

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A No. 69 of 2012

Sankar Naskar @ Gopal

Vs.

State of West Bengal

For the Appellant

: Mr. Arindam Jana,
: Mr. Sumanta Das.

For the State

: Mr. Pravas Bhattacharya,
: Mr. Firoz Ahemed Begg.

Hearing concluded on: 12/12/2022

Judgment on: 13/03/2023

Rai Chattopadhyay, J.

1) This appeal is directed against the judgment and order of conviction dated January 19, 2012 and January 20, 2012, passed by the Additional Sessions Judge, Fast Track, 2nd Court at Alipore in Sessions Trial No. 2 (11)/2006, arising in connection with Sessions Case No. 54 (9)/2006.

2) The trial Court, vide the said judgment found the present petitioner to be guilty of an offence of attempt to rape, under Sections 376 and

Section 511 IPC. The Court upon finding the appellant guilty as above has sentenced him to suffer simple imprisonment for five years and to pay fine of Rs. 1,000/- and in default, to suffer a further period of one month of rigorous imprisonment.

3) Being aggrieved by and dissatisfied with the said judgment and order of sentence by the trial Court, the appellant has preferred this appeal with the prayer that the order of conviction and sentence may be set aside.

4) The case was set in motion with registration of the FIR by one Budhiswar Naskar. The FIR was lodged on September 26, 2005 being registered as CNG P.S. Case No. 157 dated 26.09.2005 under Section 376 (f) IPC. The FIR was lodged in Canning Police Station in the District of South 24 Paraganas. The brief fact/allegations which the defacto complainant has narrated in the FIR may be extracted as herein below:

On September 23, 2005, the minor daughter of the defacto complainant (victim girl) went to her elder sister's house namely, Minoti Naskar. The time is stated to be at 5.00 p.m in the evening and the age of the victim at the relevant point of time is stated to be eleven years. Allegedly the present appellant, who happened to be a resident of a nearby house of that of the defacto complainant, called the victim girl and took her to the roof of his house. There, allegedly the present appellant tried to embrace and forcefully torture the victim girl. The girl raised protest

though could find it difficult to defend the forceful aggression of the present appellant. However, somehow she managed to escape from his clutches and ran away there from. The defacto complainant has narrated that the victim rushed back to her residence and described everything to her mother, i.e, the wife of the defacto complainant namely, Debala Naskar.

5) Thus the defacto complainant in the FIR has alleged of an incident of rape, said to have happened three days prior to lodging of the FIR.

6) The investigation was started and ultimately was culminated into filing of a charge sheet by police against the present appellant alleging offence under Section 376 IPC against him. After commitment of the case by the Magistrate, the Sessions Court framed charge against the present appellant on November 10, 2006. The charge was framed under Section 376 IPC against the present appellant. The appellant pleaded not guilty and hence the trial proceeded.

7) The prosecution to prove its case, has examined as many as fifteen witnesses in the trial.

8) On Scrutiny of the entire prosecution evidence the witnesses may be categorised in the following manner:-

Nos.	Description	Witness No.
1.	Defacto complainant and other witnesses supporting the prosecution case.	P.W.1, P.W.2 and P.W.11.

Nos.	Description	Witness No.
2.	Relatives and neighbours of the defacto complainant whose evidence is based on hearsay.	P.W. 5 , P.W. 6 , P.W. 8 and P.W. 9
3.	Sister of the victim, deposing for the first time in a Court, no statement made to the police during investigation.	P.W. 3
4.	Co-villager and scribe of FIR.	P.W. 7
5.	Doctors	P.W. 10 and P.W. 13
6.	Magistrate who recorded victim's statement under Section 164 Cr.P.C, 1973.	P.W. 12
7.	Police witnesses, i.e, recording officer and investigating officer.	P.W. 14 and P.W. 15

9) So far as P.Ws 5, 6, 8 and P.W 9 are concerned, their evidence is not their first hand knowledge of fact, which they have deposed. It appears that they have gathered knowledge of fact which they deposed, from other persons, who may or may not have the first hand knowledge regarding the same. Probative force of such fact deposed by these witnesses would depend on the competency and credibility of the other persons, than them. Such evidence is not a direct piece of evidence and not acceptable (excepting certain exceptional circumstances) in view of the provisions under section 60 of the Evidence Act.

