

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

KOHIMA BENCH

Criminal Appeal No.5/2019.

BONGPHA @ PHONGPHA
S/O MR. LEMJUN,
PERMANENT R/O HONGPHUI VILLAGE, MON, N/L.

..... APPELLANT.

VERSUS

THE STATE OF NAGALAND
KOHIMA.

..... RESPONDENT.

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

Advocate for the appellant	: Mr. M. Jamir,
Advocate for the respondent	: Mr. K. Angami, Public Prosecutor, Nagaland

Date of Hearing :- 21.11.2023

Date of Judgment :- 22.01.2024.



JUDGMENT AND ORDER

Heard Mr. M. Jamir, learned counsel for the appellant, and also heard Mr. K. Angami, learned Public Prosecutor, for the State of Nagaland.

2. In this appeal, under section 374(2) Cr.P.C., the appellant – Mr. Bongapa @ Phongpha, has put to challenge the judgment and order, dated 19.03.2019, passed by the learned Sessions Judge, Dimapur, Nagaland in Sessions Case No. 43/2014, corresponding to G.R. Case No.501/2013, under Section 376 IPC. It is to be noted here that vide impugned judgment and order, dated 19.03.2019, the learned court below has convicted the appellant, under section 376 (2) (i) IPC and sentenced him to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs.500/ with default stipulation.

3. The background facts, leading to filing of the present appeal, under section 374(2) Cr.P.C. is adumbrated herein below:-

“On 03.09.13, at around 5:30 PM, while the victim Smti. X (name withheld) was taking bath in her house, situated at Ward No. 6, Chumukedima, accused Bongpha came near her and pushed her from behind. She then raised alarm and the accused then went away. She then went inside the house thinking that the accused might have gone away. But, after few minutes, accused came again when she was dressing up inside her room. The accused then pushed her and laid on the floor and committed rape upon her. She had shouted, but, no one was there to rescue her. On the next day she had reported the matter to her mother. The mother then called the informant -Ms.



Kennyisha and discussed the matter with her and decided to report the matter to police. Accordingly, Ms. Kennyisha had lodged an FIR with the O/C Diphupar Police Station on 5th September 2013, upon which the O/C Diphupar Police Station had registered a case, being Diphupar P.S. Case No. 84/2013, u/s 376(1) IPC and endorsed ASI Yawao Bolem to investigate the same. The I.O. then visited the place of occurrence, examined the witnesses, and got the victim examined by Doctor and collected the report and arrested the accused and forwarded him to the court. Then on completion of investigation, the I.O. laid charges sheet against the accused/appellant to stand trial in the court under section 376(1) IPC. On commitment of the case to the Court of sessions, by the learned Chief Judicial Magistrate, Dimapur, the accused/appellant entered appearance before the learned Sessions Judge, Dimapur. Then the learned Sessions Judge, Dimapur, after hearing both sides, had framed charge against the accused/appellant under sections 376(2)(i) IPC and on being read over the accused/appellant pleaded not guilty and claimed to be tried. The prosecution side then had examined as many as 7 witnesses, including the M.O. and I.O. and thereafter, hearing arguments of both sides, found the charge under section 376(2)(i) well established and convicted him accordingly, and thereafter, hearing him on the point of sentence, sentenced him as aforesaid."

- 4.** Being highly aggrieved and dissatisfied with the aforesaid judgment and order, the appellant has preferred this appeal, and contended to allow the same on the following grounds :-

