



THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

Criminal Appeal (J) No. 22/2020

Moniram Changmai,
S/o. Lt. Bhola Changmai, R/o No. 4 Chepatoli,
P.S.- Tingkhong, Dibrugarh, Assam.

.....Appellant.

-Versus-

1. The State of Assam,
Represented by Public Prosecutor, Assam.
2. Smti. Arati Gogoi,
W/o - Late Deokon Gogoi, Vill.- 4 No. Chapatoli,
PS- Tingkhong, District- Dibrugarh, Assam.

.....Respondents.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Appellant : Mr. P. Mahanta, Amicus Curiae
.....Advocate.

For the Respondents : Mr. P.S. Lahkar, Addl. P.P.
.....Advocate.

Date of Hearing : 18.07.2024

Date of Judgment : 26.07.2024

JUDGMENT AND ORDER (CAV)

Heard Mr. P. Mahanta, learned Amicus Curiae for the accused/appellant and Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent No. 1. None appears for the respondent No. 2, though the name of one Mr. B. Baruah, learned counsel is reflected in the cause list.

2. In this appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (Cr.P.C., for short), the accused/appellant, namely, Shri Moniram Changmai, has put to challenge the correctness or otherwise of the judgment and order of conviction and sentence, dated 25.06.2019, in Sessions Case No. 15/2019. It is to be noted here that vide impugned judgment and order dated 25.06.2019, the learned Additional Sessions Judge (FTC), Dibrugarh, had convicted the accused/appellant under Section 376 IPC and sentenced him to suffer rigorous imprisonment for a period of seven years and also to pay a fine of Rs. 2,000/-, in default of payment of fine, to suffer simple imprisonment for two months.

3. The background facts, leading to filing of the present criminal appeal, are briefly stated as under:-

“The informant, Smt. ‘X’, (name withheld) is the wife of Late Deokan Gogoi of No. 4 Chopatoli village, under Tingkhong P.S. Smt. ‘Y’ (name withheld), aged about 16 years, is her

daughter. Shri Moniram Changmai, the present accused/appellant, aged about 53 years, is her co-villager and he had committed sexual intercourse with her daughter, Smt. 'Y', for last six months by enticing her that he would give money to her and thereby, impregnated her. Stating above, inter alia amongst others, the informant Smt. 'X' lodged one FIR with the In-Charge, Borbam Police Out Post on 28.07.2016, upon which the In-Charge, Borbam Police Out Post had recorded a G.D. Entry, being G.D. Entry No. 341, dated 28.07.2016 and forwarded the same to the Officer In-Charge, Tingkhong P.S. for registering a case.

On receipt of the FIR from the I/C, Borbam Police Out Post, the Officer In-Charge, Tingkhong P.S. registered a case, being Tingkhong P.S. Case No. 88/2016, under Section 376 IPC, read with Section 4 of POCSO Act and endorsed S.I. Nomal Ch. Bora to investigate the case. The I.O. then visited the place of occurrence, examined the witnesses, got the victim girl examined by Doctor and collected the report and also got her statement recorded under Section 164 Cr.P.C. by a Magistrate and arrested the accused and forwarded him to the Court. Then on completion of investigation, the I.O. laid charge-sheet against the accused/appellant to stand trial in the Court under Section 376 IPC.

The learned Sessions Judge, Dibrugarh then took cognizance of the same and registered a case, being POCSO Case No. 67/2016. Then securing the presence of the

accused/appellant, and after hearing the learned Advocates of both sides, had framed charges against him under Section 376(2)(n) IPC read with Sections 5/6 of the POCSO Act, on 03.12.2016, and on being read and explained over the same to the accused/appellant, the accused/appellant pleaded not guilty and claimed to be tried.

