

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.(J) 29 of 2015

Sri Ananda Kirti Jamatia
S/o Shri Ananda Kishore Jamatia
of Vill-Habukma, P.S. Killa, Udaipur,
District-Gomati, Tripura.

-----Appellant(s)

Versus

State of Tripura

-----Respondent(s)

Crl.A.(J) 60 of 2015

Sri Shib Sankar Jamatia
S/o Shri Rati Ranjan Jamatia
of Vill-Habukma Kami, P.S. Killa, Udaipur,
District-Gomati, Tripura.

-----Appellant(s)

Versus

State of Tripura

-----Respondent(s)

For Appellant(s)	:Mr. Sankar Bhattacharjee, Adv. Mr. Soumendu Roy, Adv.
For Respondent(s)	:Mr. B Choudhury, PP.
Date of hearing	:27.06.2018.
Date of pronouncement	: 25.09.2018.
Whether fit for reporting	: YES

**HON'BLE THE CHIEF JUSTICE MR. AJAY RASTOGI
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

Lodh,J.

This appeal is directed against the judgment and order of sentence dated 29.05.2015 passed by the learned Sessions Judge, Gomati District, Udaipur in ST 27(ST/U) of 2014 whereby and whereunder the appellant was convicted and sentenced to undergo RI for 12 years and to pay a fine of

Rs.20,000/-, i.d. to suffer SI for six months under Section 376(1) of IPC.

2. The prosecution case in brief is as under:

One Sambhu Kr. Jamatia (PW4), father of the prosecutrix 'Puspa' (name withheld) lodged a complaint on 22.01.2014 to the Officer-in-charge of the Killa PS, Gomati District stating inter alia that on last 13th January, 2014, at about 9 O'Clock night on the occasion of Poush Sankranti his younger daughter 'X' (name withheld) (PW5) aged about 16+ years together with some of her friends had visited the house of Malindra Jamatia who is a resident of Habukmabari and in that meanwhile, one Shib Kr. Jamatia, accused-appellant No.1 entering into the said house had attacked the friends and he had taken away his daughter forcibly. The said accused took his daughter to an abandoned place and after that he along with another Ananda Kirti Jamatia, accused-appellant No.2 had raped 'Puspa' forcibly and thereafter had set her free. Later on, knowing the incident he had appeared before the village chakdiri (Head of village) for proper conciliation. But even after making conciliation by the village chakdiri for two times no proper conciliation was found. As such being helpless, he prayed before the concerned police authority for appropriate remedy in accordance with law.

3. On receipt of the said written complaint/ejahaar, the OC Killa P.S. registered an FIR being 02/2014 dated 22.01.2014 under Section 376(d) of the IPC (Exhibit-P 1/1). The Officer-in-charge Bipin Debbarma (PW9) himself took up the investigation and he visited the place of occurrence, prepared the hand sketch map, seized school certificate of the victim prosecutrix by preparing seizure list (Exhibit-2 series). He also recorded the statements of witnesses and arrested the two accused persons, arranged medical examination of the victim girl and also collected the medical report accordingly. The said investigating officer also ensured the recording of the statement of the victim under Section 164(5) of the CrPC. After that, on his transfer, the investigation was handed over to one Manik Lal Nandi (PW10) who after taking up the investigation recorded the statement of Dr. Manik Jamatia (PW3) and after completion of investigation, being satisfied with the prima facie evidence against the accused appellants, submitted charge-sheet against both of them under Section 376(d)/120B of the IPC.

4. After being committed, the learned Sessions Judge on perusal of the police report and other materials on record found prima-facie case against both the accused persons and accordingly charge was framed against them under Sections 376(d) of IPC. But according to the learned trial court no case of criminal conspiracy under Section 120B of the IPC was made

out against them. Accordingly, the accused were absolved from that charge.

5. The charge framed by the learned trial judge is reproduced below in verbatim:

"I, Sri A.Pal, Sessions Judge, South Tripura, Udaipur, do hereby charge you:-

Sri Shib Sankar Jamatia

Sri Ananda Kirti Jamatia

As follows:-

That on 14.01.2014 at about 0300 hours to 0330 hours both of you at Habukma Kami in the rubber plantation to the nearby the house of Sri Malindra Jamatia and in the house of Kunja Dayal Jamatia under P.S.-Killa, Dist-Gomati Tripura, committed gang rape upon Miss. Ranjita Rani Jamatia and you thereby committed an offence punishable under Section 376-D of I.P.C. and within my cognizance.