- [i] That, the learned court below has failed to apply its judicial mind and overlooked the Medical Report of the victim and the report of the FSL which gave negative test for spermatozoa and that spermatozoa present up to 3 days after the intercourse and occasionally up to 6 days;
- [ii] That, the learned court below had chooses not to examine the Junior Scientific Officer of FSL, who had examined the vaginal swab of the victim;
- [iii] That, the learned court below had failed to appreciate that the victim is a mentally retard and dumb person and without taking the help of independent/professional interpreter had examined her and inspite of absence of corroboration from independent witnesses believed her version;
- [iv] That, the learned court below had failed to appreciate the medical report in its proper perspective, which indicates no sign of physical struggle and that mild discharge indicates infection that lead to reddening of the vulva, which alone cannot be taken as a ground for forced intercourse, and that the factum of old torn hymen indicates that she was accustomed to sexual intercourse and to that extend the medical report is contradictory wherein the Doctor opined that the victim was not accustomed to sexual intercourse;
- [v] That, the learned court below has failed to consider the submissions of defence counsel and relied upon evidence of those witnesses who were not present at the time of occurrence



and the impugned judgment and order is against the settled principles of criminal jurisprudence;

[vi] That, the impugned judgment and order is based on circumstantial evidence and surmise and conjecture and is perverse and is based on no legal evidence;

5. Mr. M. Jamir, learned counsel for the appellant has canvassed following points for consideration of this court at the time of hearing,:-

- (i) That, the learned court below, in the impugned judgment and order, solely relied upon the evidence of the victim, who is a mentally retard person as per evidence of the Doctor and that there is no materials to suggest that the learned court below had taken the help of expert while recording her evidence and the learned court below is not expert in that line and on such count the evidence of victim cannot be relied upon;
- (ii) That, the evidence of the Doctor reveals that he found no sign of struggle on the person of the victim and as such her evidence is highly improbable;
- (iii) That, the learned court below has failed to consider that the hymen of the victim was found to be old torn, which indicates that she is accustomed to sexual intercourse and as such the finding of the Doctor cannot be used against the appellant;
- (iv) That, the statement of the victim under section 164 Cr.P.C also not supported the version of the victim and that the case of the prosecution is highly improbable;



6. These points/circumstances, according to Mr. Jamir, have cast serious doubt about the very sustainability of the judgment and order of the learned court below and therefore, it is contended to set aside the impugned judgment and order. Mr. Jamir also referred following decisions of Hon'ble Supreme Court in support of his submission.

- (i) Raju and Others vs. State of Madhya Pradesh, reported in (2008) 15 SCC 133;
- (ii) Sadashiv Ramrao Hadbe vs. State of Maharashtra and Another, reported in (2006) 10 SCC 92;
- (iii) Rai Sandeep @ Deepu vs. State (NCT of Delhi), reported in (2012) 8 SCC 21;
- (iv) State of Rajasthan vs. Darshan Singh @ Darsan Lal, reported in (2012) 5 SCC 789;
- (v) Sadashiv Ramrao Hadbe vs. State of Maharashtra, reported in (2006) 10 SCC 92
- (vi) Krishna Kumar Malik vs. State of Haryana, reported in (2011) 7 SCC 130;
- (vii) Munna vs. State of Madhya Pradesh, reported in (2014) 10 SCC 254;
- (viii) Sujit Biswas vs. State of Assam, reported in (2013) 12 SCC 406;
- (ix) Sham Singh vs. State of Haryana, reported in (2018) 18 SCC 34
- (x) Sharda Birdichand Sarda vs. State of Maharashtra, reported in (1984) 4 SCC 116;

7. Per-contra, Mr. K. Angami, the learned P.P. has supported the impugned judgment. Mr. Angami submits that the learned court below, having considered all the facts and circumstances, had arrived



at a just conclusion and the same warrants no interference of this court. Mr. Angami further submits that even if there is no eye witness to the occurrence, yet there is no point to disbelieve the evidence of the victim and her evidence alone is sufficient to record conviction and therefore, it is contended to dismiss the appeal.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the appeal and the grounds mentioned therein and also the documents placed on record. Also, I have perused the impugned judgment and order and the record of the learned court below and the case laws, referred by the learned counsel for the appellant.

9. Before directing a discussion into the issues, so raised in this appeal, it would be beneficial to have a glimpse upon the evidence on the record. It is to be mentioned here that in order to bring home the charge against the accused/appellant, the prosecution side has examined as many as seven witnesses.

