

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 44 of 2023

1. Sri Uttam Kumar Debbarma, son of Sri Sankar Debbarma of Golaghati, P.O. & P.S. Takarjala, District: Sepahijala, Tripura, Pin-799102.

.....Appellant

-V E R S U S-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate. Mr. S. Bal, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	11.02.2025
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. S. Bal, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State.

[2] This criminal appeal has been filed under Section-374 of the Code of Criminal Procedure is directed against the judgment dated 25.08.2023 and sentence dated 28.08.2023 passed by the learned Additional Sessions Judge, West Tripura, Agartala, Court No.5 [First Track Court] in connection with Case No. ST(T-1) 107 of 2021 convicting the appellant under Sections-376(1) of IPC and sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- and in default, to suffer simple imprisonment for further term of six months.

[3] The case of the prosecution, in a nutshell, is that from the month of June, 2017 the relationship in between complainant and the accused person grown up through facebook and on different occasions

accused person went into the house of complainant and during this period accused person taken away ATM card of complainant without her consent and withdrawn money from her account and on 25.08.2019 night accused person went into the house of complainant and stayed in her house with an excuse that he was ill and at midnight the accused person called the complainant and asked her for medical treatment and while complainant opened door of her room at that time accused person embraced her and committed rape upon her also threatened her that if she disclosed the incident to anybody then he would harm her daughter and on fear she did not lodge any case initially as the accused person is a leader of one political party and accused person may try to hide the evidence against him by killing the complainant and accused person also taken away her ATM card beyond her knowledge.

[4] Thereafter, on 20.12.2019, she lodged the present case before the learned CJM, Agartala, West Tripura against the accused person and on receiving the same was forwarded to OC, BJN P.S. and on receiving the same OC BJN P.S. registered the FIR on 20.12.2019 in connection with BJN P.S. Case No. 2019/BJN 094 against the accused person.

[5] On the basis of FIR, P.S. case was registered against the accused person and on completion of the investigation and finding sufficient materials charge sheet is filed against the accused person under Sections-458/420/379/376 of IPC. On receipt of the charge-sheet, the committal Court took cognizance of the offence under Sections-458/420/379/376 of IPC and finding the offence which are exclusively triable by the Sessions Court, committed the record to the Court of the learned Sessions Judge, West Tripura, Agartala. The learned Court below received the records and transferred it to this Court and as per order dated 17.11.2021 the Court below received the present case for disposal in accordance with law.

[6] Upon hearing of both sides, charges were framed against accused person under Sections-376(1)/379 of IPC. Charge has been framed

in separate sheet of paper and the charge was read over and explained to accused person but he pleaded not guilty and claimed to be tried.

[7] To substantiate the charge, the prosecution has adduced as many as 16(sixteen) witnesses. On the closure of prosecution evidence, the accused-appellant was examined under Section-313 of Cr. P.C. for having his response in respect of the incriminating materials those surfaced in the evidence as adduced by the prosecution, to which he expressed his willingness to adduced evidence and accordingly, defence examination-1 witnessed on his behalf..

[8] Having heard the arguments made by both sides and on perusal of the material evidence on record, the learned Court below has observed as under:

“In the result, I find that, the prosecution has successfully proved the charge framed under Sec.376(1) of IPC against the accused Sri Uttam Kumar Debbarma. Accordingly, accused Sri Uttam Kumar Debbarma is hereby convicted for commission of offence punishable under Sec.376(1) IPC. He is taken into custody.

As the accused person in this trial has been convicted for committing a heinous crime under Section-376(1) of IPC, I am not inclined to proceed in accordance with the provision of probation of offenders Act, 1958.

Hence, convict Sri Uttam Kumar Debbarma shall be heard by this Court on 28.08.2023 at about 12.30 pm on the question of sentence.”

[9] Being aggrieved by and dissatisfied with the judgment and order of conviction passed by the learned Court below, the present appeal has been preferred by the appellant.