And I hereby direct that you be tried on the said charges by this court."

In response to the above noted charge, the accused persons pleaded not guilty and claimed to be tried.

6. Learned Sessions Judge after going through the records decided to determine the case on the following points:

- 1. Whether the accused Shib Sankar Jamatia and Ananda Kirti Jamatia in furtherance of their common object committed gang rape of victim 'Puspa'?**
- 2. Whether the accused persons with the common object committed the offence punishable under Section 376(D) of IPC?**

7. As many as 5 witnesses were produced by the prosecution to substantiate the charge. The prosecution also exhibited some documents which are as follows:

- i) Exbt.P-2/1 – Signature of PW-1 in the seizure list
- ii) Exbt. P/3 – Medical report of PW3
- iii) Exbt.P-4 series – Medical checkup report prepared by PW-4
- iv) Exbt.P-1/1 signature of PW-4 in the FIR
- v) Exbt.P-4/1 – Signature of PW-5 in the 164(5) statement.
- vi) Exbt.P-2 series – Signature of PW-9 in the seizure list. (school certificate)
- vii) Exbtr.P-2 series – Signature of PW-9 in the seizure list. (wearing apparels).

8. After conclusion of examination of witnesses both the accused persons were examined under Section 313 CrPC when all the incriminating evidence and materials of the prosecution were placed and they answered that the allegations leveled against them were false. They denied adducing any evidence on their behalf.

9. On perusal of the evidence and materials on record, learned Sessions Judge sentenced both the accused persons to suffer RI for 12 years along with fine, as stated above.

10. Heard Mr. S Bhattacharjee, learned counsel appearing for the appellants as well as Mr. Choudhury, learned PP appearing for the State respondent.

11. Mr. Bhattacharjee, learned counsel appearing for the appellant inviting our attention to the FIR would contend that though the alleged incident occurred on 13.01.2014 at 9 O'Clock night, the father of the victim prosecutrix had lodged the FIR by way of submitting written complaint/ejahaar on 22.01.2014, i.e. after a period of 9 days and there is no reasonable explanation given by the maker of the FIR for causing such delay.

12. According to Mr. Bhattacharjee, the accused appellants have been falsely implicated in the case and the whole prosecution story is concocted, fabricated and an afterthought. He submits that there are serious contradictions in the statements who deposed as witnesses before the learned trial judge.

13. In view of the submissions of the learned counsel for the appellant, we have critically and meticulously examined the statements made by the witnesses before the learned trial court.

14. PW1, Md. Sahajahan Mia is a constable who is the witness of seizure. He identified his signature in the school certificate of 'X' (Exbt.P-2/1).

15. PW2, Bir Mohan Jamatia is the uncle (elder brother of father) of the prosecutrix. He has deposed that he came to know about the alleged fact of rape of 'Puspa' committed by Shib Sankar Jamatia and Ananda Kirti Jamatia from Shambu

Kr. Jamatia. The matter was also informed to the 'Choudhury' of the village but the dispute could not be settled.

16. PW3, Manik Jamatia is the Doctor who examined the victim girl on 22.01.2014 at 10.30 pm and the alleged incident is of 13.01.2014 at 9 O'clock. On examination he found simple injury, bruise on the right thigh, hymen torn, multiple scratch mark found. Finally, he opined that there was symptom consistent with recent sexual assault. He also exhibited the report (Exbt.P-4 series).

17. PW4, Sambhu Kr. Jamatia is a vital witness being the father of the prosecutrix and the informant who lodged the complaint/ejahaar. In his deposition he has stated that both the accused appellants kidnapped his daughter and raped her. His daughter was found on the next day by the side of his house when she could not move and on being asked the prosecutrix told him that the accused appellants forcibly took her away and raped her. He has further deposed that he went to Choudhury to mediate and tried to deliver justice but failed. This witness has further stated that he went to another Choudhury for justice but it also yielded no result and having found no other alternative he filed the instant case on 22.01.2014.

18. In his cross-examination, he has stated that he had not seen his daughter to go to the house of Gobindabhakti Jamatia. He has stated that his daughter was found in the house of Pahati on the next day morning. He has further

deposed that in his written ejahar he did not name the Choudhury to whom he approached for justice. He denied the suggestion that he did not pray for justice to Choudhury. He has stated that he had no knowledge to seizure of school certificate of his daughter.

