of acquittal is to be followed on the touchstone of liberty along with the advantage of having seen the witnesses. [Article 21](#) of the Constitution of India also aids the accused after acquittal in a certain way, though not absolute. Suffice it is to state that the Appellate Court shall remind itself of the role required to play, while dealing with a case of an acquittal.

21. Every case has its own journey towards the truth and it is the Court's role undertake. Truth has to be found on the basis of evidence available before it. There is no room for subjectivity, nor the nature of offence affects its performance. We have a hierarchy of courts in dealing with cases. An Appellate Court shall not expect the trial court to act in a particular way depending upon the sensitivity of the case. Rather it should be appreciated if a trial court decides a case on its own merit despite its sensitivity.

22. At times, courts do have their constraints. We find, different decisions being made by different courts, namely, trial court on the one hand and the Appellate Courts on the other. If such decisions are made due to institutional constraints, they do not augur well. The district judiciary is expected to be the foundational court, and therefore, should have the freedom of mind to decide a case on its own merit or else it might become a stereotyped one rendering conviction on a moral platform. Indictment and condemnation over a decision rendered, on considering all the materials placed before it, should be avoided. The Appellate Court is expected to maintain a degree of caution before making any remark.

23. This court, time and again has laid down the law on the scope of inquiry by an Appellate court while dealing with an appeal against acquittal under [Section 378](#) CrPC. We do not wish to multiply the aforesaid principle except placing reliance on a recent decision of this court in [Anwar Ali v. State of Himanchal Pradesh](#), (2020) 10 SCC 166:

14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under: [\[Babu v. State of Kerala, \[\(2010\) 9 SCC 189\]](#):

“20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is “against the weight of evidence”, or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn.* [(1984) 4 SCC 635], *Excise & Taxation Officer-cum-Assessing Authority v. Gopi Nath & Sons* [1992 Supp (2) SCC 312], [Triveni Rubber & Plastics v. CCE](#) [1994 Supp (3) SCC 665], [Gaya Din v. Hanuman Prasad](#) [(2001) 1 SCC 501], *Aruvelu v. State*, [(2009) 10 SCC 206] and *Gamini Bala Koteswara Rao v. State of A.P.*

It is further observed, after following the decision of this Court in [Kuldeep Singh v. Commr. of Police](#) [(1999) 2 SCC 10], that if a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse, and the findings would not be interfered with.

14.3. In the recent decision of [Vijay Mohan Singh v. State of Karnataka](#), [(2019) 5 SCC 436], this Court again had an occasion to consider the scope of [Section 378](#) CrPC and the interference by the High Court [[State of Karnataka v. Vijay Mohan Singh](#), 2013 SCC OnLine Kar 10732] in an appeal against acquittal. This Court considered a catena of decisions of this Court right from 1952 onwards. In para 31, it is observed and held as under:

“31. An identical question came to be considered before this Court in [Umedbhai Jadavbhai v. State of Gujarat](#), [(1978) 1 SCC 228]. In the case before this Court, the High Court interfered with the order of acquittal passed by the learned trial court on reappreciation of the entire evidence on record. However, the High Court, while reversing the acquittal, did not consider the reasons given by the learned trial court while acquitting the accused. Confirming the judgment of the High Court, this Court observed and held in para 10 as under:

‘10. Once the appeal was rightly entertained against the order of acquittal, the High Court was entitled to reappreciate the entire evidence independently and come to its own conclusion. Ordinarily, the High Court would give due importance to the opinion of the Sessions Judge if the same were arrived at after proper appreciation of the evidence. This rule will not be applicable in the present case where the Sessions Judge has made an absolutely wrong assumption of a very material and clinching aspect in the peculiar circumstances of the case.’ 31.1. [In Sambasivan v. State of Kerala](#), [(1998) 5 SCC 412], the High Court reversed the order of acquittal passed by the learned trial court and held the accused guilty on reappreciation of the entire evidence on record, however, the High Court did not record its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable.

