

GAHC010159982022



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

Case No. : CRL.A(J)/88/2022

MD. SAMSUL HUSSAIN
S/O. MD. HUSSAIN ALI, R/O. KAKAJAN ARANDHARA GAON, P.S. TEOK,
JORHAT, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM.

2:Mrs. Mina Begum (Informant)
R/O Kakojan Arandhora Gaon
P.S- Teok
Dist- Jorhat
Assam
Pin- 78511

Advocate for the Petitioner : MS SAGARIKA BARPUJARI (AMICUS CURIAE),

Advocate for the Respondent : PP, ASSAM, MR A. ALI (R-2),MR M AHMED (R-2)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

Date of hearing : 11.12.2024 &16.12.2024.

Date of judgment : 20.12.2024

JUDGMENT & ORDER (CAV)

(Suman Shyam, J)

Heard Ms. S. Borpujari, learned *Amicus Curiae* appearing on behalf of the sole appellant. We have also heard Ms. S. Jahan, learned Addl. P.P., Assam appearing on behalf of the State. Mr. M. Ahmed, learned counsel has appeared for the respondent No.2/informant.

2. This Criminal Appeal from Jail is directed against the judgment and order dated 05.07.2022 passed by the learned Special Judge, Jorhat in Special Case No.34 of 2019 whereby, the sole appellant was convicted under Section 376 AB of the Indian Penal Code (IPC) and sentenced to undergo rigorous imprisonment for a period of 20 years and also to pay fine of Rs.5000/-, in default, to undergo simple imprisonment for a period of one year.

3. The prosecution case, as unfolded from the materials available on record, in a nutshell, is that on 26.06.2019, the mother of the victim had lodged an ejahar before the Officer-in-Charge of Ladoigarh Police Outpost informing him that on 19.06.2019, she, along with her 12 years old daughter, had gone to the house of 'Bogai' at Holongapara. She had washed clothes in Bogai's house and thereafter, sent her daughter to fetch the clothes from the upper floor of the house. At that time, Md. Samsul Hussain committed rape on her daughter inside a large room located in the upper floor of the house. That day, her daughter did not say anything. On 26.06.2019, at around 4:00 p.m. when her daughter was playing, Samsul gave her Rs.20/- and asked her to accompany him to the jungle. However, instead of accompanying

Samsul she came running home and at around 7:00 p.m. her daughter had told her (victim's) sister-in-law, viz., Ms. Jerina Begum about the incident and Jerina informed her about the matter. When they asked Samsul regarding the incident, a chaotic situation arose. The public had apprehended Samsul and handed him over to the police.

4. Based on the ejahar dated 26.06.2019, Teok P.S. Case No.291/2019 was registered under Section 376 AB of the IPC read with Section 6 of the POCSO Act. The matter was thereafter taken up for investigation by the police. On completion of investigation the I.O. had submitted charge-sheet. Accordingly, charge was framed against the appellant/accused to which he had pleaded not guilty. As such, the appellant was subjected to trial. On conclusion of trial, the learned Special Judge had convicted the accused/appellant under Section 376AB of the IPC and sentenced him as aforesaid.

5. From a careful reading of the materials on record, it appears that the conviction of the appellant is primarily based on the testimony of the victim/prosecutrix. Law is well settled that in a case of this nature, conviction can be awarded solely on the basis of evidence of the prosecutrix provided the version of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. [See **Ganesan Vs. State (2020)10 SCC 573**]. However, if there are inconsistencies in the version of the prosecutrix, then it would be incumbent upon the Court to look for corroboration.

6. The learned *Amicus Curiae* appearing in this case has argued that the version of the prosecutrix is full of contradictions and there is no corroboration of the

prosecution story by the other witnesses. As such, the conviction of the appellant in this case is unsustainable in the eyes of law and hence, liable to be set aside by this Court. In order to examine the said contention, it would be necessary for this Court to go through the materials available on record.