19. On analyzing the statement of PW4 it is revealed that in his examination in chief he has stated that on the next day of the occurrence of the incident, his daughter was found by the side of his house. In his cross-examination he has contradicted himself when he has stated that his daughter was found on the next day morning in house of one Pahati. So, there is a serious contradiction in the cross-examination itself.

20. PW5, is the prosecutrix. She has stated that on the last Poush Sankranti, she along with Ajit Jamatia, Riten Jamatia, Mangaldebi Jamatia, Seuli Jamatia, Puspalexmi Jamatia when to the house of one Gobindabhakti Jamatia and at about 3 a.m. when they were sitting in that house performing Sankranti, at that time Shib Sankar entered into the room breaking the door and slapped Puspalexmi Jamatia when she fled away. Shibsankar then threatened her and asked her to say whether she wanted to die or live and after saying so she was forcibly taken away to the jungle. She has further stated that Ananda Kirti Jamatia came to the jungle and both of them raped her one after another. She has further deposed that after the rape was committed they took her back

to the house of Puspalexmi Jamatia where Ananda Kirti Jamatia again raped her. Then both of them left the house. Both the accused were known to her as they lived in the same village. She has categorically stated that on the next morning she told the fact to her father and others.

21. In her cross-examination, she has stated that the house of Ajit and Riten are at Totabari and they had friendly relation with others. She has further stated that all male members of the house of Gobindabhakti went to Mela.

22. At this juncture, it is necessary to take note of her statement under Section 164(5) of the CrPC which she made before the learned Magistrate. In her statement, she has stated that when she regained her sense she found herself naked and also found Ananda Kirti Jamatia just beside her in naked condition. She tried to shout but Anada Kriti Jamatia raped her. While deposing before the trial court, this statement of the prosecutrix is not found.

23. From her statement, another important contradiction has come to light, that PW4 has stated in his examination-in-chief that the prosecutrix was found by the side of his house when she could not even move. The question naturally arises that if the prosecutrix could not move how she came to the house of her father and who had kept her by the side of the house of PW4. This casts a serious suspicion in the

mind of the court about the genuinity of the evidence of both PW4 and PW5 and it appears that the story is concocted and afterthought.

24. PW6, Sarojini Jamatia has stated that the victim 'Puspa' is her sister-in-law and that it was Shibsankar who left the prosecutrix in naked condition in the house of Puspalexmi.

25. During cross-examination, his attention was drawn to his statement under Section 161 CrPC when the witness did not find any such statement and the learned court has kept the statement for confirmation by the IO.

26. PW8, Ajit Jamatia has told a different story. He has stated that he along with her friends taking food in the house of Santi Jamatia when Shibsankar along with the prosecutrix went there and had beaten him. Then Shibsankar went away with the said girl.

27. PW9, S.I. Bipin Debbarma is the first IO who has recorded the FIR and seized the documents and wearing apparels and arranged for scientific examination of those apparels as well as the medical examination of the prosecutrix.

During his cross-examination, he has stated that Sambhu Kumar Jamatia, who is the maker of the FIR, did not tell him that his daughter told him that she was taken away forcibly. The IO has further stated that Sarojini Jamatia (PW6)

did not tell him that victim told her that she was left at the house of Puspalexmi Jamatia in a naked condition.

28. From his statement, it is amply clear that he did not support the statement which was kept for confirmation by the IO that Shibsankar left the victim in naked condition at the house of Puspalexmi which has led this Court not to rely upon the evidence of PW6 and even the story of the prosecutrix.

29. PW11, Gobindabhakti Jamatia has stated that on 13.01.2014 at the time of occurrence he was in the mela and the prosecutrix along with Pushpalaxmi, Litan and Ajit were in his house. On his return from Mela none was seen present in his house. He has further stated that on the next day morning, 'Puspa' told her that she was raped.

