

GAHC010185782018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/77/2018

CHAN MOHAN ARYA AND 2 ORS.
CHIRANG, KAJALGAON

2: GOPAL RABI DAS

CHIRANG
KAJALGAON

3: PARAMESHWAR CHOUHAN

CHIRANG
KAJALGAO

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Linked Case : Crl.A./98/2016

MONGOL ARYA and 3 ORS
S/O SRI SUNIL ARYA
R/O VILL. PALPARA
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN 783372

2: CHAN MOHAN ARYA
S/O LATE SHYAMLAL ARYA

3: GOPAL RABI DAS

S/O LATE MOUGLA RABI DAS

4: PARAMESHWAR CHOUHAN
S/O SRI NANDU CHOUHAN
ALL ARE R/O VILL. BIJNI TOWN
WARD NO. 4
P.S. BIJNI
DIST. CHIRANG
ASSAM
PIN 783372
VERSUS

THE STATE OF ASSAM and ANR

2:SMTI KALPANA RAI CHOUDHURY

S/O SRI BALEN RAI CHOUDHURY
R/O VILL. SIYALBARI DOHLAPARA
P.S. BIJNI
PIN 783372
DIST. CHIRANG
ASSAM.

Advocate for : MS.K L R YANTHAN
Advocate for : appearing for THE STATE OF ASSAM and ANR

For Appellant (s) : Mr. S. C. Biswas, Advocate

For Respondent (s) : Ms. S. Jahan, Learned Additional Public Prosecutor,
Assam

Date of Judgment : 21.12.2023

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

JUDGMENT

Date : 21-12-2023

- 1.** Heard Mr. S. C. Biswas, learned counsel for the appellants. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.
- 2.** By this common judgment, it is proposed to dispose of two criminal

appeals, namely, Criminal Appeal No. 98/2016, as well as Criminal Appeal (J) No. 77/2018.

3. The Criminal Appeal No. 98/2016 has been preferred by the appellants, namely, 1. Mongol Arya, 2. Chan Mohan Arya, 3. Gopal Rabi Das, and 4. Parameshwar Chouhan, impugning the judgment and order dated 25.01.2016, passed by the learned Sessions Judge, Chirang at Kajalgaon in Sessions Case No. 23(B)/2015, whereby the appellants were convicted under Section 376(2)(g) of the Indian Penal Code, and were sentenced to undergo rigorous imprisonment for 10 years with a fine of Rs. 2000/- each and in default of payment of fine, to undergo further rigorous imprisonment for six months. The appellants were also convicted under Section 325 of the Indian Penal Code and were sentenced to undergo rigorous imprisonment for 2 years with a fine of Rs. 1000/- each and in default of payment of fine, to undergo further rigorous imprisonment for 3 months. The appellants were also convicted under Section 379 of the Indian Penal Code, and were sentenced to undergo rigorous imprisonment for one year with a fine of Rs. 1,000/- each and in default of payment of fine to undergo further rigorous imprisonment for 3 months. All the sentences were directed to run concurrently.

4. The Criminal Appeal (J) No. 77/2018 was registered on receipt of an appeal petition which was filed by the appellants, namely, 1. Chan Mohan Arya, 2. Gopal Rabi Das, and 3. Parameshwar Chouhan, through Superintendent of District Jail, Goalpara, where they are presently detained, also impugning the aforementioned judgment of the learned Sessions Judge Chirang. It is pertinent to mention herein that though jail appeal was registered on the basis of an appeal petition filed by the aforesaid appellant, they had earlier filed the Criminal Appeal No. 98/2016 impugning the same judgment, hence, both the

appeals were taken up together for consideration.

5. The facts relevant for consideration of the present Criminal Appeals, in brief, are as follows: -

(i) That on 19.05.2019, the victim (original name withheld and hereinafter referred to as 'Ms. M') lodged an FIR before the Officer-in-Charge of Bijni Police Station, inter-alia, alleging that on 18.05.2009 at around 12.30 pm when the victim was talking to her friend Deepak Das sitting near a tree at the south west bank of the Duloni river, the accused persons named in the FIR including the present appellants all of a sudden assaulted the friend of the victim without any reason and thereafter, they forcibly dragged the victim to the nearby jungle and repeatedly raped her. The accused persons named in the FIR (*including the present appellants*) tore the clothes of the victim and pressed her neck causing injuries on her person, they also prevented her from shouting and threatened to kill her if she raises any commotion. After the said incident, when nearby people reached there, the accused persons fled away from the said place.

(ii) On the basis of the aforesaid FIR, Bijni P. S. Case No. 113/2009 was registered under section 147/323/341/376(2)(g) /379/427 of the Indian Penal Code and investigation was initiated.

(iii) After completion of the investigation, charge-sheet was laid against the accused persons including the present appellant under Section 147/323/341/376/379/427 of the Indian Penal Code.