[10] Mr. S. Kar Bhowmik, learned counsel appearing for the appellant has submitted that the learned trial Court has committed gross error in passing the impugned judgment and order of conviction. The learned Court below has relied upon the purported witnesses in the present case whose evidences was untrustworthy, improbable and was not legally tenable. The inordinate delay of about four months in lodging FIR has never been explained by the prosecution making the judgment and order of conviction liable to be quashed.

[11] The learned Court below failed to appreciate the fact that PW-3 Smt. Manju Debbarma was around 45 years and the accused was around 46 years old on the alleged date of incident and as such they were very much within the age of consent.

[12] That PW-3 in her examination-in-chief stated that on 25.08.2019 the accused came to her house in the evening to return her vehicle and told that he was feeling ill and he could not go to his house and asked the victim to stay in her house. At that time the victim along with her 18 years old daughter used to stay separately from her husband and her daughter was also there in the house. In her examination-in-chief she further stated that she was having two bed rooms in her house and the victim and her daughter were sleeping in one room and the accused in another bedroom. At midnight the accused was feeling unwell and called the victim and requested her to take him to hospital.

[13] At that time, the accused suddenly embraced the victim and raped her against her will. She in her evidence further stated that she decided to file complaint after giving her daughter to the hostel after 3 months of the alleged incident. She further stated that her Almirah always remains open and her password of ATM card is always written in the front part of her Almirah. The main allegation of the victim was that by stealing her ATM card, the accused had withdrawn Rs 50,000/-. On many occasions she requested the accused to return her ATM card but the accused did not return.

[14] The victim in her cross examination stated that she studied up-to class 12 and at the relevant time she was serving as Animal Resource Development Assistant. What the learned Court below failed to appreciate was that though the alleged incident occurred on 25.08.19, the victim in her cross examination clearly stated that she did not lodge any police complaint though police station is only 4/5 Kms. away from her house. Only on 29.11.2019 after a delay of 3 months 26 days she lodged a Court complaint. Further in her cross examination she stated that the accused used to help

her in her problems and she used to help the accused by giving money. She further admitted in her cross that she never went to any doctor for medical examination after the alleged incident.

[15] PW-3, the victim was also examined under Section-164(5) of Cr.P.C on 06.01.2020 wherein she mainly ventilated her grievance against the accused regarding misuse of her ATM Card. The learned Court below has failed to appreciate that the main grievance of the victim was regarding her ATM card being taken away by the accused and subsequent withdrawal of money and as such, it is by no stretch of imagination is a case of rape and both the victim and the accused were in very cordial terms making the judgment and order of conviction liable to be set aside.

[16] It has been further contended that the learned Court below has failed to appreciate the fact that PW-7 Smti. Chhaydra Rupini, the daughter of the victim in her examination in chief stated the victim is her mother. The incident occurred in the month of August 2019. On that day accused came to their house to return their car and he stayed at night in their house as he was feeling ill. PW-2 stated that on that night she slept with her mother and at night her mother was called by the accused. She stated that she does not know what happened exactly thereafter. On the next day he had taken the ATM card of her mother and on being asked he said that he lost the ATM card.

[17] The learned Court below did not appreciate that PW-7 who was 18 years old and an Engineering student on the alleged date of incident was the best witness for prosecution but did not corroborate the prosecution story of rape in anyway making the judgment and order of conviction liable to be set aside. The learned Court below failed to appreciate that PW-11 Sri Dhruba Ranjan Debnath, ex-colleague of victim in his examination in chief stated that in the year 2019 in the month of December, he along with Jagadish Debbarma used to do electrical work in the house of the victim. He found Uttam Debbarma in that house for two days during his work and

had lunch with Uttam Debbarma. He further stated that Manju Debbarma told him that Uttam Debbarma assured her to marry.

[18] As such, from the above evidence it is quite clear that there was very good and cordial relation between the victim and the accused and only due to some financial differences pertaining to the ATM card the relationship was strained culminating into lodging of the instant case. The learned Court below failed to appreciate that PW-12 Sri Jagadish Debbarma, in his examination-in-chief stated that his wife was working with the victim in Veterinary department Abhoynagar. He in his examination-in-chief stated that in the year 2019 in the month of December, he along with PW-11 Dhruba Debnath went to the house of the victim to do electrical work. He found Uttam Debbarma in that house and also had lunch with Uttam Debbarma.

