HIGH COURT OF TRIPURA
AGARTALA

CRL.APP(J) 02 of 2018

Sri Jeffrey Hrangkhal,
son of late Sushil Kumar Hrangkhal,
resident of Debthang Para,
PS: Teliamura, District: Khowai Tripura

----Appellant(s)

Versus

The State of Tripura,

---- Respondent(s)

For Appellant (s)	: Mr. A. Acharjee, Adv.
For Respondent(s)	: Mr. S. Debnath, Addl. PP.
Date of hearing	: 20.05.2020
Date of pronouncement	: 28.09.2020
Whether fit for reporting	: YES

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY

Judgment & Order

(S. Talapatra, J)

This is an appeal by the convict, herein after referred to as the appellant, under section 374(2) of the CrPC challenging the legality of the judgment and order of conviction and sentence respectively dated 31.10.2017 and 01.12.2017 delivered in case No.ST(T-1) 41 of 2014 by the Addl. Sessions Judge, Court No.5 West Tripura, Agartala. By the said judgment, the appellant has been convicted under Section 376(2)(i) of the IPC and pursuant thereto he has been

sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.50,000/- with default stipulation.

[2] The root of the prosecution can be located in the complaint filed by one Smt. Rani Rupini (PW-2) revealing that her elder daughter aged about 13 years, [the name is withheld for purpose of protecting the identity of the victim] was engaged at Immanuel Hostel, Khamtingbari as cook. On 25.06.2013 at about 1200 hours in the noon, her daughter suddenly came back from the hostel and informed her that from 22.06.2013 to 24.06.2013 during her stay in the hostel everyday at about 9-10 pm, the hostel supervisor namely Jeffrey Hrangkhal (the appellant) used to take her daughter to his room and got his body massaged. The appellant raped her daughter against her will for four times. The said complaint (Exbt-1) was received by Jirania Police Station on 26.06.2013 and based thereon, Jirania PS case NO.62/2013 under Section 376 of the IPC was registered and taken up for investigation. On completion of the investigation, the final police report chargesheeting the appellant was submitted by the police. Having taken cognizance, the police papers were committed to the court of the Sessions Judge, West Tripura Agartala and the case was re-registered as case No. ST(T-1) 41 of 2014. But for

trial, the said case was transferred to the court of the Addl. Sessions Judge, court No.4 West Tripura, Agartala (the trial judge, hereinafter). The trial judge had framed the charge against the appellant on 21.08.2014 under section 376(2)(i) of the IPC for committing rape on the victim who was under 16 years of age. The appellant pleaded innocence and claimed to be tried.

[3] In order to substantiate the charge the prosecution adduced as many as 10 witnesses including the victim (PW-3) and the medical officer who examined the victim (PW-6). That apart, 6 documentary evidence (Exbt-1 to 6) were admitted in the evidence at the instance of the prosecution. After recording the prosecution evidence, the appellant was examined under Section 313(1)(b) of the CrPC to have his response on the incriminating materials those appeared in the evidence. The appellant had reiterated his plea of innocence stating that the evidence incriminating him are concocted and unreliable. Having appreciated the argument placed by the State and the accused, the trial judge returned the impugned finding of conviction having observed *inter alia* as follows:

> **"Finally, I find no reasonable ground to accept the argument of Mr. Debnath, Ld. Defence Counsel on the issue that as because the prosecution failed to produce the school admission register, no age of the victim can be ascertained from the oral testimony of prosecution**

> **witnesses. In this respect after careful scrutiny of prosecution evidence it appears that PW8 Shri Subrata Majumder, the issuing authority has identified the school certificate of victim (Exhibit 4) and that was marked without objection from the side of defence. The school certificate of victim having the date of birth as on 07.01.1998 is found duly proved by the prosecution. Besides, from the evidence of the mother of victim Smt. Rani Rupini it was also made out that at the time of alleged incident age of the victim was 13 years. There cannot be any other reliable evidence apart from the oral evidence of mother of the victim duly confirmed by the school certificate of victim. From the school certificate of victim the fact is duly proved that at the time of commission of offence the age of the victim was below 16 years which is one of the criteria to constitute an offence under section 376(2)(i) of IPC."**

[4] Mr. A. Acharjee, learned counsel appearing for the appellant has submitted that the entire prosecution case is based on the testimony of the victim and it is not disputed that there had been no corroboration of the victim's statement. No inmate of the hostel even the person named by her to whom she confided such heinous act of the appellant was not examined. Even the medical examination report dated 27.06.2013 (Exbt-4) is ambiguous. Mr. Acharjee, learned counsel has further submitted that PW-6, Sukla Debbarma, who examined the victim on 26.06.2013 has categorically stated that she did not find any spermatozoa in her private part and she has further stated a rupture of 5 to 6 days old in hymen is treated as old rupture. Mr. Acharjee, learned counsel, has submitted that in the report submitted by State Forensic Science Laboratory (SFSL), it has been clearly stated that on

examination of vaginal swab (two samples-Exbts-A and B), they did not find semen, seminal stain or spermatozoa of human origin.