(iv) During the trial, it was found that three of the accused persons named in the FIR, namely, Noni Gopal Mondal, Tuten Das and Sanjay Barman were found to be juvenile in conflict with law, therefore, their case

was referred to the Principal Magistrate, Juvenile Justice Board, Bijni and the remaining four accused persons, i.e., the present appellants, faced the trial initially before the Court of learned Sessions Judge, Bongaigaon and thereafter, before the Court of learned Sessions Judge, Chirang at Kajalgaon.

(v) The Trial Court framed charges under section 376(2)(g)/379/325/34 of the Indian Penal Code against the present appellants. When the said charges were read over and explained to the appellants, they pleaded not guilty to the said charges and claimed to be tried.

(vi) During the course of the trial, the prosecution side examined as many as 15 prosecution witnesses and exhibited 11 documents and 7 material exhibits. The appellants were examined under Section 313 of the code of criminal procedure, 1973 during which they pleaded their innocence and denied the truthfulness of the testimony of the prosecution witnesses. However, they did not adduce any evidence in their defence. Ultimately, by the judgment which has been impugned in this appeal, learned Trial Court had convicted and sentenced the appellants in the manner as already stated hereinbefore.

6. Before considering the rival submissions made by learned counsel for both sides let us go through the evidence of the prosecution witnesses, which is available on record.

7. PW-1 Damayanti Ray Choudhury is a reported witness and she testified that on 18.5.2009, at about 12:30 PM, while her sister "Miss. M" was coming back from the market she met her friend Dipak Das at Palpara at the bank of river Duloni. She testified that then the accused persons named above

with others assaulted Dipak Das and also threatened him, as a result of which he lost his teeth. The witness further testified that thereafter the accused persons forcibly dragged her sister to the bank of a small stream and Sanjay Barman (declared juvenile in conflict with law) and two others committed rape on her sister. The PW-1 also testified that the accused persons also snatched the gold chain worth 12 anna, one Nokia mobile handset, a cash amount of Rs.395/-, one Vodafone recharge voucher and one receipt of the tailor from her. The PW-1 further testified that her sister came back at about 2 o'clock at noon, and thereafter changed her dresses and then reported the entire incident to her friend Puspa Ray. She added that thereafter the husband of Puspa Ray, namely, Apurba Ray and his friends, namely, Domboru Ray, Rajesh Ray, Bhaben Ray reported to her (PW1) about the incident.

8. During cross-examination, the PW-1 asserted that on that very day, the victim went out from the house, at about 11:00 AM on the pretext of going to the shop of a tailor for stitching her cloths and also for the purpose of marketing. She further asserted that the victim "Miss. M" was the second child amongst their brothers and sisters. The PW-1 fairly stated that she got the names of the accused persons from the witness Pranjali. During further cross-examination, the witness stated that her sister had shown her the injuries on her neck, both the hands, leg and back. She added further that they did not disclose the matter to the neighbouring people because it would bring shame for the entire house. She added further that the gold chain was recovered by the police. During cross-examination, the PW-1 further asserted that the occurrence took place towards southwest of river Duloni. She also stated that the place where both the victims were talking to each-other was at a distance of about 200 meters from the culvert over river Duloni. She also stated that the

place of occurrence, where her sister had been raped, was at a distance of about 400 meters from the said culvert.

9. The PW-2 Gobinda Basak and the PW-3 Pranjal Ray are shown as seizure witnesses. The PW-2 testified that about 6 months ago, from the date of his testimony before the court on 10.2.2010, police met him on the road and asked him whether he had any knowledge about the commission of rape of a girl on the previous day. The PW-2 stated that he had no such knowledge, but at the same time he deposed that from a little distance from that place, near Amguri Bridge, police recovered a pair of ladies sandals. He added that police obtained his signature in Exhibit-1 seizure list and proved Exhibit-1(1) as his signature. During cross-examination, the witness stated that police did not read over Exhibit-1 before him.

10. The PW-3 Pranjal Ray also testified that on 18.5.2009, he came to know from his friend Raju Das, Bijay Bagchi and others that on that very date, a little while ago, at the bank of river Duloni, the accused persons, namely, Parameswar Chouhan, Chand Mohon Arya, Gopal Rabidas and Mongal Arya along with three others committed rape on "Miss. M". The witness also testified that on the next day at about 2:30 to 3:00 pm, police came to their village and he himself along with others accompanied the police to the bank of the river Duloni. He further testified that police recovered a cord made of cloth, used for tying churidar, one pair of ladies sandals, a piece of cloths used for pocket of jeans pants, from the place of occurrence. During cross-examination, this witness stated that he knew the accused persons from childhood, as because they belonged to the same village. The witness was confronted with his previous statement, recorded by the Investigating Officer u/s 161 of the Cr.P.C. The Investigating Officer confirmed that this witness did not state before the