7. As noted above, the victim girl was about 11 years old when the incident allegedly took place on 19.06.2019. The evidence of the victim was recorded on oath by the learned trial Court on 17.12.2019 i.e. barely after six months of the occurrence. The victim girl, who was examined as PW-1, has deposed to the effect that at the time of the incident, her age was about 11 ½ years. Her mother Ms. Mina Begum is the complainant in this case. She knew the accused, who is her maternal grandfather. The incident took place about 5/6 months back. On the day of the incident, at about 11 a.m., she and her mother had gone to the house of "Bogai Dada" located across the road, at the request of wife of Bogai, to wash clothes in their house. While her mother was washing clothes, the accused, who also works in the house of "Bogai Dada" was wiping the floor with mud. She had gone to the terrace to collect clothes drying in the sun. The accused followed her to the terrace and forcefully dragged her to an empty room in the terrace and closed the door. Thereafter, the accused had opened her panty, took out his penis and inserted it inside her vagina. She got hurt and shouted. However, none including her mother heard her shouting. After sometime, she had managed to free herself from the clutches of the accused and tried to leave the room when the accused caught hold of her and threatened her by saying that if she tells anyone about the incident, he will kidnap her on her way to the school and kill her. Out of fear she did not tell about the

incident to anyone. After about a week, when she was going towards the river bank to look for her brother Adil Ali, the accused had met her on the road and gave her Rs.20/-. He dragged her towards the jungle and opened her panty. At that time, the area was deserted. She cried and somehow managed to save herself from the clutches of the accused and came running to her sister-in-law Zarina Begum and informed her about the incident.

8. PW-1 has also deposed that by that time, her brother Adil Ali had arrived and came to know about the incident. Her sister-in-law had informed about the incident to her father. Then her father went to the house of the accused to enquire about the incident. At that time, the son of the accused Akramul Hussain had hit her father on his head from behind. Her brother also went to the house of the accused to enquire about the incident and to ask the son of the accused as to why he had hit his father despite the fact that it is the accused who had committed the wrong. Thereafter, her mother had lodged the ejahar against the accused. Next day, the police came and had sent her for medical examination. Her statement was also recorded by the Magistrate under section 164 of the Cr.P.C. PW-1 has proved Ext-1 as her statement recorded under Section 164 Cr.P.C. by identifying her signatures therein.

9. During her cross-examination, PW-1 has denied the suggestion that she had not stated before the police that when she had gone to the terrace to collect clothes which were drying in the sun, the accused had followed her to the terrace and forcefully dragged her to an empty room in the terrace and closed the door, opened her panty, took out his penis and inserted his penis inside her vagina. She has also denied the suggestion that she had not stated before the police that when she

managed to free herself from the clutches of the accused and tried to leave the room, the accused had caught hold of her and threatened her that if she revealed the incident to anyone, he would kidnap her on her way to the school and kill her. PW-1 has further denied the suggestion that she had not stated before the police that after about a week, when she was going towards the river bank to look for her brother viz., Adil Ali, she had met the accused on the road who had given her Rs.20/- and dragged her towards the jungle and opened her panty. She has also denied the suggestion that she had not stated before the police that when her father went to the house of the accused to enquire about the incident then the son of the accused Akramul Hussain had hit her father on his head from behind. PW-1 has also denied the suggestion that the accused did not force himself on her and that she was deposing falsely.

10. The complainant in this case Mrs. Mina Begum was examined as PW-2. She is also the mother of the victim. PW-2 has deposed that the age of her daughter on the date of the occurrence was 12 years 2 months. She knew the accused Samsul Hussain, who is her maternal uncle. The incident took place about 5/6 months back. On the day of the incident, she had gone to the house of Bogai along with her daughter as she was informed by the accused that wife of Bogai had asked her to go to their house with "henna leaves". When she reached the house of Bogai along with her daughter, she was asked by wife of Bogai to wash their clothes. Her daughter was sitting beside her in the shade. After sometime, she was asked by the wife of Bogai to pick up the clothes which were drying in the terrace. PW-2 has further stated that accused had followed her daughter to the terrace, dragged her inside a room

