

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 710 of 2016

Santu Molla

Vs.

The State of West Bengal.

For the Appellant : Mr. T. K. Dhar.

For the State : Mr. Binoy Panda,
Ms. Puspita Saha.

Heard on : 21.11.2022

Judgment on : 05.12.2022

Shampa Dutt (Paul), J.:

The present appeal is against an judgment and order dated 27.09.2016 and 28.09.2016 passed by the learned Additional Sessions Judge, 7th Court, Barasat North 24 Parganas in connection with Sessions Trial No. 01 (07) of 2012 corresponding to Sessions Case No. 04 (02) 2012 thereby convicting the appellant for offence punishable under Section 493/376 of the Indian Penal Code, 1860, sentencing him to suffer rigorous imprisonment for seven years and to pay fine of Rs. 10,000/- (rupees ten thousand), in default to suffer further rigorous imprisonment for further 6 (six) months for the offence punishable under Section 376 of the Indian Penal Code and was further sentenced to rigorous imprisonment for 5 (five) years and fine of Rs. 5,000/-, in default further rigorous imprisonment for 3 (three) months for the offence punishable under Section 493 of the Indian Penal Code. The sentence to run concurrently.

The prosecution case is that the daughter of the de-facto complainant aged about 16 years developed a love affair with the accused and took her away to the house of his friends and relatives on assurance of marriage. Later the de-facto complainant came to know that the accused had forcibly raped her several times. The de-facto complainant requested the father of the accused for marriage of his son (accused) with his victim daughter but the family members of the accused refused such proposal and de-facto complainant came to know that his daughter was two months pregnant. A complaint was lodged and on trial in the case under reference the accused/appellant was convicted as above.

Mr. T. K. Dhar learned counsel for the appellant submits that the judgment under appeal was passed without proper consideration of the materials and evidence on record and in spite of the essential ingredients of the offence alleged not being proved before the Trial Court, the learned Trial Judge erroneously convicted the appellant/accused and as such there has been grave miscarriage of justice and the conviction is based on hearsay evidence without any corroboration and as such the judgment of conviction under appeal is liable to be set aside as the prosecution has failed to prove their case before the Trial Court beyond all reasonable doubt.

Mr. Binoy Panda, the learned counsel for the State submits that the judgment of conviction under appeal is in accordance with law as the victim in the present case was aged only 16 years and the prosecution has proved before the Trial Court by way of evidence that the accused committed rape upon the 16 year old victim. The victim clearly being a minor, the question of consent does not arise and as such there being a clear case against the accused which has been proved beyond all reasonable doubt before the Trial Court, the appeal is liable to be dismissed.

Evidence on record

The offences for which the present appellant has been accused are under Sections 376/493 of the Indian Penal Code.

Section 376 of the Indian Penal Code lays down:-

“376. Punishment for rape.— (1) *Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life, or for a term which may extend to ten years*

Ingredients of offence.— *The essential ingredients of the offence under Sec. 376 are as follows:*

- (1) *Accused had sexual intercourse with a woman;*
- (2) *Such sexual intercourse was under any one of six circumstances enumerated in Sec. 375 of the Indian Penal Code;*

* * * * *

The offence of rape has been defined under Section 375 of the Indian Penal Code.

“375. Rape.—*A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—*

First. — Against her will.

Secondly. — Without her consent.

Thirdly. — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly. — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married.

Fifthly. — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or

intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. — With or without her consent, when she is under sixteen years of age.”

In the present case admittedly the victim is aged 16 years and from the medical reports exhibited before the Trial Court, the Doctor found that though the victim was not pregnant, he found that the victim had intercourse and found the hymen of the victim ruptured and on examination the Doctor gave his opinion that the victim was not aged more than 16 years 6 months. As such it has been proved by way of clear evidence beyond reasonable doubt that the victim was a minor and that she had intercourse (allegation of rape) at the time of incident in this case.

The next offence alleged is under Section 493 of the Indian Penal Code.