Investigating Officer that he could come to know from Bijay Bagchi and Raju Das about the occurrence. However, the witness made it specific in the very next line of his deposition that police did not record his statement before him. He further testified that after the seizure list (Exhibit-1) was written, it was read over to him. The witness could not remember the colour of the ladies slippers, but added that it was an old pair of slippers. He stated that to go to the bank of the river Duloni from their village, they have to cross a bamboo culvert. He further added that at the other bank of river Duloni, there was a Bodo medium school and an establishment for dyeing. He added that the place of occurrence was at a distance of about 100 meters towards southwest of the junction of river Duloni and a small stream. He also made it specific that the place of occurrence was not visible from the said culvert. The PW-3 stated that the house of victim Dipak is situated at a distance of about 5 miles from his house. He added that on 20.5.2009, he along with the members of AAKRSU went to the house of victim Dipak. He further stated that on that very day, at about 2:00 PM, he went to the police station to see the accused persons. He specifically denied a suggestion that he had a quarrel with the accused persons regarding playing of cricket and to take revenge he deposed falsely against the accused persons.

11. PW-4 Subrata Kr. Paul is another seizure witness, who testified that one day in May 2009, while he was returning from his school, on request he had shown a reporter of a newspaper, the way leading to the village Palpara. He testified that he led the said reporter to Palpara Village, where he found that police collected some materials in connection with a case. He further testified that police collected and seized a ribbon made of clothes, probably used in wearing dresses and a piece of cloth used in back pocket in long pants. The PW-

4 during cross-examination, stated that at the time of seizure, 2 to 3 reporters were present. He added that he was asked by police as well as the reporters to put signature in the seizure list. He could not remember whether PW3 Pranjali was present at the place of seizure when he put his signature as Exhibit-1(3). Thus, the evidence of this independent witness makes it abundantly clear that police collected and seized a ribbon made of clothes probably used in wearing dresses and a piece of cloth used as a back pocket in long pants. This part of his evidence remained unchallenged and unshaken. He had deposed that he had no enmity with the accused persons and he had no reason to depose falsely in this case.

12. PW-5 Smt. Bela Arya turned hostile at the time of deposing before the Court and she was allowed to be cross examined by the Prosecution side. During cross-examination by the prosecution side, she was confronted with her previous statement, recorded by the Investigating Officer u/s 161 of the Cr.P.C. The Investigating Officer confirmed that she had stated before him that her son along with 6 others, jointly committed misdeed (Baya kam) on a girl and gave her son Mohan Arya the mobile handset to keep it in his custody. The Investigating Officer also confirmed that the said witness stated before him that police seized the aforesaid mobile handset on being produced by her. She is the mother of accused Chan Mohan Arya. In her examination in chief, she testified that she heard that one day at noon, while a young boy and a girl were talking with each other, the local people chased them.

13. PW-6 Dr. Hasmat Ali, who examined the victim girl on 19.05.2009, has deposed that on that day, i.e., on 19.05.2009, at about 1:30 p.m., he examined the victim girl in connection with Bijni P. S. Case No. 113/2009 and she was escorted by one Savitri Bala Devi. He has deposed that the age of the victim

was found to be above 18 years, according to X-ray report. He has also deposed that no sign of rape was found and only lacerations were found on both the thighs of the victim. He exhibited the medical report as Exhibit-2 and his signature as Exhibit-2(1). He also examined Dipak Das on 21.05.2009 at about 10:45 a.m. and during examination he found (1) cut injuries with bleeding from the lower lip 1.5"x1.5", (2) swelling and tenderness over the left ear and (3) three teeth extracted due to blow injury. He exhibited the medical report of Deepak Das as Exhibit- 3. He has also stated that the laceration injury on the victim may be caused due to itching, etc., or may be self-inflicted and the injuries on Deepak Das may be caused due to fall.

14. PW-7 "Miss. M" is the prosecutrix/victim of the case and as such she is the main witness in this case. Her evidence reveals that on 18.5.2009, at about 12:30 PM, she was talking with her friend Sri. Dipak Das at the bank of river Duloni. She testified that at that time, the accused persons, namely, Nani Gopal, Tuton, Sanjoy Barman (all declared juvenile in conflict with law), Chand Mohan Arya, Gopal Rabidas, Mongol Arya and Parameswar came there and voluntarily caused hurt to the said Dipak Das. The witness also testified that some of the accused persons had also snatched her mobile handset Nokia 2626 model, with SIM 9707848256. The witness further testified that some of the accused persons also dragged her to a distance of 80 to 90 ft. from that place towards the jungle and all the seven accused assembled there again and forcibly disrobed her by tearing her churidar. She further added that all the accused persons also forcibly tore her underwear and thereafter all of them committed rape on her. She specifically stated that the accused persons committed rape on her by forcibly penetrating their penis in her private parts one after another. The PW-7 further testified that it was a secluded place and though she cried for