situated in the terrace and after opening her panty, did bad things to her. According to PW-2, her daughter had shouted for help but she did not hear her shouting. The accused had instilled fear in her daughter such that if she disclosed to anyone about the incident then he would kidnap her on her way to the school and kill her. About one week after the incident the accused had handed over Rs.20/- to her daughter and dragged her to the jungle. He opened her panty. However, the victim managed to free herself from the clutches of the accused and came running to the house crying. She disclosed as to what had happened. The victim had narrated the incident to her daughter-in-law Zarina Begum and to her son Adil Ali and her husband Hayat Ali. Her husband Hayat Ali went to the house of the accused to find out about the same when the son of the accused had hit her husband on the head with a log. Thereafter, the public also *gheraoed* the house of the accused and had handed him over to the police. PW-2 has confirmed that she had lodged the ejahar Ext-2 which contains her signature Ext-2(1). PW-2 has further deposed that the police had recorded the statement of herself and her daughter (victim). The statement of the victim was also recorded by the Magistrate under section 164 Cr.P.C. During her cross-examination this witness had remained firm.

11. Ms. Rina Begum, who is the sister of PW-2, was examined as PW-3. In her deposition she has stated that the complainant PW-2 is her elder sister and the victim is the daughter of the complainant. She knows the accused. The incident took place in the month of June, 2019. On that day she was present at her home when the complainant came and told her that she is going to the house of Bogai along with the victim girl to hand over "Mehendi leafs". When she came back in the evening she

told her that the wife of Bogai had sent the victim to bring clothes from the terrace and the accused locked the victim in a room, opened her clothes and committed rape upon her. The victim tried to alert people by raising hue and cry but her voice was not heard downstairs. PW-3 has further stated that the complainant (PW-2) had asked her as to what should be done. Then she enquired with the victim who had also told her that the accused had opened her clothes and manipulated her vagina with fingers and thereafter inserted his penis in the vagina of the victim. Then she advised the complainant to inform the matter to the father of the victim girl. When Hayat Ali i.e. the father of the victim went to the house of accused to find out about the incident, he was beaten up by the son of the accused. Thereafter, the accused was handed over by the people of the village to the police and a complaint was lodged.

12. PW-4, Jarina Begum is the sister-in-law of the victim. She has deposed that on the day of the incident she was present in her home. Her mother-in-law went out to the house of Bogai to hand over mehendi leafs along with the victim and returned in the evening. She came to know about the incident a week after the occurrence. The victim had not divulged the incident as the accused had instilled fear in her. One week after the incident, the accused had met the victim in a grocery shop in the vicinity and asked her when she was coming to deliver mehendi again. Then the victim told her that on the previous occasion when she had gone to the house of Bogai along with the complainant to hand over mehendi leaf, the wife of Bogai had asked her to bring dried clothes from upstairs. There the accused forcefully opened her panty and thereafter committed sexual assault on her. When she came to know

about the incident she told the complainant about the same and had also informed her husband Adil Ali who in turn told the father of the victim about the incident. Thereafter, her father-in-law went to the house of the accused to enquire about the incident but he was physically assaulted by the son of the accused.

13. PW-5, Smti. Jahana Begum is a neighbor of the complainant. She has deposed that on the day of the incident she was cooking food when, at about 7/7:30 p.m., the complainant came running to her and told her that she and her daughter had gone to the house of Bogai to give "jetuka" when the accused Samsul Hussain, who is the maternal uncle of the complainant had called the victim upstairs and committed rape upon her. During her cross-examination PW-5 has denied any personal knowledge about the incident.

14. PW-9, Hayat Ali is the father of the victim and the husband of the complaint. He has deposed that on the day of the incident the accused came to his house and asked his wife to go to the house of Bogai with mehendi. Accordingly, his wife (PW-2) went to the house of Bogai along with his daughter (victim). His wife was asked to wash clothes by wife of Bogai and his daughter was asked to bring the dried clothes from upstairs. When his daughter went upstairs the accused followed her, dragged her inside the room located in the terrace and committed rape upon her by threatening to end her life. PW-9 has stated that he came to know about the incident from his wife. During his cross-examination, PW-9 has confirmed that he could learn about the incident from his wife.

