IN THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appellate Jurisdiction)

Crl. A. No. 30 of 2017

Durga Bahadur Gurung
R/o Sokpay Sumshi,
South Sikkim,
A/p Central Prison,
Rongyek, East Sikkim

... Appellant

Versus

State of Sikkim.

... Respondent

BEFORE

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CJ.
HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, J.

For the appellant : Mr. U.P Sharma, Advocate (Legal Aid Counsel)

For the respondent: Mr. S.K. Chettri, Addl. Public Prosecutor, Sikkim

Date of hearing : 24.10.2020

Date of judgment : 06.11.2020

JUDGMENT

(*Arup Kumar Goswami, CJ*)

This appeal is directed against the judgment and order dated 25.09.2017 passed by the learned Sessions Judge (POCSO Act), South Sikkim at Namchi in Sessions Trial (POCSO) Case No. 10 of 2015 convicting the appellant under Section 376(2)(f)/372(2)(i)/376(2)(n) of the Indian Penal Code, 1860 (for short, the IPC) and sentencing him to undergo RI of 15 years for the offence committed under Section 376(2)(f) IPC, to suffer RI for 15 years for the offence committed under Section 376(2)(i) and to suffer RI for 15 years for the offence committed under Section 376(2)(n), providing that the sentences imposed will run concurrently. The learned Sessions Judge by the aforesaid impugned judgment acquitted the accused of the offence under Section 5(l)/ 5(j)(ii)/5(n) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012(for short, the POCSO Act).

2. The learned trial Court, relying on Exhibit-3, the birth certificate of the victim, had held that the date of birth of the victim girl is 02.07.1994. The reasoning assigned for acquitting the appellant of the offence under POCSO Act was that the victim girl had attained the age of 18 years in the month of July 2012 whereas the POCSO Act came into force on 14.11.2012.It was also observed that criminal law cannot be applied with retrospective effect.

3. In this case, the father is convicted for committing rape of his own daughter, resulting in birth of a child.

4. The brother of the appellant, Smt. P. Gurung (Ward Panchayat), Ram Kumar Kothwal (District Panchayat) , Navraj Gurung and Ganga Maya Gurung lodged a first information report(F.I.R) before the In-charge, Lingmoo Out Post alleging that the appellant had raped his daughter and had hidden about the fact of birth of a baby. Based on the aforesaid F.I.R (Exhibit-6), Ravangla P.S. Case No. 8 of 2015 under Section 376 IPC was registered against the accused and investigation had commenced. On conclusion of investigation, finding a prima facie case, the Investigating Officer (I.O) filed charge-sheet under Section 376 (2) (f) (k) (h) IPC read with Section 4 of the POCSO Act against the accused.

5. Initially charges under Section 5 (l)/5 (n) of POCSO Act and under Section 376 (2) IPC were framed on 22.08.2015 and charges being explained, the accused pleaded not guilty and claimed trial. However, subsequently, learned Sessions Judge (POCSO Act), by an order dated 10.06.2016 framed charges under Section 5 (l)/5(j)(ii)/5(n) of the POCSO Act/376(2)(f)/376(2)(i) and 376(2)(n) IPC. Charges being explained, the accused pleaded not guilty and claimed trial. By then some witnesses were already examined. The learned trial Court, by the order dated 10.06.2016, decided to hold a *de novo* trial.

6. During trial, while the prosecution examined 17 witnesses, defence adduced no evidence. The statement of the accused was recorded under Section 313 Cr. P.C. where, apart from taking a plea of denial, he stated that

the Ward Panchayat was not in good terms with him and as such she had made a false case against him .He had also stated that his daughter had told that the baby was that of one Prem Lal Mangar.