help, no person came there. The PW-7 also testified that while she was raising alarm, the accused persons resisted her and also pressed her neck and further threatened to kill her, if she raised alarm any further. The PW-7 testified that after committing rape, the accused persons allowed her to go, but as she had no cloth to cover her body, she was not in a position to come out and then accused Nani Gopal brought one old churidar from his house and gave her to wear the same. She further testified that finding no other alternative, she wore the same. The witness further stated that at that time she noticed that the gold chain worth 12 annas was lost from her neck and someone of the accused persons had taken away the same. She further testified that after coming out to the place from where she had been dragged, she saw some people there and reported the incident to them. The witness deposed that after coming back to the house, she changed her dress, washed her body and thereafter went to the house of her married friend Puspa and as she did not find her in the house, she reported the incident to Apurba Ray, the husband of her friend. She testified that Apurba Ray reported the incident to her parents. The witness also testified that on that evening, her father and her elder sister Damayanti went to the house of Apurba Ray and then she reported them the incident. She also testified that police went to the place of occurrence, being accompanied by her and from there police recovered the string of her churidar made of cloth. She further added that police also recovered the pair of her sandal.

15. During cross-examination, PW-7 that she asserted that she passed the higher secondary examination in 1998. She also made it specific that Exhibit-5 FIR was written as per her own dictation and it was also read over to her after completion of the writing. She admitted that she did not write in the FIR that at the time of commission of rape, some of the accused persons were holding her

hands and legs and others committed rape on her. She also admitted that she did not write in her FIR that at the time of the commission of rape, the accused persons gagged her mouth. During cross examination PW-7 made it specific that they were sitting at the western side of the river Duloni and were talking with each-other. She stated that her brother Jibdhon Ray Choudhury was known to the witness Pranjal. She has stated that after she was allowed to go back to her house and when she came out, she found 10 to 12 persons and added that amongst them Pranjal was also there. She further added that when Pranjal saw her dress, he stated before her and also before the police the names of the accused persons. She stated that Pranjal disclosed the names of the accused persons and accordingly, she wrote the names in her FIR. She has stated during cross examination that on the very next day of the occurrence, she went to Bijni P.S. at about 11:00 PM with her elder brother Sonaram Ray and lodged the FIR. She stated that at the time of writing of the FIR, Pranjal was not present and added that after lodging of the FIR, she came back to the house. During cross examination, she made it specific that within one week of the occurrence, police called her over phone at the police station for the purpose of identifying the accused persons and added that the accused persons were in the lockup of the police station and police asked her whether those accused persons had committed rape on her or not. She further stated during cross-examination that police took her inside the lockup and one lady police, 3 police constables and the O.C. of the police station were with her. She stated that she told the police that those accused persons committed rape on her and also did the other misdeeds. She added that on that day only 6 accused persons were there in the police lockup. She also stated that she identified the other accused person after about 15 days at the police station. She also stated during cross- examination

that the accused persons committed rape on her and also tortured her physically for about 1 hour. She added that she received pain in her body. During further cross-examination, she also stated that she was dragged by some of the accused and Dipak was also dragged by some other accused, but made it specific that the accused persons were altogether 7 (seven) and they dragged both of them to two different sides. She reiterated that she was raped by all the 7 accused persons. This witness also asserted that in her house, her mother, father, her brother Jibdhon, her elder sister Damayanti, she herself and her grandmother were residing. She further stated that on that day she came out from her house on the pretext of going to market. To a question by the court, the witness stated that the accused persons committed rape, after dragging her down on the ground. She stated that she received scratches on her back. However, she admitted that she did not show those scratches on her back to the doctor. She further stated that the dress, which was offered to her at the place of occurrence by the accused persons were seized by the police.

16. PW-8 Ranjit Barman is also a reported witness and he testified that he got the information about the occurrence at the Office of AAKRSU and on the next day of the occurrence, the elder brother of Miss. M came to the Office of AAKRSU and requested them to take steps in this regard. He testified that they advised the elder brother of "Miss. M" to take recourse to law. He further testified that on 20/08/2009, at about 12 o'clock at noon, he along with about 20 other AAKRSU members went to the place of occurrence and found the jungle at the place of occurrence was deranged. During cross-examination, PW-8 made it specific that on 20.8.2009, at about 5:00 PM to 6:00 PM, they went to the police station and found the accused persons inside the police station. He added that there were about 100 persons outside the police station.

17. PW-9 Champak Kr. Ray deposed that on 18.5.2009 in the evening, he could hear from his brother Jibdhon Ray that his co-villager Miss. M had been raped by somebody. He testified that after about 4 days of such occurrence, he went to the police station, on being called by O.C. of Bijni P.S. along with the elder sister of Miss. M. He testified that when they arrived at the police station the O.C. Bijni P.S., showed the golden chain and a mobile to them and on being asked by the O.C., he put his signature in the seizure list. During cross examination, the witness stated that after hearing about the occurrence, he went to the residence of the prosecutrix at about 6:30 PM. He added that he did not meet the prosecutrix at her residence and also did not ask the inmates of the residence whether she had arrived at her residence or not. He further added that none of the inmates of the residence of the prosecutrix reported him about the occurrence. He added that he went to the police station along with Damayanti Ray Choudhury on her request. He further added that he was not an eyewitness of the recovery of those articles from the place of occurrence. During cross-examination he further asserted that he could come to know that the mobile handset was of Nokia. Further he admitted fairly that the mobile was not shown to him. He further added that he does not know Arati Rabi Das.