Thereafter, the prosecution side had examined as many as seven witnesses, including the M.O. and I.O. and after closing the prosecution evidence, the learned trial Court had examined the accused/appellant under Section 313 Cr.P.C. The accused/appellant also had examined one witness in his defence. While the case was fixed for argument, the learned Sessions Judge, Dibrugarh had found that the victim is above 18 years and thereafter, converted the case to Sessions case and transferred it to the Court of learned Addl. Sessions Judge (FTC), Dibrugarh for disposal, without however, altering the charge. Thereafter, hearing arguments of learned Advocates of both sides, the learned trial Court had found that the prosecution side had succeeded in bringing home the charge under Section 376 IPC against the accused/appellant beyond all reasonable doubt and accordingly, convicted and sentenced him as aforesaid."

4. Being highly aggrieved, the accused/appellant has preferred this appeal from Central Jail, Dibrugarh on the ground that he is not satisfied with the judgment and order of conviction and sentence so passed by the learned Additional Sessions Judge (FTC), Dibrugarh.

No other specific ground has been taken by the accused/appellant. Upon registration of the appeal, this Court was pleased to appoint Mr. P. Mahanta, learned counsel as Amicus Curiae to represent accused/appellant.

5. Mr. P. Mahanta, learned Amicus Curiae for the accused/appellant submits that except the evidence of the victim, there is no eyewitness to the occurrence and that the learned trial Court has convicted the accused/appellant solely on the basis of the evidence of the victim. But, according to him, the evidence of the victim girl is full of contradictions, while she had categorically stated that the occurrence took place in the month of '*Chot*' of the Assamese calendar year, in her house, while her parents were absent, yet, in her statement recorded under Section 164 Cr.P.C., she stated that the occurrence took place in the Month of '*Chot*', and that her parents were present in her house at that time. Mr. Mahanta further submits that the evidence of the victim cannot be accepted because of the contradiction with the medical evidence also. Referring to the evidence of the Doctor, Mr. Mahanta submits that the Doctor (P.W.6), had examined the victim girl on 30.07.2016, at Assam Medical College and Hospital, Dibrugarh in the Department of Forensic Medicine and after examination, she found no injury on her private parts of the victim and also found no evidence of recent sexual intercourse and she had detected evidence of pregnancy, on her person and duration of her pregnancy as per USG Obstetric report is 22 weeks and 1 day and as such, the date on which she conceived falls on 27th February of 2016, and thus, the evidence of

the victim and the evidence of the Doctor cannot be reconciled and that the victim girl had affairs with someone else and as the evidence of the victim is not of sterling quality her evidence cannot be relied upon to convict the accused/appellant, without any corroboration from the evidence of any independent witness. Therefore, Mr. Mahanta has contended to extend the benefit of doubt to the accused/appellant. Referring to the evidence of P.W.3 and of D.W.1, Mr. Mahanta further submits that the same totally belied the prosecution version. It is also the submission of Mr. Mahanta that the FIR was filed after five months, when the pregnancy was discovered by her mother, without any plausible reason for delay, which, according to Mr. Mahanta, casts serious doubt about the veracity of her version. Mr. Mahanta has referred to a decision of Hon'ble Supreme Court in the case of **State of Uttarakhand vs. Darshan Singh**, reported in (2020) 12 SCC 605, specially to paragraph No. 43.

6. Per contra, Mr. P.S. Lahkar, learned Additional Public Prosecutor has supported the impugned judgment and order of conviction and sentence. Mr. Lahkar, taking this Court through the evidence of the victim (P.W.1) and also her statement recorded under Section 164 Cr.P.C., submits that the victim is throughout consistent and in her statement under Section 164 Cr.P.C. also, she had categorically stated that the occurrence took place while her parents were absent and while preparing the paper-book, the concerned section had committed some typographical mistake in this regard and as such, the contradiction so pointed out by Mr. Mahanta

