

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

CRA/325/2006

SAMAR DEBANGSI

VS

STATE OF WEST BENGAL

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

For the Appellant: Ms. Trina Mitra, Adv.

For the State : Ms. Shaila Arfin, Adv.
Ms. Sana Naaz, Adv.

Last Heard on : 02.04.2025

Judgement on : 25.04.2025

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This appeal is directed against the judgement and order of conviction dated April 25, 2006 and April 26, 2006 respectively passed by the Learned Court of Additional District and Sessions Judge Kandi, Murshidabad in Session trial No 2 of 2003/Session serial no. 67 of 2002.
- 2.** The learned trial court vide his judgement found the present petitioner guilty of an offence of outraging modesty of the victim and an attempt to commit Rape upon her and thereby passed the order of conviction punishable under section 354 and 376/511 IPC against the present appellant and sentenced him to suffer imprisonment for a term of two years

in default to undergo further rigorous imprisonment for a term of three months for the offence committed under section 354 IPC. The learned court further passed the sentence to undergo rigorous imprisonment for a term of 3 ½ years and to pay a fine of Rs 5000/- in default to undergo rigorous imprisonment for a term of 6 months for the offence committed under section 376/511 IPC .

3. Being aggrieved thereby the instant appeal has been filed by the appellant for setting aside the said Judgement and order of conviction. Bereft of any details, the fact of the case is that the accused/appellant attempted to rape on February 6, 1998 at about 5 P.M at a sugarcane field when she went to attend nature's call.
4. on the basis of a complaint lodged by the defacto complainant/victim before the Burwan Police Station on February 8, 1998 against the appellant herein and Burwan P.S. case No 81/98 dated February 8, 1998 under Section 354/376 Indian Penal Code started and after completion of investigation, the Investigating Officer had submitted charge sheet No 18/1998 dated 27.03.1998 under Section 354/376/34/511 of the Indian Penal Code against the accused Samar Debangsi being the present appellant. The case was transferred after the commitment from the Court of Learned SDJM Kandi to the Court of Additional Session Judge Kandi. The charge against the accused persons were read over and explained to him to whom he pleaded not guilty and claimed to be tried. Accordingly, trial commenced and the Learned Trial court found the accused guilty of the offence committed under section 354 and 376/511 IPC.

5. Submission

The learned defence counsel argues that,

- a) the impugned judgement and order of conviction is bad-in-law and passed without considering the evidence led before the Court on behalf of the Defence Counsel.
- b) The evidence of the prosecution witnesses specially the evidence of prosecutrix that there has been a long-standing dispute with the appellant over a plot of land was not considered by the court
- c) There has been an inordinate delay in lodging the complaint which made a dent to the prosecution in establishing the story.
- d) The Learned court failed to pass the order of conviction solely on the basis of the evidence adduced by the defacto complainant in absence of Injury report or evidence of any Doctor. No ingredients to attract section 376 IPC can be found either from the evidence of the victim .
- e) The prosecution has failed to prove the case beyond all reasonable doubts .There exists glaring inconsistencies and contradictions which are apparent on bare reading of the evidences adduced by the prosecution witnesses.
- f) The contradiction cast clouds regarding the veracity of the testimonies of the prosecution witnesses accordingly urged this court to allow the appeal and acquit the appellant.

6. The Learned counsel appearing on behalf of the prosecution supports the judgement of conviction and order of sentence and it is argued that a complaint was lodged by the de-facto complainant/victim herself before the

Burwan P.S. on February 8, 1998 against the accused/appellant alleging attempt to rape on February 6, 1998 at about 5 P.M. over which the Burwan P.S. case No 81/98 dated February 8, 1998 under Section 354/376 Indian Penal Code started and after completion of investigation, the investigating officer had submitted the Burwan P.S. charge sheet No 18/1998 dated 27.03.1998 under Section 354/376/34/511 of the Indian Penal Code against the accused Samar Debangsi being the present appellant. The prosecution cited as many as seven witnesses who corroborated the case of the victim and the Learned Trial court has found him guilty for commission of offences under section 354 and 376/511 IPC as the prosecution was able to prove the charges beyond all reasonable doubts.