18. PW-10 Arati Rabi Das is the mother of the other accused Gopal Rabi Das and she also turned hostile. She was confronted with her previous statement before the Investigating Officer and the Investigating Officer Mr. Dipanta Phukon (PW-11) confirmed that she had stated before police that on 30.6.2009, police arrested her son alleging his involvement in doing the misdeeds against the girl and that police appeared at their residence in search of the golden chain of that girl. The Investigating Officer also confirmed that she

had stated before him that while the rain water had fallen on the bed of her son and as she was shifting the cloths of his bed, the golden chain came out from under the bed and accordingly she handed over the same to the police. She further admitted that subsequently Police arrested her son Gopal Rabi Das in connection with this case.

19. PW-11 Dipanta Phukan testified that on 19.5.2009, he was posted as SI at Bijni P.S. and on that day, the Prosecutrix "Miss. M" filed a written FIR which was endorsed to him for investigation. He testified that he visited the place of occurrence and also examined the witnesses. He further testified that from the place of occurrence, he recovered the string of a churidar and also a pair of ladies sandal with the hooks being torn. The PW-11 testified that he found the said cord of the churidar by the side of the tributary of river Duloni. He testified that it was found near the place of occurrence. This witness also testified that the place of occurrence was at a distance of about 100 meters from the place where the victim and her friend had been sitting. He further testified that he found one part of the pair of ladies sandals at a distance of 15 ft. from the place of occurrence and the other part of the pair was found at a distance of 35 ft. He testified that the hooks of both the parts of the sandal were found torn. He proved Exhibit-1 as the seizure list and Material Exhibit-1 as the said cord of salwar and Material Exhibit-2 as the pair of ladies sandals. The witness further testified that as all the cloths of the victim were torn, accused Gopal Rabi Das gave the victim a churidar of his sister and the said dress was seized by him. He proved Exhibit-3 as the said seizure list and Material Exhibit-3 and Material Exhibit-4 are the said churidar and the top respectively. The witness further testified that the mobile handset of the victim was handed over to police by Bela Arya and proved Exhibit-8 as the seizure list and Material Exhibit-5 as the said

mobile handset. The PW-11 further testified that the gold chain of the victim was handed over at the police station by Arati Rabi Das, the mother of accused Gopal Rabi Das and proved Exhibit-7 as the seizure list. He further proved Material Exhibit-6 as the said gold chain. The witness also testified that he took photograph of the place of occurrence and nearby places and proved Material Exhibit-7(1), Material Exhibit-7(2) and Material Exhibit-7(3) as the said photographs. He specifically stated that Material Exhibit-7(3) is the photograph of the place of occurrence. Material Exhibit-7(3), photograph of the place of occurrence clearly discloses that the area was covered by bushes and there was dried grass, as testified by Mr. Phukan. PW-11 Dipanta Phukan, during cross-examination, specifically stated that the FIR was received on 19.5.2009, at about 12:30 PM. He further testified that the prosecutrix herself accompanied him to show the place of occurrence. He further testified that both the hooks of the pair of the slippers were found torn. He also made it specific that the cord of the salwar was found, which was torn on one side. He further made it specific that all the articles were found by the side of river Duloni and added that those items were identified as the items of the victim. This witness stated that the seized items were marked with MR number and no separate number or identification mark was given there. During cross-examination, he stated that the mobile handset was seized at Bijni Police Station, on being produced by the mother of one of the accused. He also stated that nearby the place of occurrence, there was no shop and the shops and establishments were at a distance of about 300 meters on the other side of the river. PW-11 also stated that on 19.5.2009, the victim was sent for medical examination in between 1:00 PM and 2:00 PM. He also added that the other victim Dipak Das was sent for medical examination on 20.5.2009. His further assertion is that about 200/300

meters away from the place of occurrence, there is a narrow bamboo made culvert and added that the same is being used, but not frequently. He further added that nearby the place of occurrence, there was no school. The witness asserted further that the accused persons were arrested on 20.5.2009 on being identified by the victim/prosecutrix. He added that later on he did not arrange for any test identification parade. The defence re-cross-examined the witness and he specifically stated that on 19.5.2009, at about 3:00 PM, he made the seizure of Material Exhibit-1 and Material Exhibit-2, i.e., the cord of the salwar and the pair of the ladies slipper. Those were seized by the MR No. 62. He further added that the victim was with him and she identified those items. He also added that Material Exhibit-3 and Material Exhibit-4 were handed over to him on 20.5.2009. PW-11 further stated that the mobile handset was produced by Bela Arya, the mother of one of the accused on 20.5.2009. He added that SIM card was not inside the handset. Although there is no endorsement under the thumb impression of Bela Arya, the witness firmly stated that he took the thumb impression of said Bela Arya. He further added that the gold chain (Material Exhibit-6) was seized on 30.6.2009. He added that after long pursuance, Arati Rabi Das produced the gold chain at the police station. He further added that the photographs were taken through digital camera which was the property of the police station. He denied a suggestion that Material Exhibit-7(1), Material Exhibit-7(2) and Material Exhibit-7(3) were not the photographs of the place of occurrence.