10. The prosecution side has examined the victim (Smti- 'X') as P.W.4. She had identified the accused in the Court. Her evidence reveals that on 3rd September, 2013, at around 5:30 p.m. while she was taking a bath, then accused Bongpha came near her, and thereafter, he left the place. After sometime, when she was dressing in her bed room, accused Bongpha came there again and he undressed her. She then raised alarm. But, no one came for her rescue. The accused then committed rape upon her despite her resistance. She did not disclose the incident that very night as she was scared, but the next morning, when her mother was about to leave

home, leaving her alone, she disclosed the incident to her. The accused/appellant had cross examined her at length and no material contradiction with her previous statement is brought on record and proved to discredit her version, except, however, eliciting that she did not report the incident to her mother at first as she was scared. Thus, her version that that the accused committed rape upon her, remained un-rebutted and undisputed in cross-examination. The medical evidence also lends support to her evidence.

11. The prosecution side has examined Dr. Sezo, who had examined the victim as P.W.3. His evidence reveals that in the year 2013, he had examined the victim at Civil Hospital Dimapur, having been brought to the Hospital by her parents, relatives and women police. Then he examined her following due procedure and submitted his report Exhibit-P/1, dated 05/09/2013. And he found sign of sexual intercourse. Her hymen was old torn. He had also drawn vaginal swab send the same for obtaining expert opinion.

12. His report, Exhibit-P/1 also consistent with his version. The report indicates that he found mild discharge from her genital, Erthema/Redness of vulva and also found her hymen torn, appears old. He also found her difficulty in walking. Nothing tangible could be elicited in cross examination of this witness, except however that the victim is a mentally retarded person and that he found no sign of struggle and no external injury on her person.

13. His evidence also reveals that he had examined accused Mr. Bongpha also and he found some bruise marks over the body of the accused inflicted by public and submitted his report Exhibit-P/2.

14. P.W.5-Mrs. Wizutliu is the mother of the victim. Her evidence reveals that during the year 2013 her family was in Chumukedima and on 3rd of September, 2013 at around 6 PM, when she came home, her victim daughter was found crying and restless. She had locked the door from inside. She complained to her that she should not come late. She, however, did not disclose what had happened to her. The next morning when she was about to leave home for her work, the victim told her not to go out and narrated the incident to her that on previous day, when she was alone in the house, then Bongpha came there and committed rape upon her. Her evidence also reveals that the accused is their neighbour and her daughter knows him. Then she called her husband, who was in Jalukie, and other relatives. They called the accused Bongpha and out of anger they beat him. The accused, however, did not admit his guilt and then they called the Zeliangrong Union, but the accused kept denying that he raped the victim. Then they handed over the case to the police.

15. Her evidence also reveals that the victim told her that the accused came near her while she was taking a bath and thereafter when she was dressing in her room; the accused pushed her down on the floor and raped her. In her cross-examination it is elicited that the victim is physically challenged. It is also elicited that no one was present when the occurrence took place. Thus, her evidence remained un-rebutted in cross-examination and the same also lends support to the version of the victim in materials particulars.

16. P.W.1 is Ms. Kennyisha, who had lodged the complaint Exhibit-P/3 with the Police Station. Her evidence reveals that she is the cousin



of the victim. And she was informed by the victim that, on 3rd of September, 2013 at around 5.00 PM while she was taking bath in her house, accused Mr. Bongpha came near her and then she shouted and then the accused ran away. But, after sometime the accused came back to her room when she was dressing. The accused then pushed her down and raped her and at that time victim was alone. She did not disclose it to anyone. But, the next day when her mother was about to go to the market for her business, the victim told her mother that she should not be left alone at home. Her mother then made an inquiry as to why she was scared and only then the victim disclosed to her mother that on previous day accused Bongpha raped her. Her evidence also reveals that the victim is a physically challenged and innocent, as such, they believed her version and as the victim is her cousin her mother had called her to discuss the matter and they decided to lodge the complaint.