Confirming the order passed by the High Court convicting the accused on reversal of the acquittal passed by the learned trial court, after being satisfied that the order of acquittal passed by the learned trial court was perverse and suffered from infirmities, this Court declined to interfere with the order of conviction passed by the High Court. While confirming the order of conviction passed by the High Court, this Court observed in para 8 as under:

‘8. We have perused the judgment under appeal to ascertain whether the High Court has conformed to the aforementioned principles. We find that the High Court has not strictly proceeded in the manner laid down by this Court in Doshi case [[Ramesh Babulal Doshi v. State of Gujarat](#), (1996) 9 SCC 225] viz. first recording its conclusion on the question whether the approach of the trial court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable, which alone will justify interference in an order of acquittal though the High Court has rendered a well- considered judgment duly meeting all the contentions raised before it. But then will this non-compliance per se justify setting aside the judgment under appeal? We think, not. In our view, in such a case, the approach of the court which is

considering the validity of the judgment of an appellate court which has reversed the order of acquittal passed by the trial court, should be to satisfy itself if the approach of the trial court in dealing with the evidence was patently illegal or conclusions arrived at by it are demonstrably unsustainable and whether the judgment of the appellate court is free from those infirmities; if so to hold that the trial court judgment warranted interference. In such a case, there is obviously no reason why the appellate court's judgment should be disturbed. But if on the other hand the court comes to the conclusion that the judgment of the trial court does not suffer from any infirmity, it cannot but be held that the interference by the appellate court in the order of acquittal was not justified;

Then in such a case the judgment of the appellate court has to be set aside as of the two reasonable views, the one in support of the acquittal alone has to stand. Having regard to the above discussion, we shall proceed to examine the judgment of the trial court in this case.' 31.2. In *K. Ramakrishnan Unnithan v. State of Kerala*, [(1999) 3 SCC 309], after observing that though there is some substance in the grievance of the learned counsel appearing on behalf of the accused that the High Court has not adverted to all the reasons given by the trial Judge for according an order of acquittal, this Court refused to set aside the order of conviction passed by the High Court after having found that the approach of the Sessions Judge in recording the order of acquittal was not proper and the conclusion arrived at by the learned Sessions Judge on several aspects was unsustainable. This Court further observed that as the Sessions Judge was not justified in discarding the relevant/material evidence while acquitting the accused, the High Court, therefore, was fully entitled to reappraise the evidence and record its own conclusion. This Court scrutinised the evidence of the eyewitnesses and opined that reasons adduced by the trial court for discarding the testimony of the eyewitnesses were not at all sound. This Court also observed that as the evaluation of the evidence made by the trial court was manifestly erroneous and therefore it was the duty of the High Court to interfere with an order of acquittal passed by the learned Sessions Judge.

31.3. In *Atley v. State of U.P.*, [AIR 1955 SC 807], in para 5, this Court observed and held as under:

'5. It has been argued by the learned counsel for the appellant that the judgment of the trial court being one of acquittal, the High Court should not have set it aside on mere appreciation of the evidence led on behalf of the prosecution unless it came to the conclusion that the judgment of the trial Judge was perverse. In our opinion, it is not correct to say that unless the appellate court in an appeal under Section 417 CrPC came to the conclusion that the judgment of acquittal under appeal was perverse it could not set aside that order.

[37] It is also well settled that the court of appeal has as wide powers of appreciation of evidence in an appeal against an order of

acquittal as in the case of an appeal against an order of conviction, subject to the riders that the presumption of innocence with which the accused person starts in the trial court continues even up to the appellate stage and that the appellate court should attach due weight to the opinion of the trial court which recorded the order of acquittal. After overall discussions and observations made by the learned Court below as well as the counsel for the parties, this Court is of the considered opinion that, it is the moral duty of the Court to give proper justice to everyone for maintaining law and order. For this purpose, let us again reiterate the vital points once again.

[38] In this context, this Court finds, that the sexual intercourse on the victim by accused persons may not be in dispute very much. In cross-examination of PW.1, the defence brought the material that victim had physical relationship on 24.09.2019 with Pradip, Gadai, Bishal and Akash. PW.1, the victim merely deposed that on 24.09.2019 she boarded one auto to drop her to her destination and two more passengers were also in the said auto and she was pushed off from the auto and she fell on the ground and sustained injury. Then she called brother in law Prasenjit Saha(PW.2) who took her to the hospital and on the following morning at 4.30 am police came to the hospital and enquired about the incident. PW.1 identified the accused Pradip Das, Ashok Deb, Priyamanish Roy, Radhab Das and Dipak Debnath I the Court. PW-1 failed to depose anything further about the sexual intercourse and for which PW-1 was declared hostile and her police statement is brought into record and marked as Exbt.5.

[39] PW.1 stated to the I.O. about the commission of sexual intercourse upon her by accused persons. From Ext.3/1, the statement of PW.1 made before the Magistrate, which is also proved by PW.21, the Ld. Magistrate, this Court finds, PW.1, the victim stated to the Magistrate about sexual intercourse upon her on 24.09.2019 by accused Pradip Das, Priyamanish Roy (Mantu). Prasenjit Adhikari, Ashoke Deb

@ Bashu, Dipak Debnath and Radhab Das. From FIR marked Ext.1/2, it reveals that the victim stated in the FIR about sexual intercourse upon her on 24.09.2019 by accused Pradip Das and she heard the name of Mantu (Priyamanish Roy) and others.