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.—Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence. — The essential ingredients of the offence under Sec. 493 are as follows:-

- (1) *The accused practiced deception on a woman;*
- (2) *The intention of the accused to practice deceit was to induce a woman (complainant) to believe that she was lawfully married to the accused;*

(3) *There was cohabitation or sexual intercourse as a result of the deception."*

The victim deposed before the Trial Court as PW 2. She has categorically stated that though the accused use to tell her that he loved her she never believed the same. She has further stated that the accused took away her at Lauhati Marriage Registry Office accompanied by his brother in law and cousin brother. He represented to her that he has married her, though she did not sign any document. Thereafter accused took her away to his cousin brother's house and his friends house and represented her as his wife. **He also had physical relation with her as husband and wife.** She told the accused that she was not married to him, but he forcibly committed "bad work (nongra kaj) with her". Thereafter accused sent her to her maternal uncle's house. She and others then informed the matter to political party office. She and others also went to the house of accused with proposal of marriage, but they refused. Thereafter this case has filed.

The victim also made a statement before the Magistrate under Section 164 of the Cr.P.C. The victim reiterated whatever she stated before the Magistrate while giving her statement under Section 164 of the Cr. P.C. before the Court on dock. The victim was examined by the Doctor who proved the report marked Exhibit 7, where the victim stated before the Doctor the history of multiple intercourse by Santu Molla (accused) against her will for last two months and last intercourse was held on 21.05.11. On examination the Doctor

found hymen ruptured, which indicates that intercourse had occurred. On thorough examination by ultrasonography and Preg. Colour Test (Exhibit 6 and 8) it was found that the victim was not pregnant. The ossification test showed that the victim was aged not more than 16 and a ½ year as on 03.06.11 (date of complaint is 29.05.11).

Prosecution witness no. 1 the victim's father and the de-facto complainant has reiterated his statements as stated in his written complaint.

Prosecution witness no. 3, the victim's mother has corroborated the case as stated by PW 1 and the victim PW 2.

Prosecution witness no. 5 is a neighbor who knows about the incident in this case and she has stated that the victim at the time of incident was aged about 13 to 15 years.

The other witnesses are all hearsay witnesses.

Exhibit 1, 6, 7, 8, 9 are all documents relating to the medical examination of the victim. The Trial Court relied upon several rulings in support of the persecution case while deciding the case finally.

Analysis of evidence

From the materials on record before the Trial Court both and evidence oral and documentary, the following facts have been proved, before the Trial Court by way of evidence.

- (a) The victim girl was aged about 16 years at the time of incident and this fact has been proved by oral and documentary evidence (medical reports).
- (b) The accused/convict used to pursue the victim girl in this case on her way to school and back stating that he loved her and wanted to marry her.
- (c) Admittedly the accused took the victim girl away to his friends and relatives house and lived there and also took the victim to Lauhati Marriage Registry Office accompanied by his brother in law and cousin brother and then represented to her that he has married her.

The accused also took her to his cousin brother house and friend's house and introduced her as his wife. Believing such statement and conduct the victim started cohabiting with the accused, who deceitfully induced a belief of lawful marriage.

The following facts have been clearly proved before the Trial Court:-

- i. The accused practiced deception on a woman (victim here is 16 years old);
- ii. The intention of the accused to practise deceit was to induce a woman to believe that she was lawfully married to the accused.
- iii. There was cohabitation or sexual intercourse as a result of the deception.

The medical documents (exhibited) have clearly proved that the victim was clearly a minor during the incident in this case and the medical reports have also proved that she had been subjected to sexual intercourse. As such considering her age (16 years) the said act of the accused having sexual intercourse with her falls in the following descriptions under Section 375 IPC.

Firstly- Against her will.

Secondly- Without her consent.

Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is the man to whom she is or believes herself to be lawfully married.

Sixthly- With or without her consent, when she is under sixteen years of age.

Accordingly the ingredients required to prove the offence under Section 376 of the Indian Penal Code and Section 493 of the Indian Penal Code has been clearly proved by the prosecution before the Trial Court beyond all reasonable doubt.

The learned counsel for the appellant has relied upon a judgment of the Supreme Court cited in **(2003) 4 Supreme Court Cases 46 (Uday vs. State of Karnataka)**. But the said judgment is not applicable in the present case as the prosecutrix in the case relied upon was aged **19 years (major)** and as such the facts and circumstances and the position of law in this case

is entirely different as the victim in this case was aged **16 years (minor)** at the time of incident.