7. Mr. U.P. Sharma, learned Legal Aid Counsel submits that the learned trial Court had committed manifest error of law in convicting the appellant as the prosecution miserably failed to prove the guilt of the accused beyond reasonable doubt. Drawing attention of the Court to the evidence of PW-4, PW- 7, PW-11 and PW-12, it is submitted by him that the victim had initially told them that she had been impregnated by one Prem Lal Manger and yet the IO, in spite of being aware of the aforesaid fact, did not cause any investigation in that regard and therefore, the entire prosecution case is liable to be thrown overboard. The learned counsel submits that evidence of PW-1 is not trustworthy and therefore, conviction of the appellant cannot be based on the testimony of PW-1. He has further submitted that PW-11 and PW-12 had deposed that the victim had claimed that the new born baby was born out of a relationship between her and her father and if that be so, offence of rape cannot be attracted in the instant case. The learned counsel submits that no reliance can be placed on Exhibit-24, it being a duplicate copy of the DNA Report prepared by one Dr. Subankar Nath, Deputy Director –cum- Assistant Chemical Examiner, Government of Tripura, Tripura State Forensic Laboratory. It is contended that Dr. Subankar Nath was not examined and no explanation was given as to why the original of Exhibit-24 could not be produced. He submits that IA No. 06 of 2020, which is an application filed by respondent, to place on record the certified copy of the DNA Report in connection with the blood samples collected from the accused, the victim girl and the baby, deserves to be dismissed being not maintainable. He submits that if PW-1 was raped for a long period of time as alleged, it is surprising that no action was taken by PW-1 by way of reporting to the police or by way of informing her family members. It is submitted that the prosecution did not ascertain by way of medical examination as to whether the appellant was

capable of having sexual intercourse. He submits that in the attending facts and circumstances of the case, the appellant is entitled to acquittal. In support of his submissions, learned counsel places reliance on ***Kali Ram vs. State of Himachal Pradesh***, reported in ***(1973) 2 SCC 808***, ***Jai Prakash Singh vs. State of Bihar and another***, reported in ***(2012) 4 SCC 379***, ***Rajiv Singh vs. State of Bihar and another***, reported in ***(2015) 16 SCC 369***, ***The State of Bihar vs. Kanu Gope and another***, reported in ***AIR 1954 Patna 131*** and ***State of Orissa vs. Prechika Parvatisam***, reported in ***AIR 1954 Orissa 58***.

8. Mr. S.K. Chettri, learned Additional Public Prosecutor, Sikkim, while supporting the impugned judgment, submits that evidence of PW-1 has not been impeached in any manner and based on her evidence alone conviction can be sustained. He also submits that there is no reason as to why the daughter will falsely implicate her father with an offence like rape. Drawing attention of the Court to the evidence of PW-3 and PW-12, younger brother and elder sister of PW-1, respectively, he submits that they have also supported PW-1 and there is no plausible reason as to why all of them should be falsely implicating their father. While conceding that initially on enquiry PW-1 had named one Prem Lal Manger as the person responsible for impregnating her and the I.O had not carried out investigation in that regard, he submits that the same is of no consequence as further investigation clearly pointed towards the guilt of the accused. Placing reliance on IA No. 06 of 2020, he submits that for ends of justice, certified copy of the DNA Report may be taken on record. He has further contended that even if Exhibit-24 is discarded, non-production of DNA Report cannot be fatal to the prosecution case. It is submitted that in view of unimpeachable testimony of PW-1 as well as her siblings, prosecution case is firmly established. He has relied on a judgment of this Court in ***Bhakta Bahadur Subba vs. State of Sikkim*** (Crl. A. No. 19 of 2019) decided on 14.09.2020 to contend that in view of the evidence on record in that case this court had convicted an accused despite there being no DNA report establishing paternity of the new born child. He also places reliance in the cases of

Rajinder alias Raju vs. State of Himachal Pradesh, reported in ***(2009) 16 SCC 69*** and ***State of Himachal Pradesh vs. Manga Singh,*** reported in ***(2019) 16 SCC 759***.

9. We have heard the learned counsel for the parties and have perused the materials on record.

10. PW-1 is the victim girl. In her evidence she stated that her younger sister and two younger brothers were residing with their father and their mother had left them when she was 8 years old. She stated that since the time she was around 12 years old, the accused used to come to her bed during night and sexually abuse her on many occasions. Her father used to rape and molest her and during the year 2014 as a result of rape committed by the accused she gave birth to a baby in November 2014. Though pregnancy was concealed by the accused, the villagers had come to know that she had given birth to a baby and when they had enquired, she had told them that the accused had raped her since she was a child. She deposed that she had given her statement, Exhibit-2, to the Magistrate. She exhibited her birth certificate as Exhibit-3 and had deposed that the baby's as well as her blood samples were collected at Namchi District Hospital.