10) P.W 4, is the victim girl. She was examined on April 9, 2007. In her deposition she says that about two years ago the incident happened with her. She has not mentioned the date of the incident, though she has mentioned the time to be at 4.00 p.m in the afternoon. She further says that she went to residence of her elder sister Minoti Naskar who lives in the same village where she herself resides, for the purpose of assisting her sister by lifting water from tube well. She has stated that the incident happened while she was returning from her elder sister's house. The appellant is alleged to have called her and took her to the roof of an abandoned house. The appellant has asked her whether she has got any love affair with anybody. She says further about her embarrassment on this question, and answering to the appellant that being like an elder brother of her, the appellant should not ask her such type of question. Immediately thereafter she was about to return from the place. At that point of time allegedly the appellant caught hold of her scarf and pulled her towards him by pulling the scarf. Victim has further told that thereafter the appellant put the said scarf on to her mouth and forcefully made her to lay down on the floor of the roof. Thereafter the appellant had forcefully took off her under garment (panty) and pushed his penis to her vagina. After this the victim has stated to have escaped there from and come back to her own house. There she has first narrated the entire incident to her sister-in-law, namely, Archana Naskar, and also to her mother, namely, Debala Naskar.

She was examined by doctor and narrated the history. She also made statements before the police and the Magistrate under Section 164 Cr.P.C, 1973. The Court has recorded the age of the witness to be twelve years, on the date of evidence.

In her cross-examination the victim has asserted that she had not raised any hue and cry from the place of occurrence at the relevant point of time, i.e, the roof of the abandoned building. She has further asserted the fact that at the time of incident she was wearing 'salwar kamiz', which was torn due to the force applied by the appellant to undress her. She has stated categorically that "accused committed sexual intercourse with me for about two minutes". She has also asserted the fact that in order to resist the appellant, she sustained injury on her back and also leg.

11) From the trend of cross-examination of this witness as well as other witnesses it appears that the defence has tried to make out a case that since defacto complainant, i.e, the father of the victim proposed victim's marriage with the present appellant, which proposal the appellant had declined, a fabricated case on the basis of the false allegations have been motivatedly planted against the present appellant.

12) P.W 1 is the defacto complainant, i.e, father of the victim. He has deposed that the occurrence took place on September 23, 2005. He was informed about the same by his wife Debala and daughter-in-law Archana.

This witness have stated the time of occurrence to be at 5.00 p.m and also the age of the victim to be eleven years, at the relevant point of time. P.W 1 stated further that the victim went to the house of his elder daughter Minoti to assist her to lift water from tube well as Minoti was sick. He says that Minoti's house is situated at about three minutes walking distance from his house. He states that the incident happened when the victim was returning back to her own house from that of Minoti. Allegedly, the appellant took her to the roof of the incomplete house, which is situated adjacent to the house of Minoti. There the appellant has allegedly committed rape on the victim. P.W 1 has stated that after the incident he has lodged the FIR on September 26, 2005, which was scribed by a person, namely, Firoj.

In his cross-examination, after denying the suggested question regarding his intention to forcefully give the victim in marriage with the appellant, this witness has stated that on the date of occurrence Bandana was wearing pant and frock and the pant was thrown into the tank by the mother of the victim, as that had become soiled due to the assault committed on his daughter. He further has stated in cross-examination that the victim was medically examined on the following day of the incident and also described about the fact that he has four daughters and two sons amongst whom the victim is the youngest daughter.