[19] PW-15 Dr.Surabhi Debbarma who examined the victim in her examination in chief stated that as per her report marked as Exbt-5 no sign of sexual assault was detected. During cross examination she stated in her report she mentioned that whether the victim was put under threat and the victim replied 'no'. As such, had there been any sexual relation between the accused and victim as per definition the same is not 'rape' and just consensual sex, which the learned Court below did not appreciate making the judgment and order of conviction liable to be set aside.

[20] PW-16 SI, the IO of the case in his cross examination has stated that he did not examine any bank personnel neither seized any bank statement of the victim. As such, the story of withdrawal of Rs.50,000/- by the accused using the ATM of victim was also not proved making the judgment and order of conviction bad in law. In support of his case, Mr. Kar Bhowmik, learned senior counsel has placed his reliance on some judgment of the Hon'ble Apex Court viz. (2013) 7 SCC 675 in Deepak Gulati v. State of Haryana, 2022 SCC Online SC 1032 in Shambhu Kharwar v. State of Uttar Pradesh and Another and (2015) 7 SCC 272 in Mohd. Ali Alias Guddu v. State of Uttar Pradesh.

[21] In *Mohd. Ali Alias Guddu v. State of Uttar Pradesh* reported in (2015) 7 SCC 272, the Hon'ble Apex Court has held thus:

“27. Be it clearly stated here delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW-2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt. That apart, the factum that the appellant informed the mother of the victim that he had left the prosecutrix at the door of her house also does not command acceptance. The recovery of the prosecutrix by the brother and her friends also creates a cloud of suspicion.”

“29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non- examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unimpeachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence

remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the accused-appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.”

[22] In ***Shambhu Kharwar v. State of Uttar Pradesh and Another***, reported in ***2022 SCC Online SC 1032***, the Hon’ble Apex Court has held as under:

“12. In the present case, the issue which had to be addressed by the High Court was whether, assuming all the allegations in the charge-sheet are correct as they stand, an offence punishable under Section 376 IPC was made out. Admittedly, the appellant and the second respondent were in a consensual relationship from 2013 until December 2017. They are both educated adults. The second respondent, during the course of this period, got married on 12 June 2014 to someone else. The marriage ended in a decree of divorce by mutual consent on 17 September 2017. The allegations of the second respondent indicate that her relationship with the appellant continued prior to her marriage, during the subsistence of the marriage and after the grant of divorce by mutual consent.

13. In this backdrop and taking the allegations in the complaint as they stand, it is impossible to find in the FIR or in the charge-sheet, the essential ingredients of an offence under Section 376 IPC. The crucial issue which is to be considered is whether the allegations indicate that the appellant had given a promise to the second respondent to marry which at the inception was false and on the basis of which the second respondent was induced into a sexual relationship. Taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 375 IPC are absent. The relationship between the parties was purely of a consensual nature. The relationship, as noted above, was in existence prior to the marriage of the second respondent and continued to subsist during the term of the marriage and after the second respondent was granted a divorce by mutual consent.

15. We, accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 5 October 2018 in application u/s 482 No 33999 of 2018. The application under Section 482 of CrPC shall accordingly stand allowed. The Case Crime No 11 of 2018 registered at Police Station Rasra, District Ballia, charge-sheet dated 23 April 2018 in the aforementioned case and the order dated 24 May 2018 in Criminal Case No 785 of 2018 in the Court of the Addl. Chief Judicial Magistrate (First), Ballia taking cognizance of the charge-sheet shall accordingly stand quashed.”