[40] PW.2 brother in law of victim, who was called by victim from circuit house and who shifted the victim from Circuit house to her house, did not depose anything about sexual intercourse and he was declared hostile and his police statement is brought into record and marked as Ext.7 and confirmed by 10(PW.40). From Ext.7. It reveals that, PW.2 stated to the police that when he has taken the victim to her house, the victim told about sexual intercourse upon her by accused Pradip. Bashu @ Dipak, Mantu and others.

[41] PW.3, the husband of victim also failed to depose anything about the sexual intercourse and he was declared hostile and his attention is drawn to his police statement and his statement is marked as Ext.8 subject to confirmation by I.O and I.O. confirmed the same. From Ext.8 and 8/1, I find, PW.3 stated to the IO that victim told to PW-3 that sexual intercourse was made on the victim by Pradip, Mantu and others.

[42] PW.4 and 5, the mother and father of victim deposed that victim told them that the sexual intercourse was made with the victim by Pradip. Mantu, Ashoke. Prasenjit Dipak, Radhab and others. PW.6 Smt. Sankari Sarkar and PW.7 Sri Narayan Chakraborty who visited the hospital when victim was in the hospital on 26.09.2019 and heard from the victim about the sexual intercourse with the victim by nine persons.

[43] PW.10 Dr. Pranab Choudhury deposed that he examined accused Dipak Debnath, Radhab Das, Pradip Das and Priyamanish Roy and on examination he found there is nothing to suggest that they are not capable of performing sexual intercourse in normal circumstances. PW.13 Dr. Pradipta Narayan Chakraborty examined accused Ashoke Deb @ Bashu and Sri Prasenjit Adhikari and opined that there is

nothing to suggest that they are not capable of performing sexual intercourse in normal circumstances.

[44] PW.10 also deposed that he collected blood sample of accused persons Dipak Debnath, Radhab Das, Pradip Das and Priyamanish Roy. PW.13 also collected blood sample of the accused Ashoke Deb @ Bashu and Sri Prasenjit Adhikari. PW.25 Smt. Payel Deb the women constable deposed about the seizure of blood sample of accused Dipak Debnath, Priyamanish Roy, Radhab Das and others.

[45] PW.40, the 10 deposed about the seizure of vaginal swab, wearing apparels and other articles of victim and about the seizure of blood sample of accused persons and sending of the seized articles to the SFSL for examination. PW.14 Dr. Subhankar Nath, Dy. Director of SFSL supported the prosecution case about the sexual intercourse upon the victim by accused persons. The operative part of the evidence of PW.14 and SFSL report marked as Ext.23 runs as follows:-

"On the basis of the above observations it is concluded that

(i) The semen stain detected in Ext.A(Vaginal swab of victim) originated from four different sources namely Ext.G (sample dry blood of accused Pradip Das), Ext.N (Sample dry blood of accused Dipak Debnath), Ext.D (Sample dry blood of accused Radhab Das) and Ext. M (Sample dry blood of accused Ashoke Deb @ Bashu).

(ii) The semen stain detected in the Ext.E1 marking area of Ext.E (pink colour leggins of victim contained some whitish starchy stain at three different places marked as E1, E2 and E3 respectively) originated from single source of Ext.I (sample dry blood of accused Priyamanish Roy @ Mantu).

(ii)The semen stain detected in the Ext.E2 marking area of Ext.E (pink colour leggins of victim contained some whitish starchy stain at three different places marked as E1, E2 and E3 respectively) originated from two different sources namely Ext.M(sample dry blood of accused Ashoke Deb @ Bashu) and Ext.L(Sample dry blood of CCL Ajoy Saha @Akash).

(iv) The semen stain detected in the Ext.E3 marking area of Ext.E (pink colour leggins of victim contained some whitish starchy stain at three different places marked as E1, E2 and E3 respectively) originated from two different sources namely, Ext. R. (sample dry bold of CCL

Suvankar Saha @ Gadai) and Ext. H (sample dry blood in gauze of CCL Bishal Das)”

[46] Considering all the evidence on record, this Court is of the opinion that sexual intercourse on the victim by accused are proved for the following fact, circumstances, ground and reasons:-

(a) Presence of semen of accused namely Pradip Das, Dipak Debnath, Radhab Das and Ashoke Deb @ Bashu in the vaginal of swab of victim and the presence of semen of accused Priyamanish Roy Mantu and Ashoke Deb @ Bashu in the leggings of victim.