13) Be that as it may, let us now proceed to see what the other witnesses have stated in this case. P.W 2, is the mother of the victim. The mother has stated in her evidence that the victim girl is the youngest daughter of her. She went to the house of her married elder sister, namely, Minoti Naskar, on the date of the incident. The time was about at 4.00 p.m. The victim went there to assist Minoti in bringing water from tube well as Minoti was then physically unwell. After completing the work the victim girl was returned to her own house. On her way to return, the appellant called her and asked if she loved anybody else. P.W 2 has stated that V.G's reply was in negative, i.e, she did not love anyone. Thereafter, the appellant took the victim to the roof of an incomplete house. When the minor was about to come back from the roof of the incomplete house, the appellant restrained her by catching hold of her scarf and made her to lie down on the floor of the room situated over the stair-cases. There he committed rape upon the victim. According to P.W 2 the appellant also threatened the minor with dire consequences, in case she disclosed the fact to anyone. After returning home the victim informed about the entire incident to P.W.1.

In her cross-examination this witness has asserted not to have told the police during investigation of the bleeding injury sustained by the victim to her private parts due to alleged offence committed by the appellant. She has further asserted that the bed sheet where the victim

laid after returning home, was also stained with blood but the same was not handed over the police. She has also asserted that the under garment used by the victim at the time of occurrence was also not handed over the police and was thrown into water for being sullied. She has further asserted that P.W 1 and herself accompanied the victim to the doctor for her treatment and that the place of occurrence was at a distance of about 1 (one) minute from her house.

- 14)** P.W. 3 is the sister-in-law of the victim who has more or less supported the evidence of P.W 1 and P.W 2, so far as the alleged offence, pre-occurrence and post-occurrence incidences are concern. She corroborates the date and time of incident, i.e, at about 4.00/5.00 p.m. She also says that the V.G. was wearing 'churidar' and her panty was soaked with blood. She asserts that she has thrown the said panty into the water. She has stated to reside in the same mess and house as that of P.W 1 and 2, that is, however, in variation of the deposition of P.W 2, who has stated her elder son, i.e, the husband of the witness to reside separately from them.

During her cross-examination, this witness have stated that she has not been examined by police earlier and it was for the first time she was deposing in the Court.

As a matter of noting and concern, it may be stated that in the deposition of P.W 3 recorded on May 5, 2007, this witness has mentioned the victim to be her 'daughter' and denied the suggestion that she has deposed false and at the instance of her 'husband'. This portion of evidence of this witness appears to be totally out of context and is kept outside to purview of consideration of this Court in this appeal.

15) P.W 11, is the elder sister of the victim, namely, Minoti who has corroborated the evidence of P.W 1, P.W 2 and P.W 4/victim. She says that she has come to know about entire incident from her mother who immediately after disclosure of the same by the victim to her, has informed P.W 11 regarding the commission of rape by the appellant upon the victim. The witness has supported the prosecution case.

16) P.W 7, is the co-villager and scribe of FIR, who have proved the FIR in the trial. He says that he has drafted the FIR according to the instructions of the defacto complainant and explained the contention thereof to him, upon which the defacto complainant signed on the same. P.W 7 has stated further in his cross-examination that he drafted the FIR at about at 9.00 p.m., though he could not remember the exact date of lodging of the FIR.

17) P.W 10 and P.W 13 are the doctors who have examined the victim on September 26, 2005 at 3.30 a.m and October 17, 2005 respectively.

P.W 10 is the medical officer and radiologists at Canning Sub-Divisional Hospital, his findings are as follows:-

“1. The patient was conscious and ambulant general condition was fair abdomen was soft and mild tenderness was found over the lower abdomen. A small abrasion over the outer right elbow measuring 1/2 c.m X 1/2 c.m. No other external injury seen.”

He deposed about the age of the victim girl on the basis of ossification test report to be above 14 years and below 16 and half years. The ossification test report marked in the trial Exhibit 3 and injury report prepared by P.W 10 is marked as Exhibit. 4.

P.W 13, is the medical officer/superintendent of Alipore Police Hospital. He has recorded his findings as follows:-

“ (i) Hymen intact but captured.

(ii) No vaginal Discharge seen.

(iii) No VD distracts.

(iv) No Foreign body seen.

(v) Experience of vaginal intercourse can be ruled out in all probability but vaginal manipulation by object like finger etc can be said.”