could not spell inveracity to the version of the victim. Mr. Lahkar further submits that it is a fact that the month of '*Chot*' of Assamese calendar falls in the month of March and the evidence of the Doctor and the medical report indicate that she became pregnant w.e.f. February 27th and the difference is not very wide and the same also could not spell inveracity to the prosecution version and that the contradictions, so pointed out by Mr. Mahanta are not on material point and that the same are trivial in nature, and that the evidence of P.W.3 and D.W.1 cause no dent to the prosecution version, in as much as, the evidence of D.W.1 is hearsay and he could not state from whom he had heard about the same and unless the person from whom he heard about the occurrence is examined, his evidence cannot be relied upon and there is no basis to accept the evidence of D.W.1, and therefore, Mr. Lahkar has contended that the evidence of the victim can be safely relied upon as the same is of sterling quality and the same is also corroborated by the medical evidence. Therefore, it is contended to dismiss the appeal. Mr. Lahkar has also referred to one decision of Hon'ble Supreme Court in the case of **Phool Singh vs. State of Madhya Pradesh**, reported in **(2022) 2 SCC 74**.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the appeal and the documents placed on record and also perused the decisions, so referred by learned Advocates of both the parties.

8. It is to be noted here that though the accused was charged under Section 6 read with Section 5 of the POCSO Act, along with

Section 376(2)(n) IPC, subsequently, charge was altered to Section 376 IPC only, in view of medical evidence and the report of the Doctor which indicates that her age is above 18 years. In absence of any documentary evidence, admittedly not collected by the I.O. during investigation, the court has to rely upon the medical evidence only. That being so, altering the charge to Section 376 IPC from Section 6 read with 5 of the POCSO Act appears to be justified.

9. It also appears that that the prosecution side has examined as many as seven witnesses including the M.O. and I.O., and exhibited five documents i.e. the statement of the victim girl as Exhibit-1, the Ejahar as Exhibit-2, the Medical Report of the victim as Exhibit-3, the Sketch Map of the place of occurrence as Exhibit-4, and the Charge-sheet as Exhibit-5. The accused/appellant also examined one witness in his defence as D.W.1.

10. The prosecution side has also examined the victim 'Y' as P.W.1. Her evidence reveals that the occurrence took place in the month of 'Chot', last year of Assamese Calendar year. On the date of occurrence, in the afternoon, while she was alone in her house, her mother went out to her neighbour's house, then, the accused came to her house and asked for betel nut, and then the accused gagged her and took her inside the room, and committed rape upon her on the bed. She then tried to scream, but, the accused threatened her not to scream, lest he will cause injury to her and to her mother. Then being terrified, she did not state the matter to her mother. She felt pain on her private parts and there was also bleeding from the same and he also touched her breast and offered her money, and

also told her that he would pay money sometimes for not disclosing the incident to anybody, and he also asked her not to disclose his name if somebody asks about the incident and told her to name someone else. Then after few days, he again committed sexual intercourse with her. She then skipped her menstrual period, and when the accused asked her about the menstrual period, she informed him that she missed her period. Then the accused brought tablet to her, and after consuming the same, there was bleeding from her breast. Meanwhile, her mother came to know about the incident and about missing of the period by her, and when asked, she told her mother and her *Borma* about the incident, and also informed her mother that the accused threatened her, so she did not disclose the matter to her. Then, a village meeting was held and the accused was present in the meeting, but, he denied his involvement with the offence. Then, her mother lodged the FIR (Exhibit-2) with the police station and then on 25.11.2016, she had given birth to a female child and the child was given in adoption from the medical, and police got her statement (Exhibit-1) recorded in the Court.