(b) Identification of accused Priyamanish Roy, Prasenjit Adhikari @ Mana, Dipak Debnath and Pradip Das during TIP by victim.

(c) Even though PW.1, the victim was declared hostile but her police statement, statement made before the Magistrate and FIR revealed that involvement of accused Pradip Das, Mantu @ Priyamanish Roy, Akash Deb, Prasenjit Adhikari @ Mana, Ashoke Deb @ Bashu, Radhab Das.

(d) PW.1 after reaching the house told about the sexual intercourse upon her by accused persons to her husband (PW.3), mother (PW.4), father (PW.5) and PW.2 (brother in law). Even though PW.2 and 3 was declared hostile but from their police statement the same is proved. PW.4 and 5 corroborated the same.

(e) PW.1 told about the incident of sexual intercourse upon her to PW.6 an independent witness and PW.7 independent witness in the hospital when victim was under treatment in the hospital.

(f) Medical evidence proved that accused are capable of performing of sexual intercourse in normal circumstances.

(g) Victim was admitted in the hospital after the occurrence of sexual intercourse and requisition vide Ext.49 was sent from the hospital to the police and FIR was recorded in the hospital itself and marked as Ext.1/2.

(h) Mobile seized from accused Priyamansh Roy @ Mantu has video file having naked video of victim vide Video No. WA0000MP4, WA000 1MP4, and the CD is marked as Ext.MO.7. On perusal of said video file, I find, it is evident that sexual intercourse was made on the victim.

(i) In cross examination of PW.1, the victim the defence brought the material that victim had physical relationship on 24.09.2019 with Pradip, Gadai, Bishal and Akash with her consent and on that day whatever happened has happened with her consent.

[47] This Court finds that it is settled law that evicence of hostile witness can be relied on either in favour of the prosecution or in

favour of the accused or in favour of both if corroborated and supported by other circumstances and evidence, such as FIR, police statement, statement made before the Magistrate, TIP report, medical evidence and evidence of other witnesses etc.

[48] In this context, PW-1 the victim deposed before the Court that on 24.09.2019 she went to GBP hospital as her child was ill and she was about to return from the hospital at about 5.30 pm and she gave a call to her bother in law to sent an Auto for her but as her brother in law could not sent auto so she got into one auto to drop her to her destination and there were two more passengers in the auto and the said auto driver with other passengers on her way to home near by the circuit house, Agartala pushed her from the auto and she fell on the ground and sustained injury and then she made a call to her brother in law (PW.2), who then came at Circuit house and took her to the TMC Hapania hospital and she received treatment and on the following morning at 4.30 am police official came to the hospital and enquired about the incident and as per say of police she put signature on a paper and she cannot recollect if the said paper was blank or not and on identification her signature is marked as Ext.1. PW.1 also deposed that she was admitted in the hospital for four days and many medical tests are conducted upon her and she put signature on paper marked as Ext.2 and she does not know what the said paper contains. PW.1 further deposed that after 7/8 days of her discharge from the hospital she was produced before the Magistrate and she narrated to the Magistrate what was told to her by police and she cannot recollect what she stated to the Magistrate and her signature on the said statement on identification are marked as Ext.3 series. PW.1 also deposed that on the day her brother in law (PW.2) also made statement before the Magistrate. PW.1 further deposed that after her discharged from hospital she was taken to jail at Bishalgarh and she identified two accused persons who were shown by

police personal and her signature on the TIP report are marked as Ext.4 series.

[49] From Ext.4 series, the TIP report and from the evidence of PW.30, the Ld. Magistrate who conducted TI parade, I find victim identified four accused persons namely Priyamanish Roy, Prasenjit Adhikari @ Mana, Dipak Debnath and Pradip Das but could not identify accused Ashoke Deb @ Bashu and Radhab Das.

[50] In cross examination PW.1 deposed that the day she was admitted in the hospital she did not make any complaint either to the doctor or to the police and she did not state to the police that she was raped by any person and she identified accused persons in the jail as accused persons were identified to her by Government Officials and she make statement to the Magistrate as per version of police who instructed her to depose what they have said else action would be taken against her as a case has already been registered. PW.1 also deposed in cross examination that she had physical relationship on 24.09.2019 with Pradip, Gadai, Bishal and Akash with her consent and she did not state to her parents, parents in law or to any relatives about the incident occurred with her and accused persons were known to her whom she identified and on that day whatever happened had happened with her consent and she has no grievance against the accused persons.