Analysis

7. Heard the rival contentions and the evidences led during trial along with the judgement of the learned trial Court.

The seminal issue falls for consideration is;

- a) Whether the evidences adduced was sufficient to record conviction under section 354/376/511 IPC against the appellant ?
- b) Whether the prosecution was able to prove the case beyond all reasonable doubts ?

8. In order to set the motion of the prosecution case the complaint was lodged by the Defacto complainant on February 8, 1998 at 7.05 hours alleging about an offence of attempt to commit rape on February 6, 1998. The formal FIR shows that on the basis of such information received on 8.2.1998 at about 7.05, the Burwan P.S. case started being Burwan P.S. case No. 18 of

1998 dated February 8, 1998 under Section 354/376/511 of Indian Penal Code. So admittedly there is a delay of two days from the date of occurrence and in filing the written complaint. Let it be seen how the prosecution has been able to explain such delay. On scanning of the evidence of the victim and the supporting prosecution witnesses coupled with the written complaint it is gathered that pursuant to the advice of the neighbours the incident was informed to the local police station by the Prosecutrix .She deposed as P.W 1 and stated in her cross-examination that she lodged the complaint after 1 day from the date of incident. She further deposed that at the time she was in her father's house, her jamaibabu Bidhan Chandra Mondal wrote the said complaint in her presence where she put her signature . She explained the reason for the delay in lodging the complaint as the villagers assured her for taking steps to settle the dispute. Said Bidhan Chandra Mondal adduced evidence as P.W. 5 and in his cross-examination he deposed that the complaint was written by him at their village . The De-facto complainant also deposed that said Bidhan Chandra Mondal wrote the said complaint in her presence where she put her signature. Fact remains no name of scribe can be found in the written complaint. However primarily a reason for the delay in lodging the written complaint can be seen but admittedly a complaint was lodged pertaining to an incident of sexual assault upon the victim/de-facto complainant.

- 9.** The Hon'ble Supreme Court in catena of decisions held that mere delay in lodging of a complaint in case of commission of rape cannot be a factor to test the veracity of the case of the victim and is not fatal for the prosecution. In the instant case the charge was under Section 376/511 IPC.

Since certain inconsistencies and departure from the statement of the victim can be found regarding the time of lodging and the scribe of the complaint in this case the evidence of the other prosecution witnesses needs to be assessed for the purpose of corroboration in the light of the above observation of the Hon'ble Apex court in order to examine the above issues.

10. In the instant case the De-facto Complainant stated in her complaint that on the above mentioned date in the afternoon she went to the field to relieve herself, suddenly someone came from behind lifted her up and took her towards a sugar cane field whom the complainant could recognise as the present appellant, a resident of their street who put her down to the ground with a view to do some sexual inter course and prepared to commit rape on her when she cried out, the person then put cloth over her mouth, pressed her throat and was about to strangle. However, he failed to do the same and there was a scuffling between them when she could manage to shout when the appellant left her and fled away. While running away he also threatened the De-facto Complainant to be murdered if she informed the matter to anybody. She usually informed the matter to her parents and then to the neighbour who advised her to inform the Police Station.

11. In view of the submissions advanced by the Learned Defence Counsel deviations are found from the content of the FIR filed by none other than the De-facto Complainant /victim herself in the evidence adduced by her as P.W. 1, which are as follows:

It was not mentioned in the FIR that the accused/appellant first put off his lungi then stripped the saree of the victim and put his lungi close to her

mouth .It was not mentioned in the FIR that the appellant pressed her breast and tried to commit rape. She first time stated that Mira/Latika saw the incident. It was not mentioned in the F.I.R that her Jamaibabu wrote the complaint as per her instruction .It was not mentioned that her wearing apparels were torn due to the scuffling.

It is argued by the Learned Senior Counsel that though the PW 1 in course of the evidence in the examination in chief mentioned first time about sustaining injuries on her right side of the forehead, On her belly and on the neck and she was discharged from the hospital after putting her First Aid, such injury report was never exhibited in this case. The I.O. did not seize the wearing apparels of the De-facto Complainant. The Learned Advocate also draws the attention of this court to the cross-examination adduced by Investigation Officer who subsequently said that he did not seize anything from the place of occurrence and also, he did not examine the owner of the sugar cane field.