17. The defence side had cross-examined her, but, failed to elicit anything tangible to discredit her version. Admittedly, she had not seen the occurrence, but, she heard it from the mother of the victim and also from the victim and as she is the cousin of the victim the mother of the victim discussed the matter with her and thereafter, they decided to approach the police and thus, the complaint (Exhibit-P/3) came to be lodged. Her evidence, thus, lends corroboration to the version of the victim and her mother.

18. However, it appears that the occurrence took place on 03.09.2013, but the FIR was lodged on 05.09.2013. Thus, there was delay of two days in lodging the FIR. It also appears that on the very



date of occurrence the victim had not reported the matter to her mother, as she was scared. She had reported the matter to her mother on the next day morning. Then the mother of the victim had reported the same to her husband and the informant and thereafter, on the next day i.e. on 05.03.2013 the FIR was lodged. Thus, the delay in lodging the FIR stands explained though not expressly, but impliedly. It is to be mentioned here that in the case of **State of Punjab v. Gurmit Singh** reported in **1996 (2) SCC 384**, Hon'ble Supreme Court had held that 'delay in lodging FIR is not material when properly explained.' And therefore, the delay of two days failed to spell inveracity to the prosecution version herein this case.

19. P.W.6 -Mrs. Dinla is a relative of the victim and she had also not seen the occurrence. She heard about the occurrence on 4th Sept.2013 and then she went to her village at Chumukedima and then the victim narrated the incident to her that on 3rd of September, 2013 at around 5:30 to 6-P.M, when she was taking a bath, accused Bongpha came near her, but he disappeared. Then after sometime, while the victim was dressing in her bed room, the accused came inside her room and pushed her down and while she was lying on the floor, accused committed rape upon her. The mother of the victim also told her that on 3rd of September, 2013 at around 6 PM, she came home from the market and she found her house locked from inside and the lights were off and the victim was in the house alone. She found the victim not in the usual mood and when asked, the victim did not disclose anything. But, on the next day morning when her mother was about to leave home for her work, the victim told her not to go out leaving her alone and then she disclosed that the previous day,

one of their neighbours of Konyak tribe, who used to go and come by the road through their residence, came and committed rape upon her. Thereafter, the matter was reported to Police. Her evidence also reveals that the victim is handicapped and cannot read or write. The defence side could elicit nothing tangible to discredit her version, except that the victim is a deaf and dumb person and she could not speak properly.

20. PW-7 is ASI Yawao Bolem, who had investigated Diphupar P.S Case No.84/2013. her evidence reveals that on receipt of a complaint on 5th of September, 2013 from one Miss. Kennyishe, the O/C endorsed the case to her for investigation. She then examined the victim and got her and also the accused examined by Doctor and collected the report. She also examined several other witnesses and on completion of investigation she laid charge sheet, Exhibit.P-4, U/S 376 IPC against the accused. It is elicited in her cross-examination that except the victim no other witnesses were there at the place of occurrence. It is also elicited that the victim is a mentally retarded person and that vaginal smear and swab samples, which were sent to FSL for examination, tested negative for spermatozoa. But, upon re-examination she stated that the smear of vaginal swab was collected after expiry of 48 hours.

21. Form the evidence discussed above, it becomes apparent that though the prosecution side has examined as many as seven witnesses to bring home the charge against the accused/appellant, yet, there is no direct evidence, except however the evidence of the victim. P.W.1, 4, 5 and 6 all have heard about the occurrence from the

victim. But, though their evidences were hearsay, yet, they heard it from the victim or from her mother and their evidences lend unstinting support to the version of the victim. The medical evidence also lends support to her version. P.W.3-Dr. Sezo has found mild discharge from her genital, Erthema/Redness of vulva and also found her hymen torn, appears old. He also found her difficulty in walking. These finding also lends ample corroboration to the version of the victim. The evidence of the Doctor also reveals that the victim appears to be mentally retarded. But, he did not mention about the degree of the same.

22. The evidence of other witness also reveals that the victim is a physically challenged person. P.W.5 - the mother and P.W.1- the complainant had deposed to that effect. P.W.6 also stated that the victim is deaf and dumb person and could not speak properly. The I.O. - P.W.7 also testified that the victim is a mentally retarded person.