The Supreme Court in ***State of Andhra Pradesh vs. Gangula Satya Murthy*** on **19th November, 1996** while deciding a case relating to rape and murder of a 16 year old victim held:-

“.....Before parting with the case, we would like to point out that the Courts are expected to show great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important because of late crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman`s rights in all spheres, we show little or no concern for her honour. It is a sad reflection and we must emphasise that the courts must deal with rape cases in particular with utmost sensitivity and appreciate the evidence in the totality of the background of the entire case and not in isolation. One of us (Dr. Anand J.) has observed in State of Punjab vs. Gurmit Singh and others (1969) 2 SCC 384 thus :

" The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity....."

The Calcutta High Court in almost a similar case (***Kartick Kundu vs. the State, 1967, Criminal Law Journal 1411***) on 23rd February, 1966 held:

Para 22 *“..... Section 493, Penal Code deals with deceit. It is not a real marriage that Section 493, Penal Code, speaks of. It deals with a case of a man*

deceitfully inducing & belief of a lawful marriage and inducing a woman to have sexual intercourse with him in that belief.....”

The Court upheld the conviction and sentence under Section 376 and 493 of the Indian Penal Code in that case.

The Supreme Court in ***State of Rajasthan vs. N.K.-the accused in Criminal Appeal No. 1698 of 1996*** on 30th March, 2000, upheld the guilt of the accused in a case where the prosecutrix was held to be 15 years of age on the date of incident, by observing as follows:-

Para 17 *“For the offence of rape as defined in Section 375 of the Indian Penal Code, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. Based on these provisions, an argument is usually advanced on behalf of the accused charged with rape that absence of proof of want of consent where the prosecutrix is not under 16 years of age takes the assault out of the purview of Section 375 of the Indian Penal Code. Certainly consent is no defence if the victim has been proved to be under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case. The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix is such as would be inherently improbable.....”*

“.....A father would not ordinarily subscribe to a false story of sexual assault involving his own

daughter and thereby putting at stake the reputation of the family and jeopardizing the married life of the daughter.....”

In Criminal Appeal no. 1520 of 2021 (***Phool Singh vs. The State of Madhya Pradesh on 1st December, 2021***) the Court considering a case under Section 376 IPC relied upon several precedents as follows:-

“..... **5.2** In the case of Ganesan (supra), this Court has observed and held that there can be a conviction on the sole testimony of the victim/prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished, credible and her evidence is of sterling quality.

In the aforesaid case, this Court had an occasion to consider the series of judgments of this Court on conviction on the sole evidence of the prosecutrix. In paragraphs 10.1 to 10.3, it is observed and held as under:

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

“9. In State of Maharashtra v. Chandraprakash Kewalchand Jain [State of Maharashtra v. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under:(SCC p. 559, para 16)

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

10. In State of U.P. v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the

accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

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

11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384], this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

‘8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation

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

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

(emphasis in original)

12. In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86], this Court held that rape

is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In State of H.P. v. Raghubir Singh [State of H.P. v. Raghubir Singh, (1993) 2 SCC 622], this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [Wahid Khan v. State of M.P., (2010) 2 SCC 9] placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, AIR 1952 SC 54].

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

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

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21]. In para 22, it is observed and held as under: (SCC p. 29)

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

5.3 In the case of Pankaj Chaudhary (supra), it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony,

without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence.[Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan v. N.K., (2000) 5 SCC 30].”

5.4 In the case of *Sham Singh v. State of Haryana*, (2018) 18 SCC 34, it is observed that testimony of the victim 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 the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384] (SCC p. 403, para 21).]

7. It is also by now well settled that 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 overlook. 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. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635].”

6. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.....”

In the present case before this Court the entire evidence of the victim as prosecution witness no. 2 and her statement before the learned Magistrate under Section 164 C.P.C. are clear, reliable and trustworthy and this Court finds no reason to disbelieve the victim.

Conclusion

In view of the said findings and the materials on record this Court finds that the judgment of conviction under appeal has been passed in accordance with law by proper appreciation of the evidence on record both oral and documentary and this Court finds no reason to interfere with the said findings of the learned Session Judge in the judgment under appeal.

The Appeal being CRA 710 of 2016 is thus dismissed.

No order as to costs.

Let a copy of the judgment along with the lower Court records be sent to the Trial Court at once (urgent).

Urgent Photostat Certified copy of this Judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)