12. It is a settled proposition that the F.I.R is not an encyclopaedia which will describe all the minute details of the incident specially when the de-facto complainant is the victim of a sexual harassment. The court cannot be oblivious of the fact that the victim is a village lady and had to go the field to attend nature's call having marital discord and is living at her father's place and therefore how difficult it would be to gather such courage to raise a voice against a co-villager. The uncontroverted testimony shows that a talk of settlement took place immediately after the alleged incident with the other villagers or Morols who assured her to settle the issue but after that failed

the complaint had to lodge which certainly supports the case of prosecutrix that something happened between the accused and the victim for which such settlement was necessary to be arrived at. The prosecutrix herself stated that she was taken to Burwan Hospital by her Jamai babu but no date was mentioned. In the cross examination she said after lodging of the complaint Daroga babu. sent her to the Hospital and after First Aid and prescribed medicine she was released. She said to have sustained injuries due to the scuffling. The injury report relied upon by the Learned Trial Court reveals the date as on 9th of February 1998 in respect of an injury sustained on 6/2/1998. The injury report further reveals that the victim sustained simple injury which are Multiple abrasions over skin and right scapula ,contusion over parietal Region (right-side) of scalp ,small abrasion over front of abdomen.

- 13.** On scrutiny of the evidence adduced by the P.W. 1 specially from her cross-examination names of Mira Mondal and Latika Mandal as eye witnesses to the incident can be found. Mira Mondal adduced evidence as P.W 2.who however deposed that after hearing the shouting she rushed towards the sugarcane field where she found Samar Debangsi and Pratima in naked condition. She is the neighbour who also went to attend nature's call during the afternoon on the fateful day. On seeing her the accused /appellant fled away. PW 2 further stated in her cross examination that police did not interrogate her after the incident and she did not go to police Station to give any statement. Therefore, from such evidence she cannot be said to be the eye witness as stated by the de facto complainant but what reveals is that she reached at the spot immediately after hearing the shout.

Moreover she in her cross examination said she saw accused Samar to run away and she also took the name of Latika who did not adduce any evidence as the prosecution witness. The parents to whom the prosecutrix informed the incident at the first hand has not been examined by the I.O.

14. PW3 Ananga Mohan Mondal who after hearing the cry of a woman rushed towards the spot with some other persons and found his sister in half naked condition stated during cross examination that he did not make any statement before the police though Daroga babu visited their village on 8th February .P.W4 Nabadwip Mondal being the brother of the De-facto Complainant while adducing the evidence deposed that he found Ananga and Nimai to chase Samar who was fleeing and he noticed the wearing saree and blouse of her sister in torn condition and when he asked about the same then his sister informed the P.W. 4 about the incident happened. However, he stated during cross examination that he never gave any statement before the Investigating Officer and his sister and Bidhan Chandra Ghosh made the statement .P.W 6 the other brother also deposed that when he rushed to the P.O he found Samar Debangsi and her sister were scuffling and as soon as he reached, he found Samar to run away. The interesting part is that none of the above witnesses being P.W 2,3 ,4 & 5 during their examination in chief denied about giving any statement before the police and during their cross examination made the statements. The evidence of the above witnesses are found named in the charge sheet as prosecution witness and their testimonies corroborated with the prosecution case. They were never declared hostile nor the defence could demolish the

case of prosecution by putting any such suggestion in order to impeach their credibility.

In a criminal case for the purpose of proper adjudication the place of occurrence and the time of occurrence plays a pivotal role. In the instant case despite having some inconsistencies in the evidence adduced on behalf of the prosecution witnesses the admitted fact comes out that the said incident happened around 5p.m or when the sun was setting at the adjacent sugarcane field on February 6, 1998 corresponding to 24/25th Magh at Dakhinmath of Paikpara . All the witnesses who were present nearby in the fields saw Samar Debangsi/ and the victim either in naked condition ,or running away or scuffling with the Victim and all of them reached the spot after hearing the shouting/crying of a lady who was the victim. The evidence of P.W 6 who saw the victim and Samar scuffling fully corroborates the prosecution case and he never denied to give statement before the police. Merely because most of the witnesses are near relative of the victim their evidence cannot be discarded in its entirety considering the corroborations of their testimonies with each other supporting the prosecution case. The accused /convict was specifically appraised of the incriminating evidences adduced against him but in his reply (under Section 313 of Code of Criminal Procedure,) he failed to say anything contrary about his presence in the said P.O at the said time.