11. Exhibit-1, the statement of the victim girl recorded under Section 164 Cr.P.C. also lends corroboration to her version, wherein also she categorically stated that the occurrence took place in the month of '*Chot*' (March-April in the year 2016), and at the relevant time, her mother and other family members were not present at home, and then the accused came to her house and asked for betel nut, and when she went inside the house to bring betel nut, then he also came inside and gagged her and assaulted her and threatened

to kill her if she shouted and thereafter, held her breast and committed rape upon her. Then, blood came out of her urinary organ and continued for the whole day and she felt severe pain, then he asked her not to disclose the matter to her mother or anybody else, or else he threatened her that he would cut them to death, and also asked her to name someone else. Then, out of fear, she had not disclosed the matter to anybody else and thereafter, he had committed such act on several occasions, and he also used to enquire about her period and when she missed the period in the month of Bohag (April-May), her mother asked her about the reason, but she did not disclose the matter. Then, being frightened about missing of her period, she reported the matter to her *Borma*. Then, on one morning, when the accused came to know about her missing of her period, he brought tablet to her and she consumed the same and bleeds in the night. Her evidence also reveals that her mother and other family members called a meeting, wherein the accused did not confess his guilt and thereafter, her mother lodged the case and then the accused fled away and he had committed such act with his own daughter.

12. Thus, it appears that except minor contradictions here and there, the statement of the victim under Section 164 Cr.P.C. also fully corroborated her evidence in material particulars. The accused/appellant had cross-examined this witness, but nothing tangible could be elicited in her cross-examination so as to discredit her version. No material contradiction with her previous statement is brought on record and proved. It is, however, elicited that the

neighbours did not know about the incident which took place in her house in the month of 'Chot', though, if some incident happened in her house, the neighbours would come to know about such incident. She denied having falsely implicated the accused. She, however, admitted that she did not receive any injury in the alleged incident. She admitted having not stated before police that the accused had accepted that he had committed rape upon her, and that he offered her money before police. It is also elicited that her mother came to know about her incident after five months. She denied the defence suggestion that no incident had ever taken place. These negative suggestions, to the considered opinion of this court, have bearing, what so ever, upon the veracity of her version.

13. The medical evidence also lends corroboration to her evidence. The prosecution side has examined Dr. Nibedita Shyam, who had examined the victim, as P.W.6. her evidence reveals that she had examined the victim at Assam Medical College and Hospital, Dibrugarh on 30.07.2016, and she found the following:-

On Genital Examination:

Genital organ well developed. Vulva is healthy. Hymen old tear at 6 O' clock position. Vagina is healthy. Cervix is healthy and OS closed. Uterus enlarged with fundal height at 20 weeks gestation. Linea Nigra is present. Foetal movement and foetal parts palpable, foetal heart rate measures 146 bits per minute. Vaginal smears were taken from posterior for-nix and around the cervix. The result of which does not show any spermatozoa.

Then on the basis of the physical examination, radiological and laboratory investigation done on Smti. 'Y' he opined as under:-

- I. Evidence of recent sexual intercourse not detected on her person.
- II. Evidence of pregnancy detected on her person. Duration of pregnancy as per USG Obstetric report is 22 weeks and 1 day.
- III. Her age is above 18 years.
- IV. Evidence of recent injuries not detected on her private parts.

The medical report, Exhibit-3, submitted by her, is also consistent with her evidence. It is, however, elicited in cross-examination that the duration of pregnancy was 5 months at the time of the examination.

14. Though, P.W.6 had not found any evidence of recent sexual intercourse on the person of the victim girl, yet, she had detected pregnancy on her person and duration of the pregnancy was 22 weeks and 1 day (Five months) and also found her age was above 18 years. Thus, to some extent, the medical evidence also lent corroboration to the version of the victim in respect of the pregnancy being carried by her on 30.07.2016. It is however a fact that she has not found any injury on the private part of the victim. Mr. Mahanta, the learned Amicus Curiae has rightly pointed this out during argument. But, his submission left this court unimpressed in as much as the occurrence took place more than five months back. And as

such it is quite natural that after five months of occurrence, no injury was found by the Doctor on her person. In this context, the observation made by the Hon'ble Supreme Court in the case of **Ranjit Hazarika vs. State of Assam** reported in (1998) 8 SCC 635, is relevant, wherein it was held in paragraph 5 as under:-