In his cross-examination he has opined :-

“In my opinion experience of vaginal intercourse of the V.G. can be ruled-out of all probability. But vaginal manipulation by object like finger etc. can be said.”

18) P.W 14, is the recording officer and P.W 15 is the investigating officer in the case. Their evidence shall be discussed later on as and when necessary.

19) Upon careful consideration of the impugned judgment and order of the trial Court it is found that the trial Court has basically placed strong reliance on the evidence of P.W 4/the victim girl. That being corroborated with the evidence of doctor/P.W 13, the evidence of the victim girl was held to be sacrosanct. The trial Court has basically proceeded on three dimensional pedestal, i.e, firstly it has accepted the age of the victim at the time of occurrence to be 11 years. Secondly, as stated earlier-by referring to the provisions under Section 134 of the Evidence Act, the trial Court has held that the evidence of the victim being corroborated with that of the doctor (P.W 13) is qualitatively sufficient to prove the prosecution case on its own merit, even without being corroborated with the other ocular or documentary evidence in the case. Thirdly, the Court has held that the other discrepancies, if any, are minor and irrelevant. The trial Court has found that there has been no scope to disbelieve what the victim has stated and ultimately held that not an offence under Section 376 IPC of rape but an offence of “attempt to rape”, i.e, under Section 376 read with Section 511 IPC, has been proved in this case against the appellant, beyond all reasonable doubts. Accordingly, the trial Court has awarded sentence of five years of simple imprisonment with a fine of Rs. 1,000/- in default one month of rigorous imprisonment.

20) This case is governed under the unamended provisions of the Code which prevailed before coming into force of the Amendment Act 13 of 2013

of the same. 'Rape' as was defined in the Code, before coming into force of the Amendment Act 13 of 2013 may be extracted as below:-

“376. 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:—

Firstly. — 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 another 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. Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception. -Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

- 21)** Section 511 IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific Sections of the Code and it provides inter alia that:-

“511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with 1[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2[imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term

of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.”

22) Therefore, even to bring home the charges of “attempt to commit rape”, the prosecution in this case must prove an attempt by the appellant of penetration of penis or any other object or part of his body not being the penis, into the vagina, mouth, uterus or anas of the victim. Such an act by the accused should be against the will of the victim, without her consent and irrespective of her consent if the victim is below eighteen years of age (which previous to coming into force of the Amendment Act of 2013 was stipulated to be sixteen years).

23) The expression ‘penetration’ denotes ingress of the male organ into the female parts. In this regard the Hon’ble Supreme Court has held in the case reported in **2021 SCCOnline SC 965 (State of Madhya Pradesh vs. Mahendra Alias Golu)** as follows:-

“16. A plain reading of the above provision spells out that sexual intercourse with a woman below sixteen years, with or without her consent, amounted to ‘Rape’ and mere penetration was sufficient to prove such offence. The expression ‘penetration’ denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what ‘penetration’ conveys under the unamended Penal Code which was in force at the relevant time. In Aman Kumar (supra), it was summarised that:—

“7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893).”

- 24) The relevant portion of the said judgment may be profitably noted to understand the concept to attempt to commit rape and preparation to commit rape:-

“11. It is a settled preposition of Criminal Jurisprudence that in every crime, there is first, Mens Rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, ‘attempt’ is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act. ‘Attempt’ is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

12. There is a visible distinction between ‘preparation’ and ‘attempt’ to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of ‘preparation’ consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an ‘attempt’ to commit the offence, starts immediately after the completion of preparation. ‘Attempt’ is the execution of mens rea after preparation. ‘Attempt’ starts where ‘preparation’ comes to an end, though it falls short of actual commission of the crime.

13. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an ‘attempt’ to commit the principal offence and such ‘attempt’ in itself is a punishable offence in view of Section 511 IPC. The ‘preparation’ or ‘attempt’ to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between ‘preparation’ and ‘attempt’. If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

20. We may at the outset explain that what constitutes an ‘attempt’ is a mixed question of law and facts. ‘Attempt’ is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence.

An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.”