15. P.W. 7 is the Investigating Officer who has admitted in his evidence that he collected the injury report and then submitted the charge sheet but he did not seize anything from the P.O. No injury report was exhibited in this case.

The negligence on the part of the investigating authority cannot be the reason for disbelieving the case of a lady who alleges to be the victim of sexual harassment. Interestingly the I.O went to the spot and despite having a complaint in the nature of commission of an offence against a woman did not seize the wearing apparels and despite collecting the injury report the prosecution did not take any initiative to prove the same by summoning the treating doctor.

16. In a decision reported in ***(Nirmal Premkumar & Anr vs State Rep.by Inspector of in 2024 (SC) 221*** the Hon'ble Supreme Court discusses the classification of oral testimony regarding the weight to be attached to the testimony of the victim in matters involving sexual offences as follows;

(i) Wholly reliable ii) wholly unreliable, iii) neither wholly reliable nor wholly unreliable.

It was further observed that the first two category of cases may not pose serious difficulty for the court in arriving at its conclusions. However in the third category of cases, the court has to be circumspect and look for corroboration of any material particulars by reliable testimony, direct or circumstantial, as a requirement of the rule of prudence.

In the instant case the nature of the witnesses are coming into the third category and therefore this court has to look for corroboration from the witnesses in order to dig out the truth.

17. In *Kishan Kumar Malik versus State of Haryana reported in (2011) 7*

SCC 130, the Hon'ble Supreme Court observed that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae.

18. The Learned Prosecution relied upon a decision of the Hon'ble Supreme Court in Sandip Mehta vs The State of U.P reported in Supreme Today AI 2025 Supreme (SC) 479 where the Hon'ble Apex Court held that evidence of prosecutrix in a case of Rape is of same value as that of an injured witness and conviction can be made on the basis of sole testimony of the prosecutrix . In the said case it was observed that the victim stood firm and unshaken disclosing the incident in detail regarding the presence and participation of accused in ravishing her.

The fact of the said case pertains to the complaint lodged by the prosecutrix alleging that on the date of the incident the accused entered into the room on the first floor when she was engaged in the work and latched the door from inside and forced her on the bed .She tried to raise an alarm but her mouth was gaged with a piece of cloth and then her salwar was removed to make her naked and ultimately committed rape on her. The grandmother of the girl eventually came to rescue and took her to ground floor. The Hon'ble Supreme Court took reference of the Judgement of ***State of Punjab vs Gurmeet Singh reported in (1996) 2 SCC 384*** Where it was observed

“ 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.”

The Learned trial court also relied upon a decision of Hon'ble Supreme Court made in ***State of Madhyapradesh vs Dayal Sahu reported in 2005 S.C.C (cri) 1988***, where it was held “once the statement of the prosecutrix inspire confidence can be based only on the solitary evidence of the prosecutrix and no corroboration could be required unless there are compelling circumstances reasons which necessitated the court for corroboration of her statement.

- 19.** The germane or foundation of initiating any criminal case is the complaint or F.I.R lodged before the police station. In this case the written complaint was filed by the defacto complainant being the victim herself and proved her signature. While adducing evidence she first time disclosed that the complaint was written by her Jamaibabu in her presence and she put her