20. PW-12 Sarbeswar Talukdar is also a reported witness and testified that one day he went to Barpeta market and at night when he came back to the house, he came to know from his wife that 6 to 7 boys had committed rape on a girl. He testified that after about one week, he came to know that accused

persons, namely, Mongol Arya, Chand Mohon Arya, Parameswar Chouhan and Sanjay Barman committed rape on the girl. This witness, during cross-examination, stated that his wife Monomati Talukdar reported him first that the accused persons had committed rape on the victim girl. He also stated that when police came to the village, 40 to 50 villagers gathered there.

21. PW-13 Smt. Trishna Medhi testified that the occurrence took place on 18th May, 2009. She testified that she heard that the accused persons named above had committed gang rape on Miss. M. She further added that on the next day, she accompanied the other villagers to the police station and then she saw the accused persons in the police station. She further testified that in their presence all the accused persons named above confessed that they had committed rape on Miss. M. She also added that later on, she asked "Miss. M" and "Miss. M" also told that they had committed rape on her. During cross-examination, this witness stated that she saw the accused persons inside the police station when she herself along with Firoja Begum had entered the police station. She stated further that police was interrogating the accused persons and added that from that day, she knew the accused persons.

22. PW-14 Firoja Begum testified that on 18.5.2009, at about 2:00 PM, while she was coming to her house, she heard that the accused persons named above along with 2/3 others had committed rape on Miss. M at Ward No.4 of Bijni Town, in a secluded jungle like place. The witness further asserted that on the next day, they took a protest march towards Bijni Police Station. She also testified that later on police arrested the accused persons. The witness also testified that she could come to know from "Miss. M" that accused persons had committed rape on her. She further added that the police seized the clothes of

Miss. M. The witness also added that the accused persons had snatched the gold chain and Nokia mobile handset of Miss. M. During cross-examination, this witness stated that the house of the victim is situated at a distance of about 1/2 KM from her house. She stated that she was informed by the members of AAKRSU about the occurrence. She also stated that they went to the police station in the morning at about 11:30 AM and at that time she noticed that police had arrested the accused persons. She further added that she was accompanied by 50 to 60 women of the women organization. She also added that about 50 to 60 members of AAKRSU were also there. She testified further that she saw the accused persons inside the chamber of the Officer-In-charge of the Police Station and there were many other police personnel. She stated that S.I. Dipanta Phukon told them that the mobile handset and the gold chain of the victim were recovered from the accused persons. She stated that the same was inside a polythene bag on the table of the police station. She stated that the accused persons told their names before her. She also stated that she had heard that on the date of occurrence, the boyfriend of the victim was also with her. She stated that the place of occurrence was shown to her by the prosecutrix herself and her elder sister and further added that the place of occurrence was at the bank of the river Duloni, but at a little distance. She stated that there was a school on the northern side of the river and added that the place of occurrence was on the southern side of the river. She also stated that the place of occurrence was covered by jungle and it was at a distance of about 20 to 22 cubits from the bank of the river. She added that there was a road nearby the river, but added that the movement of people through the said road was scarce. Both PW-13 and PW14 are independent witnesses. They, being the members of a Women Organization led a protest march to the Police Station,

demanding the arrest of the culprits of the heinous crime. They were in no way connected with the prosecutrix, nor had any enmity with the accused persons. Both of them were reported by the victim herself, about the identity of the accused persons.

23. PW-15 Dipak Das @ Aradhon Das has deposed that he knew all the accused. PW-15 testified that the occurrence took place in 2009 and added that on the date of occurrence, at about 9:30 AM, "Miss. M" (victim) had talked to him over phone and had asked him to come near the RCC culvert at Bijni Town. He testified that accordingly he went there and found "Miss. M" there. He also testified that they were talking sitting under a tree and then accused Mongol Arya came there and left the place after seeing them. He testified that he did not give any importance to it, but after 5 minutes, the accused persons came back and accused Mongol caught hold of him and thereafter all the accused voluntarily caused him hurt. He testified that later on accused Parameswar asked others to leave him. He also testified that as a result of causing hurt, he lost four teeth and he received multiple bodily injuries. The witness further testified that on seeing the accused persons assault him, "Miss. M" objected and asked them why they were beating him. He added that then all of them dragged her towards the garden. He added that the accused persons snatched his mobile handset and the purse.