[5] Mr. Acharjee, learned counsel has further stated that the statement as recorded under section 164(5) of the CrPC of the victim by the Judicial Magistrate (PW-10) would show that she had narrated a different story to the said Judicial Magistrate. According to Mr. Acharjee, learned counsel, on a keen scrutiny of the testimony of PW-3 (the victim), it will be apparent that she has not been telling the truth. In the cross examination, the victim has stated that one female student namely Lallampui was staying in the hostel and she had been there while she was called for giving massage. Thereafter, the victim did not say anything about the presence of Lallampui. Thus, Mr. Acharjee, learned counsel has contended that the entire evidence has been perversely read and thus the trial judge arrived at a wholly unwarranted finding. There is no sustainable evidence against the appellant.

[6] According to Mr. Acharjee, learned counsel the place of occurrence is highly doubtful. That apart, absence of injury external or internal turns the victim’s version further doubtful. Finally, Mr. Acharjee, learned counsel has submitted that it has

not been proved that the age of the victim is either below 16 years or under 18 years of age. Mr. Acharjee, learned counsel has relied on a few reports. In **Juwarsingh and Others vs. The State of Madhya Pradesh** reported in **AIR 1981 SC 373**, it has been held that the cross examination is not the only method of showing a witness untrustworthy. If the oral testimony of certain witnesses appears contrary to proved facts their evidence might well be discarded on that ground. If their testimony is on the face of it unacceptable, the courts are not bound to accept their testimony because there was no cross-examination. Mr. Acharjee, learned counsel has submitted that neither the circumstance nor the direct evidence is available which stands to corroborate the testimony of the victim.

[7] In sequel, a decision of the Madras High Court in **Sivakumar vs. State by the Inspector of Police** (Judgment dated 31.07.2015 delivered in CRL.A.No.131 of 2014) has been relied on by Mr. Acharjee. The passages as referred in respect of usages of statement recorded under Section 164(5) of the CrPC are reproduced, it has been observed in **Sivakumar** (supra), *inter alia* as follows:

> **"40. With regard to the statement of a witness recorded by a Magistrate u/s.164 Cr.P.C., in RAMPRASAD VS. STATE OF MAHARASHTRA [1999 CRI.L.J. 2889 (SC)], the Hon'ble Apex Court observed as under:**

"15. Be that as it may, the question is whether the Court could treat it as an item of evidence for any purpose. Section 157 of the Evidence Act permits proof of any former statement made by a witness relating to the same fact before any authority legally competent to investigate the fact but its use is limited to corroboration of the testimony of such a witness. Though a police officer is legally competent to investigate, any statement made to him during such an investigation cannot be used to corroborate the testimony of a witness because of the clear interdict contained in Section 162 of the Code. But a statement made to a Magistrate is not affected by the prohibition contained in the said section. A Magistrate can record the statement of a person as provided in Section 164 of the Code and such a statement would either be elevated to the status of Section 32 if the maker of the statement subsequently dies or it would remain within the realm of what it was originally. A statement recorded by a Magistrate under Section 164 becomes usable to corroborate the witness as provided in Section 157 of the Evidence Act or to contradict him as provided in Section 155 thereof."

41.In GURUVINDAPALLI ANNA RAO VS. STATE OF A.P. [2003 CRI.L.J. 3253], a Division Bench of the Andhra Pradesh High Court held that since the previous statement of a witness under Section 164 Cr.P.C., has been recorded by a Magistrate, it is a public document, the Magistrate need not be summoned and examined as a witness. The Division Bench observed as under:

"7.We would like to put one more discrepancy on record, viz., that while recording evidence, the learned II Additional Sessions Judge had summoned the I Additional Munsif Magistrate, Tenali (PW.10) to prove the statement of P.W.1 recorded by him under Section 164 Cr.P.C. This Court has already ruled if any Magistrate records the statement of a witness under Section 164 Cr.P.C, it is not necessary for the Sessions Judges to summon that Magistrate to prove the contents of the statement recorded by him. This Court has already ruled that when a Magistrate, discharging his official functions as such, records the statement of any witness under Section 164 Cr.P.C, such statement is a 'public document' and it does not require any formal proof. Moreover, it is seen that the learned II Additional Sessions Judge, Guntur, while recording the evidence of the I Additional Munsif Magistrate, Tenali (PW.10), has exhibited the statement of P.W.1 recorded by the Magistrate as Ex.P.10. As a matter of fact, such statement cannot be treated as a substantive piece of evidence. Such statement can be made use of by the prosecution for the purpose of corroboration, or by the defence for contradiction, under Section 145 of the Evidence Act. Therefore, the II Additional Sessions