30. PW12, Sheuli Jamatia has also deposed in the same tune.

31. PW14, Puspalexmi @ Kuhaity Jamatia is the most vital witness in this case because the prosecutrix herself in her evidence has stated that on the occasion of Sankranti Mela she was all along with Pushpalaxmi in the night when Shib Sankar entered and slapped her. In her deposition, she has not stated that she was slapped by Shibshankar. On the next day morning, both PW14, Pushpalaxmi and the victim prosecutrix talked to each other when she told that she was raped. From

this, it is evident that she also did not support the statement of the prosecutrix that she was slapped by Shibsankar.

32. PW15, Manik Ch. Das is the Headmaster of the school who in consultation with the admission register has issued the certificate stating that the date of birth of the prosecutrix as per record is on 06.09.1994. According to this court, the said certificate has no evidentiary value as it has not been formally proved in accordance with Section 63 and Section 68 of the Evidence Act.

33. In this respect, we may gainfully refer to a decision in **Ravinder Singh Gorkhi Vs. State of UP**, reported in **(2006) 5 SCC 584** wherein the Apex Court at para-38 and 39 has held, as under:

"38. The age of a person as recorded in the school register or otherwise may be used for various purposes; namely, for obtaining admission; for obtaining an appointment; for contesting election; registration of marriage; obtaining a separate unit under the ceiling laws; and even for the purpose of litigating before a civil forum, e.g. necessity of being represented in a court of law by a guardian or where a suit is filed on the ground that the plaintiff being a minor he was not appropriately represented therein or any transaction made on his behalf was void as he was minor. A court of law for the purpose of determining the age of a party to the lis, having regard to the provisions of Section 35 of the Evidence Act will have to apply the same standard. No different standard can be applied in case of an accused as in a case of abduction or rape, or similar offence where the victim or the prosecutrix although might have consented with the accused, if on the basis of the entries made in the register maintained by the school, a judgment of conviction is recorded, the accused would be deprived of his constitutional right under

Article 21 of the Constitution, as in that case the accused may unjustly be convicted.

39. We are, therefore, of the opinion that that until the age of a person is required to be determined in a manner laid down under a statute, different standard of proof should not be adopted. It is no doubt true that the court must strike a balance. In case of a dispute, the court may appreciate the evidence having regard to the facts and circumstance of the case. It would be a duty of the court of law to accord the benefit to a juvenile, provided he is one. To give the same benefit to a person who in fact is not a juvenile may cause injustice to the victim. In this case, the appellant had never been serious in projecting his plea that he on the date of commission of offence was a minor. He made such statement for the first time while he was examined under Section 313 of the Code of Criminal Procedure."

34. In the decision of **Alamelu Vs. State, represented by Inspector of Police**, reported in **(2011) 2 SCC 385**, the Apex Court has held that the date of birth mentioned in the transfer certificate would have no evidentiary value unless the person who made the entry or who wrote the date of birth is examined. We may refer to para 40 of the said decision [scc.P.395, para 40] which reads as under:

"40. Undoubtedly, the transfer certificate, Ex.P16 indicates that the girl's date of birth was 15-6-1977. Therefore, even according to the aforesaid certificate, she would be above 16 years of age (16 years 1 month and 16 days) on the date of the alleged incident, i.e., 31-7-1993. The transfer certificate has been issued by a government school and has been duly signed by the Headmaster. Therefore, it would be admissible in evidence under Section 35 of the Evidence Act, 1872. However, the admissibility of such a document would be of not much evidentiary value to prove the age of the girl in the absence of the material on the basis of which the age was recorded. The date of birth mentioned in the transfer certificate would have no evidentiary value unless the person, who made the entry or who gave the date of birth is examined."

35. From the analysis of the evidence and materials on record it is revealed that the prosecution has failed to show any cogent reason about the delay in lodging the FIR to the police station. The maker of the complaint/FIR has stated that he has approached the Choudhury and had tried to persuade them to get justice but the prosecution did not feel it necessary to examine those persons to substantiate this statement of PW4 which leads us to draw an adverse inference in the story of PW4 whether he had actually approached the Choudhury or not.