[51] In this context, this Court is of the view that admittedly PW.11, Dr. Priyanka Poddar, who examined the victim on 25.09.2019 deposed and from Ext. 18, the injury report, it can be found that no injury was found on the private part or any other part of body of the victim. Injury on the body of the victim is at all not necessary to determine whether the sexual intercourse was forcible or consensual but in this case where it is the prosecution case and PW.1, the victim stated in the FIR police statement and before the Magistrate that nine persons raped her and among them three persons raped her twice or thrice

forcibly and at the time of commission of rape mouth and hands of PW.1 were tied as stated in the police statement. Sustaining of injury is natural. Non having of any injury either in the private part or in any other part of the body of victim specially in the mouth 'and hands, which were tied during the commission of rape by nine persons creates a doubt against the prosecution.

[52] It is the prosecution case that in the seized mobile of accused Priyamanish Roy @ Mantu there is naked video file of victim and the said CD is marked as Ext. MO.7. On perusal of the said videos vide No. WA0000MP4 and WA0001MP4, it does not appear to this Court that sexual intercourse with the victim is not consensual. That apart, PW.1. the victim stated to the Magistrate that during the commission of rape her mouth and hands were tied and she was unable to shout but in the video file of the said CD, it reveals that the mouth and hands of the victim were not tied.

[53] PW1 failed to support the case of prosecution before the court and prosecution merely suggested that PW.1 deposed false before the court suppressing the truth but no reason for deposing false by PW.1 is suggested to PW.1. During argument learned Addl. PP submitted that due to poverty PW.1 deposed false before the court and concealed the truth may be by taking money but no such suggestion was given to PW.1, the victim. Hence, it cannot be said that victim deposed false before the Court and made true statement earlier.

[54] PW.1 did not state in the FIR that 3/5 accused persons raped her twice or thrice but in the police statement PW.1 stated that Pradip, Mantu, Bishal, Bashu and Akash raped her twice and PW.1 stated before the Magistrate that Bashu, Pradip and Mantu raped her thrice. In my opinion, the above mentioned contradiction is material and creates a doubt as to the truthfulness of statement made in the FIR, police statement and statement made before the Magistrate.

[55] PW.2, the brother in law of victim merely deposed that on receipt of message from victim he picked the victim and dropped her to her house and failed to depose anything further. PW.2 was declared hostile and his police statement brought into record and the said police statement is marked as Ext.7. From Ext.7 it can be found that PW.2 stated to the 10 that victim told to them when victim was dropped to her house that she was raped by accused persons. On the contrary, from Ext.6/1, the statement of PW.2 made before the Magistrate, I find PW.2 did not state anything to the Magistrate that victim told to PW.2 and others when victim was dropped to her house about the commission of rape upon victim by accused persons. Hence, police statement of PW.2 cannot be relied on being doubtful rather the evidence of PW.2 before the court appears to be truthful to the effect that PW.2 merely picked the victim from circuit house and dropped her to her house as the same is also stated before the Magistrate.

[56] PW-4 deposed that she saw the miserable condition of her daughter and victim was bleeding and was in pain but no such condition is supported and corroborated by PWs.5, 5 and 7. That apart, the fact that the victim was bleeding and was in pain is also not supported by medical evidence as discussed earlier. PW.9 Sri Raju Bhowmik is the owner of the Eco vehicle and deposed for the seizure of the said vehicle and that the said vehicle was given on rent to the Electric Department and accused Bishal Das was the driver of the said vehicle. PW.12 Sri Sunil Bhowmik, BGM of Electric office also deposed that Eco vehicle was hired in their office and owner was one Raju Bhowmik (PW.9) and driver was accused Bishal Das. PW.22 Sri M. Mog deposed that on 04.11.2019 he verified the driving licence of Bishal Das marked as Ext.40. From the evidence of PW.9 and 12, it can be said that accused Bishal Das was in control of the Eco vehicle on the date of accident but the same would be of no help to the prosecution to determine the fact

that whether sexual intercourse with the victim was forcible of consensual.

[57] It is true that the victim deposed false but as victim has family and a minor daughter, it would not be expedient to initiate any action against her. In view of above and having regard to the entire evidence and materials on record, I am of the opinion that prosecution has failed to prove the case beyond reasonable doubt and hence, the order of acquittal recorded by the learned Addl. Sessions Judge does not deserve any interference and thus, the same stands affirmed. Consequently, the criminal appeal filed by the State-appellant stands dismissed. The Judgment and order of acquittal passed by the learned Addl. Sessions Judge is confirmed.

[58] The appeal stands disposed of as indicated above. Send down the LCRs forthwith. As a sequel, miscellaneous application(s) pending, if any, shall stand closed.

JUDGE

A.Ghosh

ANJAN
GHOSH

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