11. PW-2, who was 18 years of age at the time of trial, is the younger sister of the victim. She stated that she was residing at Lingee in a rented house and when she visited her father's house she saw a baby and when she enquired about the baby, her father had told her that he had brought the baby from Yangyang . Later on, she came to know that the baby was fathered by her father. PW-2, in her cross-examination had stated that PW-1 did not tell her that she was impregnated by their father.

12. PW-3 is the younger brother of PW-1. He deposed that PW-1 was impregnated by his father and the baby was that of PW-1.

13. PW-12, who is a married daughter of the accused, had deposed that one day PW-1 informed her telephonically that she had delivered a baby at home and that allegations are levelled by the villagers that the baby was borne out of an illicit relationship between her and her father. On request of PW-1 she had come to her father's house on the day following the receipt of the phone call and on being asked who the father of the new born baby was, PW-1 told her that the accused had impregnated her. She further stated that the accused had sexually assaulted her even when she was small. In her cross-examination she stated that initially PW-1 had informed her that she was impregnated by one *latta* (deaf and dumb person), but she did not enquire about the said *latta.*

14. PW-4, PW-7, PW-11 and PW-13 are the co-villagers who had filed the FIR along with PW-5, who is the younger brother of the accused.

15. Evidence of PW-4 is to the effect that during March 2015 he and some other villagers came to learn that the accused was hiding a small baby in his house and later on he came to learn that the accused had impregnated his own minor daughter, who had also confirmed the same. In cross-examination he said that on the following day of their initial enquiry, the victim had informed that she was impregnated by one Prem Lal Manger.

16. PW-7, who is the Panchayat Secretary, deposed that some time during March 2015 it came to light that the accused had impregnated his minor daughter. The daughter also confirmed that her father had raped her since she was a child and accordingly, F.I.R (Exhibit-6) was lodged by her and other Panchayat Members.

17. PW-11 stated that a rumour was going around in the village that a new born baby was found in the house of the accused and that the father of the baby could be the accused borne through his daughter. She stated that the accused had confessed in presence of Panchayat Members that the new born baby was born to his daughter. On being asked, the victim stated that the baby

was born after being impregnated by the accused. As they claimed that the baby was born out of an illicit relationship, an FIR was filed. In her cross-examination she also stated that initially the victim and the accused had told them that the father of the new born baby was Prem Lal Manger.

18. PW-13 stated that when Panchayat Members and police asked in his presence about the baby, the accused stated that he was the father of the baby born through his daughter.

19. PW-5 stated that during March 2015 he came to know that there was a small baby in the house of the accused and later on it came to light that the accused had impregnated his minor daughter. He deposed that he was a witness to Seizure List (Exhibit-3) by which the birth certificate of the victim was seized. In cross-examination, he admitted that PW-1 never informed him that the accused had impregnated her.

20. PW-6 deposed that on 15.03.2015, as a Medical Officer of Ravangla Primary Health Center (PHC), he had examined the accused and had found bruises on his left hand and the bridge of the nose and had made a report (Exhibit-9). He also stated that the accused was referred to Medico Legal Specialist for further examination.

21. PW-8 was the Officer In-Charge of Ravangla Police Station, who investigated the case on the basis of FIR (Exhibit-6).

22. PW-9, who was posted at Yangyang PHC, had stated that she had verified the authenticity of the birth certificate of the minor victim.

23. PW-10 is the Pathologist of the District Hospital, Namchi who had drawn blood sample of the accused for DNA testing.

24. PW-14 is the Judicial Magistrate, who had recorded the statement made by PW-1 under Section 164 Cr. P.C.

25. PW-15 is the Pathologist in the Namchi District Hospital, who had collected blood samples of the victim as well as the infant baby of the victim. He stated that by a requisition (Exhibit-14), addressed to the Medical Officer on duty at District Hospital, Namchi, the I.O of the case requested to preserve blood samples of the victim and the new born baby for DNA examination.