15. As per the version of PW-2, wife of Bogai viz. Rubi Ahmed had sent the victim to the terrace to bring the clothes. Rubi Ahmed was examined as PW-10. During her

deposition before the Court, PW-10 has, however, stated that at the time of the incident, she was at Delhi. She had received a phone call from her husband informing her that public had beaten Bulbul (accused) and he was arrested by the police in connection with some case involving a female.

16. PW-11, Nurtaz Ali was on duty at the Lahdoigarh Police Outpost on 26.06.2019. PW-11 has deposed that on that on the said day, at about 9:10 p.m., he had received a phone call from a person from Arandhara Gaon informing him that a person was being assaulted by the public for committing the offence of rape on a minor girl. Based on the said phone call he had made G.D. Entry No.488 on 26.06.2019 and thereafter, proceeded to the place of the incident at Arandhara Gaon. Having reached there he had found that accused Samsul Hussain was being assaulted. He immediately sent the accused for medical treatment at Kakojan PHC. The victim and her mother were also sent to the Police Station in a different vehicle. He had recorded the statements of the witnesses including Zerina Begum, Rina Begum and Jahanara Begum at the place of the incident, prepared rough sketch map. He had also deposed that on receipt of the complaint dated 26.06.2019 submitted by PW-2, Teok P.S. Case No.291/19 was registered under Section 376(AB) of the IPC read with Section 6 of the POCSO Act, 2012 and he was entrusted with the responsibility of carrying out investigation. He had collected the medical examination report of the victim and after completion of investigation, charge-sheet was submitted against the accused under Section 376(AB) of the IPC read with Section 6 of the POCSO Act. Ext-7 is the charge-sheet which bears his signature Ext-7(1).

17. During his cross-examination PW-11 has stated that there is no mention for the

cause of delay in lodging the ejahar and that PW-1 did not state before him that when she managed to free herself from the clutches of the accused and tried to leave the room, the accused had caught hold of her and threatened her that if she reveals the incident to anyone he will kidnap her on the way to school and kill her. The I.O. has further stated during his cross-examination that the PW-1 did not state before him that after about a week, when she was going towards the river bank to look for her brother Adil Ali, the accused had met her on the road and gave her Rs.20/- and dragged her towards the jungle and opened her panty.

18. The PW-11 has further deposed in his cross-examination to the effect that PW-2 Mina Begum did not state before him that the accused followed her daughter to the terrace, dragged her inside a room situated in the terrace and by opening her panty, did bad things to her. He has further deposed that PW-2 had not stated before him that her daughter shouted for help but she did not hear her shouting. The I.O. has also deposed that PW-2 has not stated before him that the accused had instilled fear in her daughter that if she revealed about the incident to anyone, he would kidnap her on her way to school and kill her as a result of which, her daughter did not reveal the incident to anyone. PW-11 has also deposed that PW-2 did not state before him that about one week after the incident, the accused had handed over Rs.20/- to her daughter and dragged her towards the jungle and opened her panty. However, she managed to save herself from the clutches of the accused.

19. During his cross-examination PW-11 has deposed that PW-3 Rina Begum did not state before him that on the date of the incident she was present at her home when the complainant came and told her that she is going to the house of Bogai

along with the victim to hand over mehendi leafs; that she came back in the evening and told her that wife of Bogai had sent the victim to bring clothes from the terrace and in the terrace the accused had locked the victim in a room, opened her clothes and committed rape upon her; that the victim tried to alert the people by raising hue and cry, However, her voice did not reach the people including the complainant who was present downstairs; that when she enquired from the victim she told her that the accused had opened her clothes, opened his clothes, manipulated her vagina with his fingers and thereafter inserted his penis in the vagina of the victim.

20. PW-11 has further deposed that the PW-4, Zerina Begum has not stated before him that - the victim had told her about the incident one week after the same had occurred and that the accused had put her under fear.

21. The I.O. has also deposed that one week after the incident, he had visited the place of occurrence and recorded the statement of Rubi Ahmed (PW-10) i.e. the wife of Bogai in whose house, the incident took place.