> **Judge, Guntur, is directed to note the provisions contained in Section 145 of the Evidence Act. Even if a statement is recorded by a Magistrate, it is not a substantive piece of evidence, but it is only a previous statement."**

In the same context, it has been observed in **Sivakumar** (supra) as follows:

> **"46. In RAM LAKHAN SHEO CHARAN AND OTHERS VS. STATE OF U.P. [1991 CRI.L.J. 2790], when the witness, whose statement has been recorded by the learned Magistrate under Section 164 Cr.P.C., during the Sessions' trial, turned hostile, did not support his statement to the Magistrate, a Division Bench of the Allahabad High Court observed as under :**
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> **"12.The trial was held when the new Code of Criminal Procedure had come into force. The wordings of Section 164 in the new and old Code of Criminal Procedure with little changes are the same. As early as in Manik Gazi v. Emperor, AIR 1942 Cal 36 : (1942) 43 Cri LJ 277 a Division Bench of the Calcutta High Court had held that the statements under Section 164 of the Code can be used only to corroborate or contradict the statements made Under Sections 145 and 157 of the Indian Evidence Act. In Brij Bhushan Singh Vs. Emperor, AIR 1946 PC 38 and in Mamand v. Emperor, AIR 1946 PC 45 : (1946) 47 Cri LJ 344) the Privy Council had observed that the statement Under Section 164 of the Code cannot be used as a substantive evidence and which can only be used to contradict and corroborate the statement of a witness given in the Court. Similar observations, as made in the two cases below, were made by the Privy Council, in Bhuboni Sahu v. King, AIR 1949 PC 257 : (1949) 50 Cri LJ 872) and in Bhagi v. Crown, 1950 Cri LJ 1004 : (AIR (37) 1950 HP 35). It was also held by a single Bench of the Himachal Pradesh Judicial Commissioner's court that statement Under Section 164 of Code cannot be used as a substantive piece of evidence. In State v. Hotey Khan, 1960 ALJ 642 : (1960 Cri LJ 1167). A Division Bench of this Court had also observed that statements Under Section 164 of the Code cannot be used as a substantive evidence.**
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> **13. The above catena of cases go to show that where the witnesses do not support the prosecution story in the Court, then their statements Under Section 164 of the Code cannot be used as substantive piece of evidence. In this case, the learned Judge had erred in using Exts. Ka-15 and Ka-16 as substantive piece of evidence."**

47.Again in PHOOL CHAND VS. STATE OF U.P. [2004 CRI.L.J. 1904], when similar situation as in Ram Lakhan Sheo Charan (supra) arose, a Division Bench of the Allahabad High Court held as under :

"18.Learned Additional Public Prosecutor Sri Amarjeet Singh has tried to emphasise that Karan (P.W. 1) and his wife Smt. Makkhan (P.W.2) were produced before the Magistrate for recording their statements under Section 164 Cr.P.C. in which they fully supported the facts/circumstances leading to the commission of multiple murders in this case. The learned counsel has contended that these statements should be given due weight and should be considered for proving the offences with which the appellants were charged. On thoughtful consideration on this legal aspect of the matter, we find that the aforesaid submission has no substance in it. The statement of a witness under Section 164 Cr. P. C. is one where the accused have hardly any occasion to cross examine him and if it is to be treated as substantive piece of evidence, it should be duly tendered before trial Court and then a witness should be produced by the prosecution for his cross examination. In this context the learned Senior Advocate appearing for the appellants has cited the case law of Brij Bhushan Singh v. Emperor, AIR 1946 PC 38 (1946 (47) Cri LJ 336) and Ram Kishan Singh v. Harmit Kaur, 1972 Cri. LJ 267 : (AIR 1972 SC 468). In these cases the Privy Council and the Hon'ble Supreme Court have categorically held that the statements recorded under Section 164 Cr. P. C. are not substantive evidence. It can be used only to corroborate the statements of the witness or to contradict them. In the present case, when the witnesses (P.W.1 and P.W.2) have themselves did not support their version, their statements earlier recorded under Section 164 Cr.P.C. could not be available to the prosecution for their corroboration. It could, to the maximum, be used by the prosecution for their contradiction, but that too has not been done in the present case. It is obvious that it would be a fallacy of a legal approach to have reliance upon the statement of a witness recorded under Section 164 Cr.P.C. and thereby to record conviction of the accused persons on that basis."