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

hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

15. P.W.2, Smt. 'X' is the informant of this case. She is the mother of the victim girl. Her evidence reveals that in the month of April, 2016, she noticed that her daughter missed her periods. Then, she asked her, but she did not reply. In the following months also, when she missed her period, she again asked her about it, but she did not reply. But, from her appearance, she found that she was pregnant. Then, her daughter informed her that the accused/appellant forcibly had sexual intercourse with her on several occasions and she did not disclose the incident out of fear. As her daughter was pregnant for five months, so abortion was not possible. Then, her brother-in-law had arranged for a '*village Bichar*' as her husband has already suffered demise, and in the said Bichar, the accused/appellant was present, but, he denied his involvement with the alleged offence in the said meeting. Then, she approached the police and lodged the FIR (Exhibit 2) with the Borbam Police Out Post and police got her statement recorded and also got her daughter examined by Doctor at the Hospital and got the statement of her daughter recorded by Magistrate. Her evidence also reveals that in the month of November, 2016, her daughter had given birth to a female child and the said child was given for adoption.

16. However, it is elicited in her cross-examination that she did know the contents of the FIR (Exhibit-2) and she lodged the FIR only after the decision in the meeting. It is also elicited that when her daughter had missed her period in the month of '*Chot*', she had not taken her to the Hospital and that her daughter sometimes used to work in the house of the accused/appellant which is nearby her house and sometimes he used to pay money to her daughter for her work. But, whatever is elicited in her cross-examination, could not demolish the probative value of her evidence that her daughter was impregnated by the accused/appellant and that she had given birth of child.

17. Thus, it appears that P.W.2 and the FIR (Exhibit-2) also corroborated the version of the victim (P.W.1). It is a fact that she is not the eye witness to the occurrence as the same took place while she was not present in her house. But, she heard it from the victim and lodged the FIR, Exhibit-2. And I find no ground to disbelieve her.

18. P.W.3, Sri Ghana Gogoi, is the neighbor of the informant (P.W.2). His evidence reveals that the victim girl is the daughter of his younger brother, and the incident took place about eight months back and he heard that the victim, Smt. 'Y' had physical relationship with the accused/appellant and as a result of this relationship, she became pregnant and thereafter, a meeting was arranged by the family members and he accompanied the victim to the Court for recording her statement and also to the medical, where she was sent for medical examination. And he heard that the victim had given birth to a female child.

19. It is elicited in his cross-examination that police did not record his statement and that all his daughters stayed in the house of the accused/appellant and they grew up there, and that he never heard anything bad about the accused person's character. It is also elicited that Anupam is his nephew and he is 21 years of age and he did not know if Anupam had any relation with the victim girl.

20. P.W.4, is Smt. Ranu Gogoi and her evidence reveals that about 6 to 7 months back, she came to know that the victim was impregnated by the accused/appellant and that she was five months pregnant and in that connection, the mother of the victim had called a meeting, wherein the victim disclosed that the accused/appellant impregnated her and that she was present in the meeting and she had seen the accused person in the meeting and later on, the victim gave birth to a baby girl.

21. P.W.5, Smt. Labanya Kotoki also testified that she heard that the victim girl became pregnant.

22. Thus, it appears that the evidence of P.W.3 and P.W.5 are hearsay and they could not state in their evidence from whom they had heard about the occurrence. That being so, no evidentiary value could be attributed to the evidence of P.W.3 and P.W.5 and the same could not help the prosecution in establishing the charge. However, it becomes apparent from the evidence of P.W.3 that the victim had given birth to a baby girl and this piece of evidence lends support to the evidence of the victim and thereby strengthened the prosecution case. On the other hand, P.W.4 had heard from the victim, who had disclosed in a meeting called by the family members of the victim

that she was impregnated by the accused and that the victim had given birth to a child. Thus, this witness also corroborated the evidence of the victim to a considerable extent.