[23] On the other hand, Mr. R. Saha, learned Addl. PP has submitted that the evidence of prosecutrix remain intact during cross examination on the point of physical assault in the form of rape and the incident occurred in the bed room of prosecutrix in the dead of night and

accordingly prosecutrix is the sole witness of the whole incident. He further submitted that PW.7 is the daughter of the prosecutrix deposed that on the dead of night on the day of incident her mother was called by the accused person and thereafter her mother went into the room where accused person stayed. He also argued that almost all the witnesses stated before the court that accused had visiting term in the house of victim described the incident occurred on 25.08.2019. When it came before the court that prosecutrix did not give her consent then Section-114A of Indian Evidence Act could attract.

[24] During examination under Section-313 of Cr.P.C. accused did not offer any explanation on the evidence of PW.3 though as DW.1 accused has taken plea that he has been falsely implicated in the instant case as the victim asked Rs.5,00,000/- from him and suddenly she lodged the instant case. He further argued that during the cross examination defence did not lead any question at any point of time regarding monitory help seeking by prosecutrix and all of a sudden as DW-1 placed this fact before the learned Court below.

[25] In support of his case, he has placed reliance on a decision of the Hon'ble Apex Court in **Phool Singh v. State of Madhya Pradesh**, reported in **(2022) 2 SCC 74**, wherein, the Hon'ble Apex Court has observed as under:

“8. In Ganesan , this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality. In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paragraphs 10.1 to 10.3, it is observed and held as under:

10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191], it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and,

therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under:

‘16. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.’

10. In *State of U.P. v. Pappu* [*State of U.P. v. Pappu*, (2005) 3 SCC 594] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

‘12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.’

11. In *State of Punjab v. Gurmit Singh* [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases

with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

‘8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

* * * * *

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.’

12. In *State of Orissa v. Thakara Besra* [*State of Orissa v. Thakara Besra*, (2002) 9 SCC 86], this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may

not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh* [*State of H.P. v. Raghubir Singh*, (1993) 2 SCC 622], this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.* [*Wahid Khan v. State of M.P.*, (2010) 2 SCC 9] placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan* [*Rameshwar v. State of Rajasthan*].

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

10.2. In *Krishan Kumar Malik v. State of Haryana* [*Krishan Kumar Malik v. State of Haryana*, (2011) 7 SCC 130], it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in para 22, it is observed and held as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and caliber, whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co- relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more

precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

[26] Before we proceed to deal with the merits of the case and decide the points taken up, it would be apposite to have a deep look at the material evidence of certain relevant prosecution witnesses for better appreciation of the rival contentions and to decide the dispute involved in the case.

[27] The only point which falls for consideration before this Court is the conviction is made under Section-376(1) for 10 years and a fine of Rs.50,000/- in default SI for six months. The main case runs around the evidence of PW-3, the victim herein who places her reliance upon the presence of her daughter PW-7 and make and makes complaint against the accused person of rape and also taking away of ATM card without her permission and withdrawing some cash. It is not for this Court to go into the other issue of taking away ATM card and withdrawing the money since the case only runs around the conviction made under Section-376(1) coupled with the evidence of PW-3 and PW-7, the daughter who according to the PW-3 complainant is the eye witness of the incident and by fair reading of 161 statement of PW-3 and the compliant made therein, the learned Court below has only relied upon the evidence of PW-3 and the same is not substantiated and supported by the evidence of PW-3 except making a bold statement with a delay of so many months and the daughter, PW-7 who was present at home did not speak anything about the allegation of rape by the accused person.

[28] Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the

testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach.

[29] In our considered opinion, the “sterling witness” should be of a very high quality and caliber, whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court which is totally missing in the present case.

[30] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspensions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[31] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed. Accordingly, the order of conviction and sentence dated 25.08.2023 and 28.08.2023 passed by the learned Additional Sessions Judge, West Tripura, Agartala, Court No.5 [First Track Court] in connection with Case No. ST (T-1) 107 of 2021 stands set aside. The convict-appellant is discharged from his bail bond and accordingly, his surety is also discharged. The appellant is acquitted from the charges leveled against him.

[32] With the above observations and directions, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash

ANJAN GHOSH
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