48.In T.DIWAKARA VS. STATE OF KARNATAKA [2006 CRI.L.J. 4813], during investigation, P.W.10 gave statement before a Magistrate under Section 164 Cr.P.C., but, later during the Sessions trial, he turned hostile. In such circumstances, the Karnataka High Court held as under :

"1....The statement of PW10 was recorded before the Magistrate. After the lodging of the complaint, PW10 has turned hostile. But the trial court convicted the accused on the strength of statement of PW10

> **recorded under Section 164 of Criminal Procedure Code. The trial court grossly erred in placing reliance on the statement recorded under Section 164 of Criminal Procedure Code as substantive evidence. While convicting the accused the statement recorded under Section 164 of Criminal Procedure Code does not have any better legal status than the one recorded under Section 161(3) of Criminal Procedure Code. At the most, if the deponent whose statement is recorded under Section 164 of Criminal Procedure Code turns hostile, he/she could be prosecuted for perjury but onthe strength of such statement no conviction can be placed. "**
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> **49.When a witness gave statement to the Magistrate under Section 164 Cr.P.C., later during the trial before the learned Sessions Judge disowned it, gave different version, either the statement given by him before the learned Magistrate may be true or his deposition before the learned Sessions Judge may be true, but both may not be true.**
>
> **[Emphasis added]**

[8] Madras High Court has unambiguously held that when the statement under section 164 of the CrPC is recorded by the Magistrate it is recorded in absence of the accused. If such statement is accepted as the deposition of the witness and is treated the part of the evidence, it is nothing sort of using the statement recorded under section 164 of the CRPC as substantive evidence. That is not permissible in law and law is consistent from the day of the privy counsel (see ***Brij Bhushan Singh vs. Emperor and Mamand vs. Emperor)*** that the statements under section 164 of the CrPC cannot be used as substantive evidence and that can only be used to contradict and to corroborate the statement of a witness given in the court.

[9] Mr. Acharjee, learned counsel has placed his reliance on a very recent decision of the apex court in **Santosh Prasad @ Santosh Kumar vs. The State of Bihar** (the judgment dated 14.02.2020 delivered in CRL. Appl no. 264 of 2020). The factual matrix of the said case is substantially different. However, having relied the previous decisions of the apex court in **Raju and Others vs. State of Madhya Pradesh** reported in **(2008) 15 SCC 133** as well as **Rai Sandeep alias Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**, it has been observed that ordinarily the evidence of a victim of rape should not be suspected and should be believed if the evidence is reliable and for that no corroboration is necessary. Having relied on **B. C. Deva vs. State of Karnataka** reported in **(2007) 12 SCC 122** in **Santosh Prasad** (supra), it has been observed that in spite of the fact that no injuries were found on the person of the victim, yet the victim can be relied on. Mr. Acharjee, learned counsel has more particularly relied on the proposition of **Raju** (supra), where the apex court had observed as follows:

> **"11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. <u>It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness</u>**

> **would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.**
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> **12. Reference has been made in Gurmit Singh's case [(1996) 2 SCC 384 : 1996 SCC (Cri) 316 to the amendments in 1983 to Sections 375 and 376 of the India 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 in so far 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."**
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> **[Emphasis added]**

[10] On the aspect of who can be stated to be a sterling witness, **Rai Sandeep alias Deepu** (supra) has been discussed in **Santosh Prasad** (supra). It has been observed in **Rai Sandeep** (supra) that "a sterling witness" should be of a high quality and caliber whose version should be unassailable. To test the quality of a such 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 consistency of the statement

right from the starting point till the end meaning at the time when the witness makes the initial statement and ultimately deposes 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 such a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstances should be instrumental for any doubt in the spectrum of the occurrence in which the person is involved as well as in its sequel, if any. Such a version should be correlated with each and everyone of other supporting materials such as the records made, 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 be evenly stated that it should be akin to the test applied in case of circumstantial evidence where there should be no missing link in the chain of circumstances to hold the accused guilty of the offence. Only if the version of such witness survives, the above tests as well as other similar test which can be applied, such a witness can be called "a sterling witness" whose version can be accepted by the court without any corroboration and based on which the

accused can be convicted. To be precise, the version of such witness of apropos the spectrum of crime should remain intact while all other attending materials namely oral, documentary and immaterial objects should match the said version.

[11] Having relied on this proposition, Mr. Acharjee, learned counsel appearing for the appellant has submitted that there is no corroboration to the statement of the victim. On the contrary, her statement has been visited by inconsistencies. Thus, based on the testimony of PW-3, the finding of conviction requires interference by this court to arrest the course of miscarriage of justice.