25) The Court in that case has also relied on the prior judgment of the Court reported in **(2004) 3 SCC 602 (Kappula Venkat Rao vs. State of A.P)**.

26) Therefore one may understand the law regarding as to when an accused person/appellant may be held guilty of an attempt to commit rape, that there must be a stage of ‘preparation’ to commit it and after accomplishing the preparation stage, the accused, attempts to commit the offence. In furtherance of such an ‘attempt’ by the accused there should be a stage of success thereof when the offence can be said to have been completed. All the stages as mentioned above should be in pursuance to an intention of the accused person to commit the offence, i.e, “mens rea”. To be more precise, the accused should first have an intention to have sexual intercourse with the victim by penetrating into the vagina of the victim. Thereafter he must prepare for the commission of the offence and the preparation stage is to be accomplished. Thereafter there must be so overt an act by the appellant showing his attempt to commit the offence. This attempt may either be successful or unsuccessful. In case of successful attempt the “crime” will be held to have been committed and if the attempt fails, the accused shall be guilty of the offence of “attempt” but not of commission of the offence. As discussed by the Hon’ble Supreme Court in

above stated case that ***“attempt by the appellant/accused person is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt and its depraving impact in that on the societal values is no less than the actual commission.”***

27) Thus being the law settled, for a guilt to be termed as an “attempt to commit rape” of which the appellant is convicted in this case, it is now required that the evidence may again be gone into, to see the credibility and merit of the same and whether the trial Court has assessed the same in their right prospective, to come to a just and legal finding.

28) In this case, there are sufficient reasons, in view of contradictions, short comings and lack of coherence in the evidence of witnesses and the corroborating documentary evidence, to differ with the basis and reasoning, upon which the trial Court has proceeded. The trial Court is found to have omitted those in its process of making decision. It is the settled law, that evidence of victim only could be the foundation of conviction, but only when the same is so sufficient and convincing, that the Court may not seek further corroboration from other oral or documentary evidence. But that does not mean that Court would only look into the evidence of the victim and to none else. The sufficiency of evidence of victim should be judged, in the light of other testimonies in that trial, only after weighing the entire evidence on record as a whole. The Court can leave aside minor discrepancies but cannot simply, leave aside all the other evidences as a

whole. This may impair it to assess the surrounding circumstances, having direct contact or effect as to the commission of or attempt to commit the alleged offence, which otherwise the Court has to assess in the course of a fair trial. The Court's decision to bestow utmost credence to the substantive evidence of the victim should be adequately reasoned that the same shall serve best interest of the fair trial and justice. It would be relevant to mention from the judgment of Supreme Court in ***Kappula Venkat Rao (supra)*** case, when the Court held that ***"Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and inspite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on this aspect."***

29) P.W 4, i.e, victim girl, is the principle witness of the prosecution. She says that she was called by the appellant to a secluded place, i.e, to the roof of an abandoned building where she was first asked a question and thereafter when she was about to return, was pulled by her scarf and made to lie down on the floor of the roof. As far as the overt act of the appellant is concern, P.W 4 has stated that after making her to lie down on the floor of the roof the appellant put off her pant and thereafter pushed his penis in to her vagina.

30) This evidence of the victim girl would have been sufficient and found sacrosanct, unless there had been a strong contradiction of that with

her version made before the Judicial Magistrate in her statement recorded under Section 164 Cr.P.C, 1973. The verdict of the Hon'ble Supreme Court is in the case of ***Aman Kumar & Anr. Vs. State of Haryana*** reported in ***(2004) 4 SCC 379***, may be referred to in this regard in which Hon'ble Supreme Court has held that victim's version if is found difficult to be accepted on face value, the Court may search for evidence which would lent an assurance to her testimony. As to why the testimony of P.W 4 alone would not be sufficient in this case, can be found from her own version given before the Magistrate. Her statement recorded under Section 164 Cr.P.C, 1973 has been duly proved in this case and marked as Exhibit 2. In her statement, firstly the victim has mentioned about the appellant kissing her before made her to lie down on the floor of the roof. Thereafter the victim has mentioned the appellant to have forcefully done some 'mischief' with her. The testimony of the victim is devoid of any evidence regarding the appellant to have kissed her at the 'preparation' stage, as he stated before the Magistrate. Further, at the initial stage, the victim could not describe the incident which allegedly have happened with her, therefore leading to the speculation that an act of 'mischief' as stated by her before the Magistrate, conducted by the appellant may or may not be an act of forceful sexual intercourse and may and may not be an act of forceful insertion of penis to her vagina against her will by the appellant. The