36. The Doctor (PW3) examined the prosecutrix medically on 22.01.2014 at 10.30 p.m. In his observation, at Column 9 "description of the incident", he has stated that the *"accused person allegedly taken the victim to a nearby pond. The victim was drunk and disoriented. Two persons allegedly assaulted at night of 13.01.2014. After the incident she was fell into pond, the accused persons then removed her clothes from her. She was threatened not to inform others. Then the case is brought by police (Killa PS) on 22.01.2014."*

37. It is found that the victim has washed and changed her clothes. He found external genitalia as follows:

- i) Labia Majora – non-specific
- ii) Labia minora – non-specific
- iii) Fourchette – intact
- iv) Vulva – non-specific

v) Perineum – non-specific

38. He found hymen torn at multiple site. He found the vagina and cervix as oedematous and tender. The doctor did not find any bleeding, no tear and no discharge. In his clinical opinion at column 15 he has found that there is consistent with recent sexual intercourse assault. He found two numbers of scar marks on right lateral canthus.

39. Under the medical jurisprudence, in a case of rape and if it was against her will, then, there must be marks of violence at labia majora and labia minora but no such significant injury marks is found in the report of the doctor which is marked as Exhibit-P3. More so, the prosecutrix has stated that she was first raped in the jungle by Shib Sankar Jamatia and then at the house of Pushpalaxmi Jamatia(PW14) in the morning by Ananda Kirti Jamatia. In the doctor's report, it is found that the victim was taken to a nearby pond by the accused persons when she was drunk and disoriented and she was allegedly assaulted at night of 13.01.2014. After the incident, she was fallen into pond and after that the accused persons removed her clothes. After a minute observation of the statement of the victim prosecutrix this Court is of the view that there are substantial inconsistencies in the statement of the victim.

40. It was the night of Makar Sankranti mela (festival) while all friends were gathered at the house of Gobindabhakti Jamatia but they left the house on the night and only the victim prosecutrix and PW14 were present at the house of Gobindabhakti Jamatia. The prosecution case is that at that time Shib Sankar Jamatia entered into the room and threatened and slapped PW14 asked her to go out of the room. It is very unnatural that PW14 did not divulge the incident to anyone when she was ousted from the house of Gobindabhakti Jamatia and it raises a serious suspicion about the truthfulness of the prosecution case. This Court finds material discrepancies which go to the root of the case and the learned trial court has simply brushed them aside without giving any satisfactory explanation for not considering the same in correct perspective.

41. PW5 in her examination, in course of the trial has deposed that she along with Ajit Jamatia, Riten Jamatia, Mangal Debi Jamatia, Seuli Jamatia, Pushpalaxmi Jamatia went to the house of Gobindabhakti Jamatia and at about 3.00 am when they were sitting in that house performing 'Sankranti', at that time Shib Sankar Jamatia entered into the room breaking the door and slapped Pushpalaxmi Jamatia when she fled away. The PW5 was threatened by Shib Sankar and forcefully taken to the jungle where she was raped.

42. PW6, Smt. Sarojini Jamatia, the sister of the prosecutrix, in course of her deposition has stated that she had not seen Ranjita and others to go to the house of Gobindabhakti. Further the attention being drawn to the statement she made in course of trial that Shibsankar left the victim in naked condition in the house of Pushpalaxmi and that her sister-victim told her all the facts in the afternoon are found absent which are confirmed by the Investigating Officer also later on in his examination. There is also no substance in the statement of PW8, Ajit Jamatia, one of the companions of the prosecutrix in the house of Gobindabhakti. Further, though the prosecutrix has deposed that Sheuli Jamatia, PW12 and Mangaldebi Jamatia, PW13 were with her at the house of Gobindabhakti and they said that they went to 'mela', which statement was confirmed by Gobindabhakti, PW11. They further deposed that on return from 'mela' they found none in the house. This also raises a serious suspicion in the mind of the court about the truthfulness of the prosecution story. It is not that only the victim prosecutrix and Pushpalaxmi (PW14) were present there but there were other persons and none of them have stated anything immediately after the abduction of the victim prosecutrix. Even, the father, according to whom, the victim prosecutrix was found nearby his house on the next morning, he also did not report any complaint to the police station and he has stated that he tried to conciliate the matter through the village Choudhurys, but, this story also remained

unproved by the prosecution and after nine days the father of the prosecutrix has lodged the FIR.

43. The learned trial judge adverted that the sole evidence of the prosecutrix can be the basis of conviction even without corroboration and rape is an extremely humiliating experience for a woman and if she is victim of sex crime she would not blame anybody but the real culprit.

44. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix a conviction can be passed, but it must be brought that in that case, the evidence of the prosecutrix must be unimpeachable and beyond reproach. In the case at hand, the learned trial judge persuaded himself away without appreciating the acceptability and reliability of the testimony of the witnesses.