[12] Mr. S. Debnath, learned Addl. PP has strongly refuted such submission of Mr. Acharjee, learned counsel for the appellant. He has stated that there is no inconsistency in the core of the statement of the victim. The victim, from the first statement made under section 164(5) of the CrPC, is quite consistent if her testimony is juxtaposed. In respect of the age of the victim, Mr. Debnath, learned Addl. PP has submitted that the mother of the victim, Rani Rupini (PW-2) has categorically stated in the trial that at the time of occurrence she was 13 years of age. But in that respect, there is no cross-examination.

That apart, the said statement of age is supported by the school certificate dated 17.07.2013 (Exbt-4) as introduced by PW-8.

[13] Mr. Debnath, learned Addl. PP has quite emphatically submitted that the testimony of PW-3 (the victim) having been consistent, can be relied for returning the finding of conviction. In this respect, Mr. Debnath, learned Addl. PP has relied on two decisions of the apex court. In **State of Maharashtra vs. Chandraprakash Kewalchand Jain** and **Stree Atyachar Virodhi Parishad vs. Chandraprakash Kewalchand Jain** reported in **(1990) 1 SCC 550,** it has been held that ordinarily the evidence of the victim of rape who does not lack understanding must be accepted without insisting on corroboration. To equate woman who is a victim of the lust of another with an accomplice to a crime would insult the womanhood. The standard of proof to be expected by the court in such case must be considered on taking into account the fact that such crime is generally committed on the sly and very rarely on direct evidence of person, other than the victim. Ordinarily, an Indian woman would be most reluctant to level false accusation of rape involving her own reputation, unless she has a very strong bias or reason to do so.

[14] In **State of Punjab vs. Gurmit Singh and Others** reported in **(1996) 2 SCC 384** the proposition of law as laid in **Chandraprakash Kewalchand Jain (supra)** has been restated by a prefatory observation which reads as under:

> **"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. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over-look. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl of a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. <u>Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be over-looked that a woman or a girl subjected to sexual assault is not an</u>**

> **accomplice to the crime but is a victim of another persons's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."**
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> **[Emphasis added]**

[15] Mr. Debnath, learned Addl. PP has relied on the decisions of the apex court in **Atluri Brahmanandam vs. Anne Sai Bapuji** reported in **AIR 2011 SC 545** and **Laxmibai and another vs. Bhagwantbuva and others** reported in **(2013) 4 SCC 97**. Both the reports are in respect of deduction of age on the basis of *'performance of adoption'*. We have not been persuaded that these reports have any relevance in the present context inasmuch as the prosecution has sought to establish the charge on the basis of hard evidence.

[16] For appreciating the contentions raised by the counsel for the respective parties, a short a survey of the evidence would be apposite. As already noted, 10 witnesses and 6 documentary evidence have been adduced by the prosecution. The defence did not place any evidence of rebuttal. Even though they have extended a plea of denial which has been evident from the cross-examination.

[17] PW-1 Smt. Gita Jamatia was studying in Class-VIII in the Immanuel English Medium School where the appellant was a teacher. She has testified that she was staying in the hostel of that school and the victim had also been staying in the same hostel.

[18] PW-2, Smt. Rani Rupini mother of the victim (PW-3) and the informant has testified in the trial that she has three children including the victim. Her son Parbet Rupini and another daughter Sangita Rupini were the students of Immanuel School, Khamtingbari. According to PW2, the said school was run by Jefferey Hrangkhal, the appellant. In the trial, she had identified the appellant. According to her on 22.06.2013, she had sent her daughter (PW-3) for the work of cooking in the hostel on being asked by the appellant. At that time, her age was about 13 years. She used to stay in the hostel and she was there till 24.06.2013. On 25.06.2013, she came back to the house and reported to her that during her stay in the said hostel, the appellant used to call her at about 9-10 pm for giving him body massage. He had committed sexual intercourse with her forcibly. The appellant had threatened her not to raise any voice at the point of knife and that he would kill her brother and sister who were reading in the said school. When she could not

bear physical torture, she had reported the same to a female teacher of the school whose surname was 'Reang'. She had advised her to flee away and thus, she came back to the house. On the following day i.e. 26.06.2013, PW-2 reported the incident to the police officer at Champaknagar police outpost under Jirania PS. The police officer reduced the oral complaint to the writing and she had put her signature on the complaint (Exbt-1). She has admitted the complaint in the evidence. The police took her daughter to Jirania hospital for medical examination. After the examination the police seized some plastic articles by preparing the seizure list (Exbt-2) and she had put her signature on the seizure list which she admitted in the trial. According to her 15 students had been residing in the school hostel. There was a school committee, but she was unaware of the names of the members of the said committee. She has admitted in the cross-examination that she did not inform the incident to the school committee or to any teacher of the school, but she had informed the incident to the chairman of the village committee. Her statement that the appellant threatened her daughter not to raise any voice at the point of knife and that he would kill her brother and sister who were reading in the same school were not found in her statement