possibility of the victim, developing at a later stage, upon her statement, cannot be ruled out.

31) The trial Court has taken into consideration the evidence of doctor (P.W 13) to corroborate offence of P.W 4 in order to find guilt of the appellant. On a careful perusal of the evidence of P.W 13, it would be found that the doctor has clearly declined the possibility of any forceful sexual intercourse with the victim girl. He has suggested about the possibility of “vaginal manipulation by object like finger etc.” However, V.G. has never stated/alleged, either in her evidence or statement before the Magistrate, against the accused/appellant of insertion of finger into her vagina. Therefore the finding of the trial Court referring penetration by the appellant to the vagina of the victim is basically founded on conjecture only. It is no way to be discarded or ignore that, firstly the victim was not immediately treated even after the allegation of commission of sexual violence and rape. She was examined after three days from the alleged date of commission of an offence. Even then, no sign of any forceful intercourse was found in medical examination. Neither the wearing apparel was seized by police in this case, which was alleged to be blood stained, nor the alleged blood stained bed sheet was made a part of this trial.

32) There would be other grounds for not placing unnecessary reliance solely on the evidence of the P.W 4 and seeking corroboration to the same. First and foremost would be the discrepancy in evidence of various

witnesses regarding the place of occurrence. As discussed earlier the place of occurrence is stated to be the roof of an abundant building, whereas it has also been stated to be within the room at the roof of an abundant neighbouring building. Even one witness have stated the building to be an incomplete one, owned by the father of the present appellant. I have also perused the rough sketch map exhibited in the trial. On a careful consideration of the substantive as well as corroborative evidence as stated above, one cannot sanguinely say as to what would be the actual place of occurrence as alleged. There is scope of doubt regarding the same.

Very pertinent is to note the victim to have stated to wear a 'churidar'/'Salwar Kameez' at the time of occurrence, in so far as the other witness supporting prosecution's case have narrated and asserted the fact of throwing into water soiled 'pant' of the victim which she wore at the time of occurrence. There is also no substantive evidence, as regards the 'torn' condition of such wearing apparel, excepting the statement of the victim. All these, appear to be discrepancies very relevant, to raise strong suspicion as regards the alleged occurrence is concerned. Doctor has also stated upon examination of the victim not regarding commission of any rape but only possibility of some minor physical violation, which has stark difference with the evidence of the victim, regarding the appellant committing rape upon her.

33) As discussed earlier, the discrepancy in evidence of the prime witness of the prosecution would not lead to the satisfaction to rely solely on the evidence of the victim, to find the guilt of the accused person, which the trial Court has proceeded to do. The same is found to be improper and not in accordance with law. Instead the same may not be credited to be qualitatively sufficient to prove the offence, on its own, in view of the entire discussions, as above. Also, that, the prosecution's case cannot be said to have proved appellant's guilt beyond scope of all reasonable doubts, on the parameters which are also discussed before, so far as the offence of 'rape' or 'attempt' for commission of the same is concerned. The impugned judgment hence suffers from impropriety and illegality.

34) Hence, the appeal should succeed. The judgment and order of the trial Court dated January 19, 2012 and January 20, 2012 respectively are set aside. Prosecution has not been successful to prove charges against the accused person beyond scope of all reasonable doubts. The appellant be acquitted in the trial. He be release from his bail bond immediately.

35) Connected application, if any, is also disposed of.

- 36)** Certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

RAI
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Date: 2023.03.13 15:52:44 +05'30'
(Rai Chattopadhyay, J.)