22. While recording his statement under Section 313 of the Cr.P.C. the accused has admitted that he is the maternal grandfather of the victim and that about 5/6 months back the victim and her mother had gone to the house of Bogai Dada to wash clothes and that he also worked in Bogai's house. The accused has further admitted that when the victim went to the terrace to collect dried clothes he had followed her and forcibly dragged the victim into an empty room of the terrace and closed the door from inside. However, the accused has denied that he had opened the panty of the victim, inserted his penis into her vagina or that he threatened the victim to kidnap her on her way to school and kill her if she reveal the incident to

anyone. Having regard to the significance of the statement of accused in this case, we deem it appropriate to reproduce the Question Nos.1, 2 and 3 posed to the accused while recording his statement under Section 313 Cr.P.C. and the answers given by him as hereunder :-

“Question No.1: PW-1, victim, deposed in her evidence that you are her maternal grandfather. What do you have to say?”

Answer :- Yes. It is true.

Question No.2 : PW-1 deposed that the incident took place 5/6 months back at about 11 A.M. when she and her mother went to Bogai Dada's house to wash clothes at the request o Bogai dada's wife and that you also work in Bogai Dada's house. What do you have to say?

Answer :- Yes. It is true.

Question No.3: PW-1 deposed in her evidence that you were wiping the floor with mud at Bogai Dada's house and while she went to terrace to collect dried clothes, you followed her to the terrace, forcibly dragged her to an empty room of the terrace and closed the door from inside. What do you have to say?

Answer :- Yes. It is true.”

23. In response to Question No.34, the accused has stated that a false case has been lodged against him due to previous enmity between his wife and the complainant. He was innocent having three children. The accused, however, did not adduce any evidence in his defence.

24. Based on the evidence available on record, the learned trial Court had found the accused/appellant guilty of having committed penetrative sexual assault/rape upon the informant's daughter. Bearing in mind the overall facts and circumstances of the case, the learned court below was of the view that by invoking powers under Section 71 of the IPC read with Section 42 of the POCSO Act, the accused should be sentenced to imprisonment for a period of 20 years and to pay fine of Rs.5000/- for committing the offence punishable under Section 376AB of the IPC.

25. From a careful examination of the evidence of the prosecutrix PW-1, we find that in her deposition, she has narrated the entire incident by following logical sequence of the events leading to the commission of rape by the accused inside the locked room in the terrace. The evidence of the PW-1 finds due corroboration from her statement recorded under Section 164 Cr.P.C. (Ext-1) with the only distinction that while recording her statement before the Magistrate, the victim did not mention about the accused offering her 20 rupees so as to accompany him to the jungle.

26. The victim has stated before the I.O. that she was taken to a room by the accused and raped by him; that she was scared and hence, did not disclose about the incident to anyone on that day. Again, on 26.06.2019 the accused tried to lure her but she returned home and informed the matter to her sister-in-law (PW-4) at around 7:00 p.m. From the above, it is apparent that all along, the version of the victim as regards the accused committing rape on her has remained consistent and free from any material contradiction.

27. It is no doubt correct that while recording her statement before the police on 27.06.2019 as well as the Magistrate, the victim appears to have been a bit

circumscribed in her narrative. However, while deposing before the court she had given complete details of the incident. The version of the prosecutrix, which is consistent with her statement recorded under section 161 CrPC and 164 CrPC appears to this court to be credible, free from any material contradiction and hence, trustworthy.

28. The learned *Amicus Curiae* has submitted that there are some contradictions, omissions in the version of the prosecutrix PW-1 to submit that her testimony is not believable. First of all, as noted above, we do not find any material contradiction in the version of the victim. It may be correct that there are some minor omissions in her statement recorded under Sections 161 and 164 Cr.P.C. However, what must be borne in mind is that the victim was a 11 years old girl and she had just been through a very difficult phase when her statement was recorded by the Police as well as the Magistrate. Therefore, minor omissions in her statements was but natural . it is possible that she might have forgotten to mention about Rs.20/- being offered to her by the accused while recording her statement before the Magistrate. However, such omission, in our view, does not go into the root of the matter so as to punch a hole in the prosecution story.