recorded under section 161 of the CrPC, but she has denied the suggestions that the victim did not tell her that the appellant threatened the victim not to raise voice at the point of knife or that he would kill her brother and sister who were reading in the school. Even the statement made by PW-2 that the victim reported the incident to one female teacher whose surname was Reang who advised her to flee away, was not found in her previous statement recorded by police during the investigation. The general suggestions as advanced to contradict her statement relating to the occurrence have been flatly denied. Even she has denied that there is any ill motive in filing the complaint against the appellant.

[19] PW-3 (the victim) when testified n the court on 22.02.2016 had stated her age to be 17 years. She has stated in the trial that the appellant is known to her and she had identified the appellant in the trial. According to her, the appellant is the Principal of the school at Khamtingbari. She has stated that she was engaged as the cook in the hostel and for that purpose, she had been staying in the kitchen of the hostel. During that period from 22.06.2013 to 24.06.2013, the appellant used to call her at his room on the plea of giving him body massage, but the appellant by gagging her mouth

undressed her and did sexual intercourse. On 25.06.2013, she had informed the incident to a female teacher but she had stated in the trial she did not know her name. The said female teacher told her to flee away and she fled away from the hostel and narrated the whole incident to her mother (PW-2). She has categorically stated that she did not inform the occurrence to anyone between 22.06.2013 to 24.06.2013 out of fear as the appellant had threatened her that he would kill her if she had disclosed the incident to anybody. She read upto class VI. After the occurrence, the police brought her at Jirania Hospital and the doctor examined her. The police has also produced her to the Judicial Magistrate at Agartala where she gave the statement in Kokborok. The Judicial Magistrate having surname Debbarma could speak Kokborak. She put her signature on the recorded statement (Exbt-3 series) which has been identified by her in the trial. In the cross examination, she has stated as under noted, which has been referred at the time of noting the submission of the counsel for the appellant:

> **" One female student namely, Lallampui was also staying in the hostel and she also went there where I was called for giving massage."**

[20] The victim did not clearly state that whether the occurrence took place after Lallampui had left that place. She

has also confirmed that she disclosed the incident to one female teacher "who used to stay in the school". The victim used to meet her daily in the day time in the school. She had denied all the general suggestions, advanced by the defence, who would offend her statement made during the examination in chief. She has particularly denied that on 22.06.2013 her age was 18 years. Thereafter, she has made the following statement but that was not contested by the defence:

> **"I tried to resist the accused by pushing him but failed. I sustained pain injury on my vagina and also on the face. It is not a fact that I deposed falsely against the accused."**

[21] PW-4, Shri Khokan Munda, a co-villager accompanied the victim when she had been taken to Jirania Hospital with her mother and the police personnel. He is the witness of the seizure which was caused by the seizure list (Exbt-2). He has admitted his signature over the seizure list and the fact of seizure. He has claimed to have heard from PW-2 that PW-3 was raped by the appellant when she was working as the cook in that school. Nothing meaningful has been extracted in the cross-examination.

[22] PW-5, Shri Dhanyamoni Rupini, is the father of the victim. He has stated in the trial that on 25.06.2013, he came to know that the appellant had committed rape on his daughter.

He came to his house as he used to stay outside. His wife (PW-2) filed the complaint in the Champaknagar Police Outpost. In the cross-examination, nothing material could be extracted from him.

[23] PW-6, Dr. Sukla Debbarma had examined the victim on 26.06.2013 at Jirania Rural Hospital where she was posted as the Medical Officer. She has testified that the police from Jirania Police Station brought the victim for examination in connection with Jirania PS case No. 63/13 with the history of rape occurring from 22.06.2013 to 24.062013 at night between 9 to 10 pm. The appellant used to get body massage from her and at that time, the appellant committed rape on her. The victim was identified and introduced by a Sub-Inspector, Biswsajit Debbarma and one Constable, Sumita Debbarma from Jirania police station. After taking necessary consent of the victim, she had examined her [the victim]. Thereafter, she has stated in the trial as follows:

> **"On examination hymen was found tear (old) and admit tip of the finger. There was no other external of internal injury. I also collected vaginal swab of the victim in a plastic container and handed over the same to police for examination by SFSL. <u>After examination I found that the victim had sexual intercourse. I submitted the report on examination of victim and opined that the victim had sexual intercourse as old hymen rapture was found and vaginal swab has been collected, packed with seal and handed over to Police."</u>**
>
> **[Emphasis added]**

[24] PW-6 has admitted her report (Exbt-4) where she has stated that she did not find any spermatozoa in the victim's private parts and further succinctly opined that, according to her, a rapture of 5-6 days old is treated as old rapture, but she has denied in the cross examination that a rupture of human becomes old after more than 5 -6 days.