23. P.W.7 is the I.O., who had carried out the investigation and prepared the sketch map, Exhibit-4, and after completion of investigation, submitted charge sheet, Exhibit- 5, against the accused/appellant to stand trial in the court under Section 376(2)(n), read with Sections 5/6 of the POCSO Act. It is elicited in his cross-examination that he had not shown the house of the victim's uncle, which is adjacent to the house of the accused/appellant, in the sketch map and he had not mentioned about the number of rooms, including the kitchen and verandah, anywhere in the sketch map. Further, it is elicited that the victim had not stated before him that her *Borma* saw the accused visiting her house and that he had not collected any documentary evidence in respect of the age of the victim girl.

24. The evidence of victim, thus, goes a long way to establish that accused Moniram Changmai, the present accused/appellant is responsible for her pregnancy. Admittedly, there is no eyewitness, except however, the evidence of the victim. But, having tested her evidence on the touchstone of the probability, its intrinsic worth and animus of the witnesses, I find no ground to disbelieve her. She has no animus to implicate the accused/appellant falsely. The evidence of P.W.2, the mother of the victim, the medical evidence about the pregnancy being carried by her and subsequently, giving birth of a baby girl by her, amply lends credence to her evidence.

25. Though, Mr. Mahanta, the learned Amicus Curiae submits that if the medical evidence is accepted that her pregnancy on the date of her medical examination is 22 weeks and 1 day, which was much prior to the month of '*Chot*', in which the accused/appellant had allegedly committed rape upon her, yet, it is well settled that when there is contradiction between medical evidence and ocular evidence, the ocular evidence will prevail. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Bhajan Singh v. State of Haryana**, reported in (2011) 7 SCC 421 wherein Hon'ble Supreme Court has held as under:-

38. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. (Vide *Abdul Sayeed* [(2010) 10 SCC 259])

26. Same principle is reiterated in the case of **Darshan Singh** (supra), so referred by Mr. Mahanta, the learned Amicus Curiae, for the respondent. In the case in hand the possibility of the ocular evidence being true, cannot be ruled out by the medical evidence.

That being so, this court is unable to record concurrence to the submission of Mr. Mahanta, the learned Amicus Curiae for the accused/appellant.

27. It is also to be taken note of herein this context that the victim hails from a rural background. She is a rustic village girl and as such there may be difference of exact month of the occurrence and the same cannot be a ground to discard the otherwise clear and cogent evidence of the victim. It is well settled that in appreciating evidence, court cannot judge evidence of witnesses from rural background by the same standards of exactitude and consistency as that of witnesses with urban background. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Shivaji Sahabrao Bobade vs. State of Maharashtra** reported in (1973) 2 SCC 793.

28. It is however a fact that there is delay in lodging the FIR. After much delay, about 5 months, the FIR was lodged. However, an explanation is forthcoming for the delay. The victim, in her evidence categorically stated that she and her mother were threatened to be killed, if she disclosed the matter to anyone else for which, she did not disclose the matter to anybody else for about five months. And it was, when she missed her periods for several occasions and when her mother noticed her pregnancy, only then she, on repeated asking by her mother, disclosed the same to her mother P.W.2 about the incident. She had also disclosed the same in the meeting convened by her mother, (P.W.2), that it was the accused/appellant who is responsible for the same. The explanation, so forthcoming for the

delay, appears to be natural in the given facts and circumstance of the case. And this factum of threatening her for not disclosing the incident is not disputed by the accused/appellant side. Thus, the delay, cannot spell inveracity to the prosecution case. Reference in this context can be made to a decision of Hon'ble Supreme Court in **State of Punjab vs. Gurmit Singh**, reported in (1996) 2 SCC 384.