45. A person is held to be guilty of rape when there is sexual intercourse without the consent of the woman. Even if this Court believes that there was sexual intercourse, it is difficult to persuade us to come to a definite conclusion that there was sexual intercourse without the consent of the prosecutrix. The testimony of the prosecutrix appears to be unnatural. If we reiterate her statement it is found that once she stated that she was forcibly taken to jungle where she was raped and after that she said that in the morning she was again raped by Ananda Kirti Jamatia when she found herself

naked. The said testimony does not satisfy this court that during that long ours it was not noticed by anybody, even though, the festival continued from night till late hours in the morning. Further, it is revealed from the testimony of the prosecutrix that she has other friends also present at the house of Gobindabhakti Jamatia and only Pushpalaxmi (PW14) alleged fled away on being threatened by the accused persons. It seems to be unnatural again that neither any of her companions nor Pushpalaxmi could not inform anyone that the prosecutrix was forcibly taken away by the accused-appellants.

46. The Apex Court in ***Bharat vs. State of M.P., (2003) 3 SCC 106*** held that *the failure of the accused to offer any explanation in his statement under Section 313 of the CrPC alone was not sufficient to establish the charge against the accused.*

47. In the facts of the present case, the learned trial judge committed an error in holding that **“any statement of rape is extremely humiliating experience for a woman and only she is the victim of sex crime she would not blame anybody but the real culprit”**.

48. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large and divides vague conjectures

from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion did not take place of legal proof. The large distance between "may be" true and "must be" true must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution. Before the accused is condemned as a convict and the basic and clean rule must be applied. In such cases, while keeping in mind the distance between "may be" true and "must be" true the court must maintain vital distance between mere conjectures and their conclusions to be arrived at. On the touchstone of dispassionate judicial scrutiny based upon complete and comprehensive appreciation of all features of the case, as well the quality and credibility of the evidence brought on record.

49. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary trivial or a grossly probable doubt, but a fair doubt that is based upon reason and common sense. [See ***Hanumant Govind Nargundkar & Anr, v. State of Madhya Pradesh, AIR 1952 SC 343, State through C.B.I v. Mahender Singh Dahiya, AIR 2011 SC 1017 and Ramesh Harijan v. State of U.P., AIR 2012 SC 1979***].

50. In ***Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622***, the Apex Court has held

that, “the facts so established should be consistent only with the hypothesis of the guilt of the accused. There should not be explainable on any other hypothesis except that the accused is guilty. The circumstances should be of a conclusive nature and tendency. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”

51. The story as discussed above, appears to be improbable to believe and however, neither the prosecutrix nor any of her parents has lodged any complaint either immediately or even within a reasonable period from the day of occurrence to the jurisdictional police station. The complaint was indisputably lodged after a lapse of 9 days by the father of the prosecutrix.

52. In this regard, it is pertinent to mention the judgment of the Apex Court in **Raju Vs. State of Madhya Pradesh, (2008) 15 SCC 133**, the relevant paragraph of which is extracted hereunder for better appreciation:

“12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act

by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."

53. In the case in hand, the medical evidence, where no mark of injury is found in the labia majora and the labia minora, Doctor's finding that the prosecutrix is consistent with recent sexual intercourse does not in any manner can be said to be indicative of rape (sexual intercourse without consent), particularly, when she was brought to hospital after 9 days, the delay in lodging the FIR, the non-examination of the companions of the victim prosecutrix, the inconsistent testimony of the prosecutrix, the unproved fact of the information to the village Choudhury by father of the prosecutrix and other associated circumstances leave a mark of doubt to treat the testimony of the prosecutrix natural and trustworthy to inspire confidence. It can be with certitude that the evidence of the prosecutrix and her father as well as that of PW14 are not of such quality which could be placed reliance upon.

54. It is the well-entrenched principle of law that the testimony of a prosecutrix can be accepted without any corroboration, without material particulars, but, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unreproachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony.

55. 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 furtherance thereof, there are irreconcilable inconsistencies in the prosecution case. 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.

56. Resultantly, the appeals are allowed, judgment of conviction and order of sentence are set aside and the appellants shall be released forthwith, if not wanted in connection with any other case.

Send down the LCRs.

ARINDAM LODH, J.

AJAY RASTOGI, CJ.