[25] PW-7, Smt. Sumita Debbarma was posted as the woman constable at Jirania Police Station on 26.06.2013. She has testified that she had accompanied the victim under the command of Shri Biswajit Debbarma, Sub-Inspector of Police of Jirania Police Station. She has confirmed that she did identify the victim to the medical officer. During examination of the victim, the medical officer collected vaginal swab in two plastic containers and the same was handed over to Biswajit Debbarma, who, in turn, did seize those containers by preparing the seizure list (Exbt-2) in her presence. As the witness to the seizure, she put her signature on the seizure list which she has identified in the trial. There has been no cross-examination.

[26] PW-8, Subrata Majumder, who was the teacher in-charge of Amarjyoti Senior Basic School has testified in the trial that on 17.07.2013 he had issued the school certificate in the

name of the victim recording that she was admitted to Class VI on 12.04.2011 and her date of birth was 17.09.1998. He had recorded the particulars in the certificate as per the entries in the admission register. He has identified the said school certificate (Exbt-4) in the trial. He has admitted in the cross examination that the admission register on the basis of which the said certificate had been issued has not been produced in the court.

[27] PW-9 Biswajit Debbarma had investigated the case. He has stated in the trial that on 26.06.2013, he had received an oral ejahar from PW-2. He had reduced the oral information into writing (Exbt-1) and that fact as disclosed was recorded in the Police outpost GD Entry No.704 dated 26.06.2013. After writing the ejahar as per the dictation of PW2, he had read out the version and having been convinced PW2 put her signature on the complaint. He had also put his signature as the scribe in the complaint. As per procedure he had forwarded the complaint to the Officer-n-Charge of Jirania PS. Based thereon, Jirania PS case No. 62/13 was registered. He had identified the handwriting of the officer in charge of Jirania PS namely Babul Das who filled up the FIR form (Exbt-5) for registering the case. After registration, the case was entrusted to him for

investigation. During investigation, he had visited the place of occurrence and prepared the site map with index (Exbt-6 series). He had recorded the statements of PWs 2 and 3 and arrested the appellant. He had arranged for medical examination of the victim. Even the medical examination of the appellant was arranged by him as per protocol before forwarding him to the court. He seized the vaginal swab by preparing the seizure list (Exbt-2). He has identified the said seizure list in the trial. He has testified in the trial further that he had sent the sample of vaginal swab to SFSL on 11.07.2013. On 01.07.2013 he received the examination report. He had received the medical examination report of the appellant on 08.07.2013. He had sent the victim to the court to facilitate recording of her statement under section 164(5) of the CrPC and her statement was duly recorded. On 22.07.2013, he has seized the school certificate showing her date of birth on 07.01.1998 (Exbt-4). The said certificate was issued by the Headmaster Amarjyoti Senior Basic School. On 26.10.2013, he had received SFSL report. On 31.07.2013, having found a prima facie being established, he filed the final police report chargesheeting Jeffery Hrangkhal (the appellant), who was at the relevant time, the in-charge of the hostel. He had identified

the appellant in the dock. He has admitted during the cross examination that he did not examine any member of the school Committee nor even the Chairman of the said Committee. Thereafter, in the cross examination he has clearly stated as follows:

> **"Witness Smt. Rani Rupini did not state to me that her daughter told her that accused threatened not to raise any voice at the point of knife and that he would kill her brother and sister who were reading in the said school. The said witness also did not state to me either in the FIR or in her statement that her daughter reported the incident to a female teacher of the school whose her surname was "Reang" and that said teacher gave advice her to flee away. The aforesaid witness also did not state to me that at the relevant time the wife of accused was at Agartala.**
>
> **PW.4 Sri Khokan Munda did not state to me that he heard from the mother of the victim that accused committed rape upon her daughter when she was engaged for cooking in the school."**

[28] PW-10, Shri Sushanta Majumder on 08.07.2013 was posted at Agartala as the Judicial Magistrate, 1st Class in the Court No.6, on that day in connection with PRC 624/2013 arising out of Jirania PS Case no. 62/13, he had recorded the statement of the victim on oath. Thereafter, the statement was read over and explained to the victim in Kokborok and on her admission that the statement had been recorded correctly, she put her signature on the statement. PW-10 has stated that in the statement (Exbt3(a), he had attached a certificate at the bottom attested with his signature and the official seal. In the

cross examination he has denied the suggestion that he did not record the statement of the victim.

[29] What is notable is that the procedure of the seizure has not been disputed by the defence.