24. During cross-examination, PW -15 has stated that the distance between his house and the house of the victim was about 4/5 Km. He added that police interrogated him after about 2 days of the occurrence at the police station. He added that he went to the police station himself along with his mother and his elder brother in the morning. He also stated that he was accompanied by his elder brother Apurba and Pradip. He further added that he did not file any

separate case for causing him hurt.

25. During their examination under section 313 of the Code of Criminal Procedure, 1973, the appellants pleaded their innocence and have stated that they have been falsely implicated in this case. They have denied the truthfulness of the testimony of the prosecution witnesses. However, they declined to adduce any evidence in their defence.

26. Mr. S. C. Biswas, learned counsel for the appellants has submitted that the Trial Court has arrived at the finding of guilt of the present appellants under Section 376(2)(g) of the Indian Penal Code, erroneously as the version of the victim/prosecutrix which she has deposed as PW-7 has not been corroborated by the testimony of the doctor i.e., PW-6, who had examined her. It is submitted by learned counsel for the appellants that the doctor who had examined the victim found no symptom of rape on the victim girl. He has categorically mentioned in his medical report that he found no symptoms of rape and no other injuries on the person of the victim, except some abrasion on the thighs of the victim girl.

27. Learned counsel for the appellants has also submitted that the doctor has also deposed that these abrasions found on the thighs of the victim may be caused by itching or may be self-inflicted and therefore, in absence of any corroboration of the testimony of the victim by medical evidence, the Trial Court was not correct in coming to the finding of guilt of the appellants.

28. Learned counsel for the appellants has also submitted that in spite of the allegations made by the victim girl, that seven persons had gang raped her, there was no finding of semen or any blood or any other injuries in her private parts. It is further submitted that there is no forensic report of the earth

removed from the place of occurrence. There is also no findings regarding chemical analysis of the seized materials collected from the place of occurrence. Learned counsel for the appellants has also submitted that there is no evidence that the victim underwent any treatment after the alleged gang rape, which is quite unbelievable. It is submitted by learned counsel for the appellants that had the victim been subjected to gang rape by seven persons, she would have required immediate medical treatment. However, in the instant case, the victim girl came to her house on her own and after getting a bath, concealed the said fact from her family members which according to learned counsel for the appellants, is not a normal conduct and therefore not believable under the facts and circumstances of the case and hence the testimony of the victim is not reliable.

29. Learned counsel for the appellant has also cited rulings of the Apex Court in “***State of Andhra Pradesh Vs. Lankapalli Venkateshwarlu***” reported in ***2000 SCC online SC 118***, as well as in “***Radhu Vs. State of Madhya Pradesh***”, reported in ***2007(12) SCC 57***, wherein the Apex Court gave benefit to the accused on the ground that the doctor's evidence does not support the evidence of the prosecutrix.

30. Learned counsel for the appellants has also submitted that in the instant case, no test identification parade was conducted by the Investigating Officer during investigation, and the appellants were identified by the victim in the police lock up. That too, in the presence of the police officials only, and therefore, such an identification may not be the basis of convicting the appellants in the instant case. Learned counsel for the appellants has also submitted that apart from the sandals of the victim as well as cord of her salwar, no other wearing apparel was found from the place of occurrence, neither it was

recovered by the Investigating Officer during the investigation. Learned counsel for the appellants has thus submitted that the Trial Court erred in relying mainly on the testimony of the victim girl to come to the finding of guilt of the appellants as the prosecution side has miserably failed to adduce any corroborating evidence to lend support to the version of the prosecutrix.

31. On the other hand, Ms. S. Jahan, learned Additional Public Prosecutor has submitted that the testimony of the victim girl in the Court during the trial and her earlier statements in this regard are consistent in material particulars. She has submitted that the PW-15, who was the friend of the victim girl who was also assaulted on the same day, had identified all the accused persons as all the accused persons were known to him before the incident. She has also submitted that the victim's testimony would itself show that the victim had taken bath after the incident, after reaching her house, and she had not immediately disclosed the incident to her family members out of shame, which is quite a natural conduct on the part of the victim under the facts and circumstances of the case. The Additional Public Prosecutor has also submitted that the doctor who examined the victim girl has performed his duty in a slip shod manner and from mere perusal of the medical examination report, which is not as it ought to have been in a case of an alleged case of gang rape. The learned counsel for the learned Additional Public Prosecutor has submitted that the doctor who examined the victim girl after the incident has not conducted detailed examination of the victim and neither he mentioned in the medical report, which is exhibited as Exhibit-2 and Exhibit-3, the details regarding his observations during examination of the victim. The medical examination report of the victim is a very cryptic and small report of consisting only 3 to 4 lines, which is shorn of all important details, and therefore, the doctor's evidence is

not at all reliable and the same may not be the basis for discarding the testimony of the victim girl and the other victim i.e., PW-15 who have corroborated the testimony of each other.