26. PW-16 is a social worker under Integrated Child Protection Scheme (ICPS) and he deposed that on being asked by the Legal Officer of the Social Justice Empowerment and Welfare Department, he had accompanied the victim and her baby to District Hospital at Namchi on 18.05.2015 for medical examination. He also deposed that the blood samples were collected by the Pathologist of the District Hospital.

27. PW-17 is the I.O who had taken steps during the investigation. He stated that Exhibit-24, the DNA Report shows that the victim was the biological mother of newly born infant (male) and the accused is his biological father. He admitted that he had not collected the blood sample of Prem Lal Manger and had also not examined him and that initially the victim had stated that Prem Lal Manger is the father of the baby.

28. In the evidence of PW-17, there is no reference that Exhibit-24 is a duplicate copy of the DNA Report. In the judgment under appeal also, it is not indicated that Exhibit-24 is a duplicate copy. Though the author of the Report, Dr. Subhankar Nath was not examined, the learned trial court took Exhibit-24 on record in view of Section 293(4)(e) Criminal Procedure Code,1973 (for short,Cr.P.C). Relying on that Report, it was held by the learned trial court that the victim girl is the biological mother of the baby and the accused is the biological father.

29. In the paper book in Exhibit-24 'DUPLICATE COPY' was written by hand. An application was filed by the I.O (PW-17) registered as IA. No. 06 of 2020, seeking liberty to produce a certified copy of the DNA Report dated 26.11.2015. It is stated in the application that he had submitted a duplicate

copy of DNA report before the learned trial court and as I.A No.03 of 2019 was filed by the appellant contending that Exhibit-24 being a duplicate copy is not admissible in evidence and certified copy of DNA Report is sought to be produced by him.

30. In ***M.Chandra* vs.*M.Thangamuthu***, reported in ***(2010) 3 SCC 712***, the Hon'ble Supreme Court considered the requirement of Section 65 of the Indian Evidence Act,1872 (for short, Evidence Act)and held as under:

> *"47. …….. It is true that a party who wishes to rely upon the contents of a document must adduce primary evidence of the contents, and only in the exceptional cases will secondary evidence be admissible. However, if secondary evidence is admissible, it may be adduced in any form in which it may be available, whether by production of a copy, duplicate copy of a copy, by oral evidence of the contents or in another form. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original. It should be emphasised that the exceptions to the rule requiring primary evidence are designed to provide relief in a case where a party is genuinely unable to produce the original through no fault of that party."*

31. From the above, it is clear that to prove the contents of a document a party must adduce primary evidence of the contents and only in exceptional cases will secondary evidence be admissible. The secondary evidence must be authenticated by foundational evidence that the alleged copy is in fact a true copy of the original.

32. In ***State represented by the Drugs Inspector vs. Manimaran,*** reported in ***(2019) 13 SCC 670***, the Hon'ble Supreme Court had held that carbon copies are primary evidence. It is not stated in the application that Exhibit-24 is a carbon copy.

33. It is evident that the factual foundation to establish the right to give secondary evidence by way of a duplicate copy was not laid by PW-17. When there was no reference to a duplicate copy in the deposition of PW-17, obviously there is no evidence that the duplicate copy was in fact a true copy of the original. In cross-examination, when confronted with Exhibit-24, PW-17 admitted that he was not acquainted with the signatures of Dr. H.K. Pratihari and Dr. Subhankar Nath.

34. It is well settled that neither mere admission of a document in evidence amounts to its proof nor mere making of an exhibit of a document dispenses with its proof which is otherwise required to be done in accordance with law**.** In view of above, Exhibit -24 cannot be taken into consideration. In ***Kanu Gope*** (supra), the Patna High Court had observed that a Chemical Examiner's original report and not a copy of such report may be used as evidence under Section 293 Cr. P.C., 1893 without formal proof.

35. In ***Prechika Parvatisam*** (supra), the Orissa High Court had declined to give direction for taking further evidence to bring on record the original report of chemical examination. Even at the appellate stage, in IA. No. 06 of 2020, there is no explanation as to why the original document cannot be produced. As such, we are not inclined to take the certified copy on the record of the case. IA No. 06 of 2020 stands dismissed of accordingly.