[30] Two pertinent questions thus arise and come to the fore from the analysis of the evidence and the extensive submission as made by the counsel representing the respective parties. Those are-(1) whether the testimony of (PW-3) is wholly reliable by as the "sterling witness" and (2) whether the age of the victim has been established by tenable evidence?

[31] Let us take up the second question first. In this case, the secondary evidence (Exbt-4) in the form of the school certificate has been admitted without production of the original admission register. Whether on the basis of the said school certificate (Exbt-4) alone, any inference on age of the victim can be drawn. In **Alamelu vs. State represented by the Inspector of Police** reported in **(2011) 2 SCC 385**, the apex court had occasion to observe as follows:

> **"43. We may further notice that even with reference to Section 35 of the Indian Evidence Act, a public document has to be tested by applying the same standard in civil as well as criminal proceedings. In this context, it would be appropriate to notice the observations made by this Court in the case of Ravinder Singh Gorkhi Vs. State of U.P.4 (2006) 5 SCC 584 held as follows:**

> **"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 a 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."**

[32] Admission of the school certificate (Exbt-4) is therefore protected by Section 35 of the Evidence Act. but so for its content is concerned, it has to be held that it has not been proved as the source of information relating to the date of birth of the victim has not been disclosed. In **Alamelu** (supra), it has been further enunciated as under:

> **"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 Indian Evidence Act. 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. <u>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.</u>"**
>
> **[Emphasis added]**

[33] From the school certificate (Exbt-4), it has transpired that the date of birth of the victim has been recorded in the

admission register as 07.01.1998. The occurrence took place on the days of 22.06.2013 to 24.06.2013, meaning on the day of occurrence the victim was more than 16 years of age. But PW-2 has stated that on the day of occurrence, the victim was aged about 13 years of age. As already pointed out while testifying in the trial the victim disclosed her age as 17 years on 22.02.2016, meaning on the day of occurrence her age was more than 14 years. Thus, on accumulative assessment of this evidence, this court is persuaded to accept the age of the victim more than 16 years but below 18 years. The ramification of this observation is that the charge as framed under Section 376(2)(i) of the IPC cannot be maintained but there cannot be any doubt that the charge under Section 376(1) of the IPC can still be maintained without framing the charge afresh as the conditions of Section 222 of the CrPC are satisfied as the offence being cognate and minor.

[34] So far the first question as formulated above, we do not have any difficulty to rely fully on the testimony of the victim (PW-3) inasmuch as her testimony has been fully corroborated by the medical evidence. Absence of spermatozoa in the vaginal swab cannot disprove the fact of penetration in the labias. The opinion of PW-6 is quite categorical in respect of

the sexual intercourse but her opinion in respect of old rupture is quite subjective and on the basis of the victim's testimony that can be understood in the perspective. When the victim came out from the control of the appellant, she had disclosed the heinous acts to her mother (PW-2) who without much delay reported the matter to the nearby police outpost. The police had taken the victim for medical examination. So far the element of threat is concerned, as testified by the victim, has not been denied by PW-10. From the defence, no evidence has been led to make out any circumstance under which the testimony of the victim can be suspected. The law is well-entrenched that there is no requirement to insist upon corroboration of the victim's statement for purpose of returning the finding of conviction. While noting the same we are not oblivious of what has been enunciated by the apex court in **Rameshar vs. State of Rajasthan** reported in **(1952) SCR 377.** It had been observed in **Rameshar** as follows:

> **"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, … The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."**

[35] As the law has developed and is crystalised in respect of the victim's testimony, the said principle has been dilated a little further by providing emphasis on "the circumstances make it safe to distance with it" (see **Chandraprakash Kewalchand Jain** and **Gurmit Singh *ibid*)**. As we have noted that no circumstance has surfaced to pursue us for corroboration or for further assurance.

Having observed thus we are of the considered view that the appellant is liable to be convicted under section 376(1) of the IPC without framing any formal charge as the said offence is cognate and minor to the offence punishable under Section 376(2)(i) of the IPC. Accordingly, the appellant is acquitted from the charge as framed under Section 376(2)(i) of the IPC, as the age of the victim could not proved to be below 16 years of age to our satisfaction.

On consideration of the relevant factors for awarding the sentence and the nature of the offence committed by the appellant in particular, we are of the view that the sentence as awarded by the trial judge is not required to be altered or modified. Hence, the order of sentence passed by the trial court stands affirmed.

In the result, notwithstanding the conversion of the charge, the appeal stands dismissed. The appellant shall serve out the remaining term of imprisonment.

Send down the LCRs forthwith.

JUDGE **JUDGE**

HIGH COURT OF TRIPURA
सत्यमेव जयते

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