23. The appellant/accused has mainly challenged the evidence of the victim on the ground that she is a deaf and dumb person and the learned court below has not indicated as to how, without the help of expert it had examined the victim. But, such an issue has never been raised before the learned court below. Though it appears that the victim appears to be a physically challenged person and according to P.W.6 she is deaf and dumb and could not speak properly, yet, the degree of the same not apparent either from the evidence of the Doctor or from the report -Exhibit-P/1, submitted by him.

24. If she was completely deaf and dumb and could not answer properly, the accused/appellant could have very well raised the issue before the learned court below. But, without raising the issue before

the learned court below, the accused/appellant chooses to raise such an issue before this court. Moreover, the record reveals that the accused/appellant had effectively cross-examined her. If the victim was completely deaf and dumb and mentally retarded the question arises as to how he had cross-examined her without the help of expert. Therefore, this court is of the considered opinion that though she is mentally retarded person and could not speak properly, yet she could speak and she understood the questions put to her and given the answers, and that too appears to be rationally.

25. Besides, the medical evidence fully corroborated her version and the evidence of other wither witnesses, although hearsay, lends corroboration to her version and no material contradiction is brought on record and proved to discredit their versions. And therefore, this court is inclined to accept the version of the victim and other prosecution witnesses.

26. Though, the appellant has contended that without corroboration from independent witnesses, the learned court below ought not to have believed the evidence of the victim, yet there seems to be no substance in the same, in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat** reported in (1983) 3 SCC 217, where it has been held that:-

"Corroboration is not the sine-quo-non for a conviction in a rape case. In the Indian setting, 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. Viewing the evidence of the girl or the women who complains of rape or sexual molestation with the aid of Spectacles fitted with

lenses tinged with doubt, disbelief or suspicion is to justify the charge of male chauvinism in a male dominated society. [287 F. 288 C-D] Rameshwar v. The State of Rajasthan, [1952] S.C.R. 377.

27. It has also been held in the said case that :

"On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence. It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World. Obeisance to which has perhaps become a habit presumably on account of the colonial hangover. We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the probabilities-factors does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities-factor' is found to be out of tune.

28. It is a fact that the FSL report has given negative test for human spermatozoa in the vaginal smear of the victim. But, this by itself is not the ground to disbelieve the evidence of the victim. The learned court below has rightly dealt with the issue in its judgment in par No.9 as under: -



"A perusal of Section 375 I.P.C, therefore, would show that one of the most important facets in the definition of rape is penetration into parts of the body of a woman as specified in the said provision. Thus, it becomes necessary to examine the evidence and material on record to come to a finding as to whether there was penetration in the instant case for the offence of rape to be proved against the accused. In order to do that, it would be advantageous to understand the position of law, as laid down by the Hon'ble Supreme Court with regard to the question of penetration in the context of the offence of rape, defined in Section 375 of the Indian Penal Code:

*In the case of **State of U.P. .vs. Babul Nath, reported in 1994 (6) SCC 29**, the Hon'ble Supreme Court has held as follows:-*

"It may here be noticed that Section 375 of the IPC defines rape and the Explanation to Section 375 reads as follows:

Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

From the Explanation reproduced above it is distinctly clear that ingredients which are essential for proving a charge of rape are the accomplishment of the act with force and resistance. To constitute the offence of rape neither Section 375 of IPC nor the Explanation attached thereto require that there should necessarily be complete penetration of the penis into the private part of the victim/prosecutrix. In other words to constitute the offence of rape it is not at all necessary that there should be

complete penetration of the male organ with emission of semen and rupture of hymen. Even partial or slightest penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim would be quite enough for the purpose of Sections 375 and 376 of IPC. That being so it is quite possible to commit legally the offence of rape even without causing any injury to the genitals or leaving any seminal stains. "

*It has been further held by the Hon'ble Supreme Court in the case of **Aman Kumar and another vs. State of Haryana** reported in 2004 (4) SCC 379 as follows:-*

".....The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of the hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The actus reus is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum

with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Section 376 IPC”.