29. Law is well settled that minor contradictions, discrepancies in the testimony of the witnesses would not have a fatal bearing in the prosecution case unless the same goes into the root of the mater. In **Ramappa Halappa Pujar Vs. State of Karnataka** reported in **(2007) 13 SCC 31** the Supreme Court has observed that some contradictions in the deposition of the witnesses are natural. In the case of **Mustak @ Kanio Ahmed Shaikh Vs. State of Gujarat** reported in **(2020) 7 SCC 237** it has been

observed that minor discrepancies, if any, is to be ignored.

30. In **State of Uttar Pradesh Vs. Krishna Master & others** reported in **(2010) 12 SCC 324** the Supreme Court has held that evidence should be read as a whole and on such reading if it appears to have ring of truth, then the discrepancies, inconsistencies, infirmities or deficiencies of minor nature, not touching upon the core of the case, can be ignored.

31. As has been noted above, after a meticulous examination of the evidence of PWs-1 in the light of the materials available on record, we are of the view that the version of the prosecutrix has a ring of truth and therefore, is liable to be accepted by this Court.

32. Coming to the evidence of the PW-2 i.e. the complainant, it is apparent from her testimony that after reaching the house of Bogai on 19.06.2019 she was asked to wash clothes and thereafter, her daughter was asked to go to the terrace and pick up the clothes which were left for drying. Accordingly, the victim had gone to the upper floor of the terrace. However, what happened thereafter was not within the personal knowledge of the PW-2. As a matter of fact, it has come out from the evidence on record that she came to know about the incident from the victim only on 26.06.2019 whereafter, the ejahar was lodged. Therefore, inconsistencies and/or contradictions, if any, in the testimony of the PW-2 as to the sequence of events that took place after the victim had gone to the terrace to collect the clothes, in our opinion, would not be of much significance in this case.

33. PWs- 3 and 5 have deposed on the basis of what they had heard from the PW-2. They are not eye-witnesses to the occurrence. Their evidence is mostly hearsay

evidence. It is to be noted here-in that PW-3 has not mentioned the date on which the PW-2 had told her about the incident. Therefore, it is possible that the PW-3 came to know about the incident only on 26-06-2019 and not on a prior date. Likewise, PW-5 has also not mentioned the date when which she had come to know about the incident from the PW-2 . It is possible that both PW-3 and 5 came to know about the incident only on 26-06-2019. Viewed from that perspective, it cannot be said that there is any material contradiction in the evidence brought on record by the prosecution side. However, even assuming that there is some inconsistency in their testimonies, it must be noted that PWs3 and 5 are not eye witnesses to the occurrence. Both have them had learnt about the incident from the PW-2 who is also not an eye-witness. As such, the evidence of PWs 3 and 5 is in the nature of hear- say evidence and hence, will not have much bearing in this case. As such, inconsistencies, if any, in their testimonies, would also, in our view, not be of much significance in the outcome of this appeal.

34. We also find that the evidence of PW-4 is consistent in her deposition and her evidence finds due corroboration from the testimony of PWs 1 and 2. PW-4 could not be shaken during her cross-examination. There is no material contradiction in her testimony. Therefore, if the version of PW-4 is believed, then there can be no doubt about the fact that the victim had informed her about the incident for the first time in the evening of 26.06.2019 at 7:00 p.m. when she returned home.

35. PW-9 i.e. the father of the victim had also heard about the incident from his wife i.e. PW-2. However, the evidence of PWs-2 and 9 corroborate the version of each

other to the effect that on 19.06.2019, in the morning hours, the PW-2, accompanied by her minor daughter PW-1, had in fact gone to the house of Bogai to wash clothes. Thereafter, the victim went upstairs to pick up the clothes which were left for drying in the terrace. It was at that stage that the incident had occurred. We do not find any justifiable ground to discard the testimonies of PWs- 2 and 9 to the above effect. Therefore, their evidence, read with the evidence of PW-1, establishes beyond any iota of doubt that the victim as well as the accused were present in the place of occurrence in the morning hours of 19-06-2019.