32. I have considered the submissions made by learned counsel for both sides, and have gone through the materials available on record meticulously.

33. As regards the testimony of PW-6, i.e., the doctor who examined the victim girl when she was brought to him for medical examination after the alleged incident, is concerned, it appears that the doctor has not performed his duty, as was expected in a case of gang rape. The medical report, which is exhibited as Exhibit-3 is not in the prescribed format of medical examination of the victim of a sexual offense. The government has prescribed a detailed format for examination of the victim of a sexual offense and wherein each and every column is to be filled up by the examining doctor.

34. In the instant case, the entire report is completed within three lines that there is no sign and symptoms of rape. It is shorn of all important details which are required to be there in a medical examination report of a victim of alleged gang rape. The medical examination report does not mention anything about the history of the case, which is the first thing a doctor should record before examining a victim of an alleged sexual assault. In the medical report, i.e., Exhibit-2, there is no description either regarding examination and findings of the genital parts of the victim, or any description regarding the hymen, vulva, vagina, labia majora and labia minora of the victim girl, which are required to be examined while examining a victim of gang rape. The doctor, i.e., PW-6 has failed to disclose as to in what conditions these organs of the victim were found when she was subjected to medical examination. There is also no observation regarding the other body parts like her breasts, her nipples, her backside,

buttocks, etc., which are also very relevant in a case involving gang rape and the doctor ought to have examined the victim and ought to have recorded the details of examination of such body parts of the victim as the case involves the allegation of gang rape on the victim. The callousness of the doctor (PW-6) is also reflected in his observation regarding the examination of the second victim, i.e., Dipak Das, wherein though he found that three teeth were extracted due to blow injury, he made an observation that the injury is simple in nature, whereas Section 320 of the Indian Penal Code includes dislocation of a bone or tooth as a kind of hurt which is designated as grievous hurt under the said Section. However, in the instant case, the doctor by describing the injuries found by him on the second victim, i.e., Dipak Das as simple only exhibited his incompetence and callousness in examining and preparing the medical examination reports. Hence, in the considered opinion of this Court, the doctor's evidence, in the instant case, cannot be the basis for disbelieving the testimony of the victim girl who has very categorically stated in her deposition before the Court that she has been raped by all the accused persons, including the present appellants.

35. As regards the submission of the learned counsel for the appellants that the Investigating Officer failed to conduct the test identification parade in the instant case, it appears that the victim girl has named all the four appellants in her FIR and thereafter, after their apprehension, she also identified them in the police lockup. While deposing as PW-7 also, during trial, she has specifically named all the four appellants and has stated that all of them had raped her by inserting their penis in her private part. Hence, in the instant case, it is not a case where non holding of test identification parade would vitiate the trial, as the identity of the appellants were disclosed by the victim in the FIR itself as well as during trial. Moreover, the fact that the victim does not know the names

of the appellants individually, in itself, cannot be a ground to discard her testimony when she has deposed during trial that all of them have raped her.

36. It is now well settled that the finding of guilt in a case of rape can be based on uncorroborated testimony of the prosecutrix, as the very nature of offence makes it difficult to get direct corroborating evidence. However, in the instant case, the testimony of PW-7, i.e., the victim girl has been corroborated by the testimony of PW-15, who was present at the place of occurrence and who was also assaulted by the appellants. Further, the recovery of the sandals of the victim as well as the cord of the salwar of the victim from the place of occurrence, also corroborates the testimony of the victim girl. There appears to be no palpable reason or motive or for any other purpose for which the victim girl would falsely implicate the present appellants in a heinous offence of gang rape, when they were not known to her previously. The defence side also failed to show that there was any previous enmity between the prosecutrix and the appellants, which would justify their submission that the prosecutrix had leveled false charges against the present appellant.

37. In the instant case, it is apparent that the victim went out of her residence informing her family members that she is going out, but concealing the fact that she is going out to meet PW-15 and thereafter, she met with the ordeal of gang rape by seven persons, including the present appellants and she has also deposed that she did not disclose the incident immediately to the family members out of shame, which is quite natural under the circumstances and therefore, the one day delay in lodging the FIR get explained in the instant case. The grounds taken by the appellants, in this appeal, in the considered opinion of this Court does not justify any interference in the impugned judgement by this Court.

38. For the above reasons, this Court is of the considered opinion that the Trial Court had correctly arrived at the finding of guilt of the present appellants, mainly on the basis of the testimony of the PW-7 and the PW-15 and this Court does not find any reasons to interfere with the said finding of the Trial Court. Therefore, the instant appeals are accordingly dismissed and the conviction and sentence imposed on the present appellants by the impugned judgment of the Trial Court is hereby upheld.

39. Send back the LCR along with a copy of this judgment, to the Trial Court.

JUDGE

Comparing Assistant