The aforesaid position of law and a perusal of Section 375 of the I.P.C. would show that in order to constitute the offence of rape, it is not at all necessary that there should be complete penetration of the male organ with emission of semen or rupture of hymen. It has been held that even a partial or slightest penetration of the male organ within the labia majora or the vulva without any emission of semen, would be quite enough for the purpose of Sections 375 and 376 of the IPC.

A plain reading of the statement of the victim before the I.O, her account of the incident to her mother, to her cousin, the complainant PW-1, to her aunty PW-6 and her deposition before the Court shows that her testimony remains firm, unchanged and without any contradiction. She has maintained all along from the date of complaint till her examination in Court that on 3rd September 2013 around 5:30 pm she was having a bath, she then went to her room to dress up, the accused entered her room at that time, pushed her to the floor and raped her. She must have undergone great mental trauma and anguish as she cannot speak, sitting in the dark in the house till her mother returned from work in the evening. She was crying when her mother came back but she was most probably in shock and could not tell her mother about the rape that evening. It was only the next morning when her mother was about to leave



home that she panicked at the thought of being left alone again and told her mother that the accused had raped her. It has to be always kept in mind that reporting a case of rape is not easy for the victim or for the family due to the social stigma involved. And therefore the testimony of a prosecutrix/victim should never be treated lightly. In the instant case the testimony of the victim is corroborated by the deposition of PW-3 Dr. Sezowho has proved Exhibit P-1, the medical examination Report dated 5.9.13 which states that there was Erythema/redness of Vulva and evidence of recent sexual intercourse present. PW-3 also proved Exhibit P-2, the medical examination Report of the accused stating that he is capable of performing sexual intercourse. It is also evident that the FSL report of semen smear and vaginal swab tested negative for spermatozoa as the samples were collected only after 48 hours of the incident. In any view of the matter it is already settled law that it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen to prove the offence of rape. Moreover, I do not find any contradictions or any material discrepancies in the version of the victim so as to render her unreliable and unworthy of credit. I find that the victim has been consistent in her version, be it before her mother, the investigating officer, her cousin or her aunty.

I am of the opinion that rape committed by present accused is proved by the cogent and reliable evidence of the victim corroborated by medical evidence as well."

29. Thus, having examined the finding so recorded by the learned court below, this court is of the considered opinion that the learned court below has rightly arrived at the finding, having discussed the evidence of the victim and other witnesses and applying the law laid down by Hon'ble Supreme Court in the decisions referred here in above.

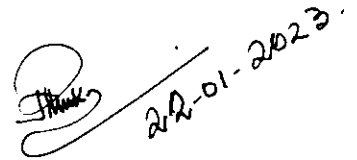
30. I have considered the submission of learned counsel for the appellant and also carefully gone through the case laws referred by learned counsel for the appellant, and I find no force in his submissions and the case laws are restricted to their own facts and no way advance the case of the appellant and therefore, detail discussion of the same is found to be not necessary herein this case.

31. The learned court below, having convicted the appellant, under section 376(2)(i) IPC, sentenced him to suffer rigorous imprisonment for 10 years and also to pay a fine of Rs.500/ with default stipulation. The victim appears to be a mentally challenged person. She was alone in her house at the relevant point of time. Whereas, the appellant is a married person and he had committed the offence in a pre-planned manner y taking the advantage of absence of her family members. Having weighed the aggravating as well as mitigating circumstances, the punishment so handed down, by the learned court below appears to be justified and also commensurate with the nature and gravity of the offence. And on such count it warrants no interference of this court. Also I find that the learned Court below has directed the DDLA to consider the award of compensation under Section 357A Cr.P.C.



from the Victim Compensation Schemes of the Government of Nagaland.

32. In the result, I find the appeal devoid of merit, and accordingly, the same stands dismissed. Send down the record of the learned court below, with a copy of this judgment and order. The parties have to bear their own costs.

A handwritten signature in black ink, followed by a diagonal line and the date "22-01-2023" written in a similar style.

JUDGE

Deka