36. In the statement made by PW-1 under Section 164 Cr. P.C. (Exhibit-1), she had stated that she was sexually assaulted by her father since she was 12-13 years of age. Her father had threatened her not to divulge about the sexual assaults and she was scared that her father would kill her if she disclosed the same and therefore, she had not told anyone about her father committing rape on her on a regular basis. It was stated that she had conceived in the month of March 2014 and had given birth to a baby during November 2014. She further stated that although the baby was kept hidden at the instance of her father, when on a particular day the baby started crying the entire village gathered

outside their house and enquired about the baby. Initially, father of the victim told the villagers that he had brought the baby from the hospital and had accordingly informed Lingmo Outpost. When the police came to make enquiry, she and her father disclosed that it was her baby and the father of the baby was her father himself.

37. Though PW 1, while recording her statement under Section 164 Cr. P.C. (Exhibit-1), had elaborately described the ordeal faced by her at the hands of her father, such detailed description does not find place in her evidence. It must not be forgotten that the statement under Section 164 Cr. P.C. is not substantive evidence and that it can only be used to corroborate or contradict a witness.

38. However, perusal of Section 164 Cr. P.C. statement goes to show that the same corroborates the evidence of PW-1 with regard to the core of the allegation that she had been subjected to sexual assault from the age of 12-13 years and that she was raped by her father as a result of which she gave birth to a child in November 2014.

39. In ***Jai Prakash Singh*** (supra) the Hon'ble Supreme Court had observed that prompt lodging of an FIR is an assurance regarding truth of the informant's version and that a promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

40. Mr. Sharma had submitted that although the accused stated to have committed rape on PW-1 for many years, yet PW-1 had not lodged any FIR and the FIR came to be lodged only by certain villagers and on that count, the prosecution case is vitiated. We find the argument to be without any merit.

41. Evidence of PW-1 goes to show that the baby was born sometime during November 2014 and when the villagers enquired she had told them about the accused having repeatedly raped her since she was a child. By then,

the baby was four months old. It is apparent from the evidence on record that the birth of the child of PW 1 was sought to be kept a secret and the other inmates of the house had also not made the same public. PW-2 had stated that when she had asked her father about the baby he told that he had brought the baby from Yangyang making it abundantly clear that the birth of the baby was suppressed. For more than four months, people in the locality were not aware about the birth of the baby. The domineering role of the father cannot be lost sight of the fact, more so, in absence of the mother who had abandoned the children. When allegations are against the father, it is not difficult to visualize the range of emotions which the victim undergoes. It may be difficult for the daughter to be able to muster enough courage to set the machinery of law in motion by lodging a complaint against her father. However, it is seen that once enquiries were made after the birth of the baby had come to light, the victim girl made a clean breast of the entire episode. In the given circumstances, PW-1 not having lodged the FIR immediately does not derail the prosecution case. The FIR came to be lodged at the instance of co-villagers,i.e, PW-4, PW-5, PW-7, PW-11 and PW-13, with promptitude and without any delay after they came to learn from PW-1 how the father had committed rape and had impregnated her.

42. PW-12 asserted that PW-1 had told her that the baby was born after she was impregnated by her father and that he used to sexually assault her when she was a child also. It is true PW-2 and PW-3 had admitted that PW-1 had not told them that she had been impregnated by her father. They may not have been told by PW-1 directly about the father committing rape on her and impregnating her resulting in birth of a baby, but that does not weaken the prosecution case as they categorically stated that they came to know later on about the identity of the father of the child. In this context, it is also relevant to note that PW-12 had visited her father's house and that PW-1 had told her that the baby was born after she had been impregnated by her father. There is no reason to disbelieve the evidence of the son and daughters of the accused. In

the facts of the case, the statement of the accused in his statement recorded under Section 313 Cr.P.C. that PW-7, who is the Panchayat Secretary, was inimical to him and therefore, a false case was lodged against him does not commend for acceptance.