29. It is to be mentioned here that the victim was subjected to sexual assault and as such she is an injured witness and on such count her evidence is on much higher pedestal and the same is acceptable in absence of corroboration notwithstanding. In this contest we may gainfully refer to a decision of Hon'ble Supreme Court in the case of **State of Himachal Pradesh vs. Asha Ram**, reported in AIR 2006 SC 381, wherein Hon'ble Supreme Court has held as under:-

“The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons, which necessitate looking for corroboration. The court should find no difficulty in acting on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspire confidence and it is found reliable.”

30. Same proposition is also laid down in the case of **State of M.P. vs. Doyal Sahu**, reported in 2005 Cril.L.J. 4375, wherein it has been held by Hon'ble Supreme Court as under:-

“Once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances.”

31. It is also worth mentioning in this context that in the case of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat**, reported in (1983) 3 SCC 217, Hon’ble Supreme Court has observed as under:-

“Refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion.”

32. Thus, in the given facts and circumstances on the record and also relying upon the ratios, so laid down in the cases discussed herein above, I find the evidence of the victim worth believing and the same is able to inspire confidence. Mr. P.S. Lahkar, the learned

Addl. P.P. also rightly pointed it out during his argument that the case law **Phool Singh (supra)** referred by him also strengthened his submission. Notably, in the said case it has been held that conviction on the sole testimony of the victim/prosecutrix is permissible if her deposition is found to be trustworthy, unblemished, and credible and is of sterling quality.

33. I have also gone through the evidence of D.W.1, Shri Puna Borah. His evidence reveals that he heard that the victim had illicit relationship with her own brother. His evidence also reveals that the victim used to work in the house of the accused and used to stay there and on account of dispute being arisen, the accused had thrown her out from his house. His evidence also reveals that on suspicion the case was lodged and after the incident the brother of the victim is missing. It is elicited in his cross-examination that he does not know what incident took place between the accused and the victim. The evidence of this witness, being hearsay, as he could not say from whom he heard that the victim had illicit relationship with her own brother, cannot be relied upon, and admittedly, he also does not know what incident took place between the accused/appellant and the victim. Thus, I find that the defence evidence also could not outweigh and weaken any part of evidence of the victim and other prosecution witnesses. Mr. Lahkar, the learned Addl. P.P. thus, appears to be right in contending that the defence evidence could not weaken the prosecution case. Therefore, and also in view of the above factual and legal position, this court is unable to acced to the

submission of Mr. Mahanta that defence evidence cause any dent to the prosecution version.

34. The outcome of above discussion is that the prosecution side has been able to prove the charge under Section 376 IPC against the accused/appellant beyond all reasonable doubt. The learned court below had convicted the accused/appellant under Section 376 IPC and sentenced him to suffer rigorous imprisonment for a period of seven years and also to pay a fine of Rs. 2,000/-, in default of payment of fine, to suffer simple imprisonment for two months. Having drawn up a balance sheet of aggravating as well as mitigating circumstances, the sentence so handed down by the learned trial court appears to justified and reasonable and the same warrants no interference of this court.

35. It appears that in the impugned judgment and order, the learned Court below has not dealt with the issue of awarding compensation to the victim girl under Section 357A Cr.P.C. Keeping in mind the object behind enacting such a benevolent provision and also the scheme adopted by the Government of Assam i.e. Assam Victim Compensation Scheme, 2012 and also considering the plight of the victim, this Court is inclined to direct the District Legal Services Authority, Dibrugarh to examine the matter and award adequate compensation to the victim girl, if otherwise she is eligible for the same. This exercise has to be carried out within a period of two months from the date of receipt of this judgment and order.

36. In the result, I find no merit in this appeal, and accordingly, the same stands dismissed. Send down the record of the learned trial

Court with a copy of this judgment and order. The parties have to bear their own cost.

37. Before parting with the record, I wish to place my appreciation on record as regards the services rendered by Mr. P. Mahanta, learned Amicus Curiae appearing for the accused/appellant and direct the Registry to make available to him just remuneration as per the notified fee structure applicable to the Amicus Curiae.

Sd/- Robin Phukan
JUDGE

Comparing Assistant