36. In so far as the evidence of PW-10 is concerned, it is no doubt correct that in her deposition she has denied any knowledge about the incident and has stated that she was in Delhi at the time of the occurrence. However, PW-10 did not say so before the I.O. Rather, it appears that PW-10, while recording her statement before the I.O. has clearly implicated the accused. It was, thus, apparent that PW-10 was not telling the truth before the Court. Notwithstanding the same, surprisingly, no request was made by the prosecution to declare the PW-10 as a hostile witness so as to cross-examine her.

37. Coming to the statement of the accused recorded under section 313 of CrPC, law is well settled that statement/admission made by the accused under section 313 Cr.P.C. cannot be made as the sole basis for conviction of the accused. However, such statement of the accused cannot be totally ignored by the Court. In **Mohan Singh vs Prem Singh** and another reported in **(2002) 10 SCC 236**, the Supreme Court has observed that the statement made in defence by the accused under section 313 CrPC can certainly be taken in aid of to lend credence to the evidence lead by the

prosecution.

38. In **Bishnu Prasad Sinha and another Vs. State of Assam** reported in **(2007) 11 SCC 467** the Supreme Court has held that although the statement of the accused made under Section 313 of the Cr.P.C. cannot form the sole basis of conviction, yet, the effect thereof may be considered in the light of the evidence brought on record.

39. In his statement recorded under Section 313 Cr.P.C. the accused has virtually admitted that he had gone to the terrace by following the victim and forcibly dragged her into a room and closed the door from inside. Save and except admitting commission of rape on the victim, the rest of the facts have been admitted by the accused/appellant while recording his statement under Section 313 of the Cr.P.C. Therefore, the denial on the part of the accused of having committed rape upon the victim does not appear to be believable. This we say so because if the accused was not guilty, we do not find any reason as to why he should have dragged the victim girl inside a room in the terrace and locked the same from inside. Therefore, the admission of the accused with regard to Question No.3 , in our opinion, would act as an additional link in the chain of circumstances establishing the guilt of the accused.

40. While recording his statement under Section 313 Cr.P.C. the accused has stated that a false case has been slapped against him due to previous animosity. However, no foundation for such plea has been laid by the defence while cross-examining the prosecution witnesses. There is also nothing available on record to indicate any previous animosity between the accused and the complainant or her husband. Moreover, the victim being an 11 years old girl it would be difficult to believe that she

would falsely implicate the accused, who happens to be her maternal grandfather, by bringing such a serious allegation.

41. Coming to the next issue of delay in lodging the F.I.R. , the delay is well explained in the F.I.R. itself which is on account of the fact that the victim did not disclose about the incident to anyone until the evening of 26.06.2019. The F.I.R was lodged on 26.06.2019 itself. Therefore, it is not a case of unexplained delay in lodging the F.I.R.

42. In so far as lack of the medical evidence is concerned, it is evident that the incident took place on 19.06.2019 and the victim was subjected to medical examination on 27.06.2019 i.e. more than a week after the occurrence. Under such circumstances, it is natural that no sign of sexual assault was found in the private parts of the victim. However, that by itself cannot be a ground for this Court to disbelieve the prosecution story.

What would be pertinent to note here in is that the offence alleged in this case had occurred on 19-06-2019 and not on 26-06-2019. Therefore, the burden of the prosecution to prove the charge would remain confined to establishing only those circumstances relating to the incident that took place on 19-06-2019 and no further. After analyzing the evidence adduced on record, we are of the un-hesitant opinion that the prosecution has succeeded in establishing the charge brought against the accused beyond reasonable doubt.

43. For the reasons stated herein above, we do not find any justifiable ground to interfere with the impugned judgment and order dated 05.07.2022 passed by the learned trial Court. Consequently, this appeal is held to be devoid of any

merit. The same is accordingly dismissed.

Before parting with the record of this case, we wish to put on record our appreciation for the valuable services rendered by Ms. S. Borpujari, learned *Amicus Curiae* and recommend that the Registry may make payment of notified remuneration to the learned *Amicus Curiae* as per the existing norms.

Send back the LCR.

JUDGE

JUDGE

T U Choudhury/ Sr.PS

Comparing Assistant