43. It has come out in the cross-examination of PW-12 that the victim girl had initially told her that the person responsible for pregnancy is one *latta* (deaf and dumb person). PW-4, PW-7 and PW-11, on the other hand, stated that the victim had initially stated that the father of the new born baby was Prem Lal Manger. There is no evidence as to whether Prem Lal Manger is a deaf and dumb person. PW-1, in her evidence, did not say a word about the *latta* or Prem Lal Manger. Significantly, PW-1 was not confronted with her alleged statement that she was impregnated by Prem Lal Manger or by one *latta*. It is significant to note that the accused in his statement under Section 313 Cr. P.C. had stated that he did not know whose baby it was, though he stated that his daughter had told the villagers that the baby was that of Prem Lal Manger. It appears that there was some attempt at the very initial stage of enquiry made by the villagers to deflect the accusation away from the father and to implicate Prem Lal Mangar or a *latta*. However, later on she narrated the ordeal faced by her at the hands of her father since she was 12-13 years old.

44. In ***Rajiv Singh,*** (supra) the Hon'ble Supreme Court had stated that the investigating agency has to maintain balance of the competing rights of the offenders and the victim as constitutionally ordained.

45. Surely, PW-17 ought to have examined Prem Lal Mangar or the *latta* as their names had cropped up. However, we are of the opinion that failure on the part of PW-17 to do so will not vitiate the prosecution case in view of the evidence on record. In ***Gajoo vs. State of Uttarakhand***, reported in ***(2012) 9 SCC 532***, the Hon'ble Supreme Court had observed that while in case of defective investigation the Court has to be circumspect while evaluating the evidence it would not be right in acquitting an accused person solely on

account of defect as to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.

46. A requisition, Exhibit-15, was made by the Officer In-Charge, Ravangla P.S.to the Medical Officer, Ravangla PHC for medical examination of the accused to ascertain whether the accused is capable of having sexual intercourse or not. However, no finding was recorded on that count .The contention advanced by Mr. Sharma on the basis thereof that the prosecution had failed to establish the guilt of the accused beyond any reasonable doubt is without any merit. It is a fact that on the query as noted hereinabove, no opinion was recorded and the Medical Officer vide Exhibit-9, after noting the injuries, had referred the accused to the Medico Legal Specialist for expert opinion, whose opinion, if there was any, is not brought on record. However, what cannot be brushed aside is that PW-1 was not confronted with the assertion that the accused was incapable of having sexual intercourse. Merely because there was an omission, the same cannot vitiate the prosecution case in view of cogent, reliable and trustworthy evidence of the victim.

47. In ***Kali Ram*** (supra), the Hon'ble Supreme Court had laid down that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and that this principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resorting to surmises, conjectures or fanciful considerations. It is also laid down that in arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the Court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses.

48. In ***Himachal Pradesh Administration vs. Om Prakash***, reported in ***AIR 1972 SC 975***, the Hon'ble Supreme Court had observed that benefit of

doubt to which the accused is entitled is reasonable doubt — the doubt which rational thinking men will reasonably, honestly and conscientiously entertain. It is further held that it does not mean that the evidence must be so strong as to exclude even a remote possibility that the accused could not have committed the crime. If that were so the law would fail to protect society as in no case such a possibility can be excluded. It will give room for fanciful conjectures or untenable doubts and will result in deflecting the course of justice if not thwarting it altogether. The mere fact that there is only a remote possibility in favour of the accused is itself sufficient to establish the case beyond reasonable doubt.

49. In ***Rajinder alias Raju*** (supra), the Hon'ble Supreme Court had observed as follows:

> "*19. In the context of Indian culture, a woman—victim of sexual aggression—would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private par*ts of the victim can be construed as evidence of consent."

50. In ***Manga Singh*** (supra), the Hon'ble Supreme Court had observed as follows:

> *"10. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration is required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law, but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix."*

50. In view of the above discussion, we are of the considered opinion that there is no merit in the appeal and accordingly, the same is dismissed.

51. Lower court records be sent back.

(Meenakshi Madan Rai)
Judge

(Arup Kumar Goswami)
Chief Justice