signature .In her cross examination she said that the complaint was written sitting at the police station by her Jamaibabu . PW 5 ,the said Jmaibabu ,Bidhan Chandra Ghosh deposed the said complaint was written as per instruction of the victim which was read over and explained to her where she put her signature. During his cross examination he said the complaint was written at their village by him and Victim went to P.S to lodge the complaint. Interestingly PW 3 Ananga Mohan Mondal the cousin brother of victim during his cross examination deposed that Complaint was lodged on that evening as some Morals assured them to settle the matter but on the next day no step was taken by them then they lodged the complaint at the Police Station after one day of the incident .He further said that Pratima accompanied them to the polices station .They went the P.S on 8th February. He further deposed that victim's two elder brothers Nabadwip and Nemai along with victim entered into the room and lodged the complaint but both the said brothers refrained from making such statement. So admittedly there appears to be some inconsistencies which creates clouds in the case of the prosecution to some extent and therefore the court had to rely upon the circumstantial evidences coupled with the evidence of the victim in order to adjudicate the issues.

- 20.** In the case in hand the victim's own admission about the lodging of written complaint by her Jamaibabu and the absence of any name of the scribe in the complaint itself or the endorsement regarding explaining the contents of the complaint to the victim by the scribe definitely cast a cloud pertaining to the very foundation of the case. . However when reading the evidences as a whole it clearly gives the picture that the complaint was

lodged after 1 day of the date of incident which fully corroborates the version of the prosecutrix. It further corroborates that on account of the talks of settlement between the parties there was a delay in lodging of F.I.R and possibly the complaint was written on the date of incident written by the said jamaibabu, P.W 5 Bidhan Mondol but submitted at the police station by the complaint duly signed by her after failure of the settlement. While adducing evidence the victim reveals that she sustained injuries on her right side of the forehead, her belly and on her back because of the scuffling took place between her and the appellant/convict and she was medically treated. She further deposed in her cross examination that she was examined by the doctor in the evening of the date of incident. In the complaint she specifically said that she was dragged by the accused into the sugarcane field. Now if the injuries sustained by the victim as appears from the testimony of the victim lady can be compared with the said injury report, sufficient corroborations can be found as the injuries primarily are found on her right side of scapula, abdomen and right side of scalp. It would not be the correct approach to rely upon an injury report without being proved or exhibited but when the incident is against a village lady who alleges an attempt to commit Rape upon her where the modesty of the lady is outraged due to force applied upon her ,where the prosecution did not cite the doctor being a charge sheeted witness to prove the Injury Report collected by the I.O and the injury report shows the date of sustaining injury as of the date of incident, the court has no other alternative but to take judicial note of such vital piece of document in order to unearth the truth and/or lend assurance to the testimony of the victim.

21. After marshalling of prosecution witness coupled with the reply given by the accused in examination under Section 313 of CrPc. It is undisputed that on the relevant date place and time Samar Debangshi was very much present and some scuffling between the accused and the prosecutrix took place on account of which the victim sustained simple injury in various parts of her body and also she was disrobed on account of such scuffling. So, primarily the application of force is established and also that the same was done without consent. In terms of Indian Evidence Act an FIR is not a substantive piece of evidence and it is an information of cognizable offence and any statement made then can only be used for the purpose of contradicting and discrediting a witness under Section 145 of Evidence Act as observed by the Hon'ble Supreme Court in **Nanku Singh versus State of Bihar, AIR 1973 SC 491**. It is also a settled position of law that statements given before police authorities in course of investigation has no corroboration value and can only be used to contradict prosecution witness (Sat Paul versus Delhi Admin) AIR 1976 SC 294. In the instant case the prosecution witnesses No. 2, 3 or 4 on taking oath deposed before the Court of Law supporting the case of prosecution and they withstand the cross examination do that extent which can support the case of the prosecutrix but thereafter said they never made any statement before the police. No specific previous statement was put to them as was made by them before the police. The charge sheet shows the name of those witnesses as charge sheet witnesses. Most interestingly in the cross examination of PW 7 the Investigating Officer, no specific suggestion was put by defence counsel regarding non recording of the statements of those witnesses.

Furthermore PW 6 who also corroborated the prosecution case never denied to give statement before police and his evidence could not be impeached. Therefore primarily the prosecution has been able to prove that there was scuffling on account of force applied by the appellant followed by sustaining injuries on the victim, on the relevant date, place and time. In the above factual backdrop it is to be ascertained whether the said scuffling attracts the ingredients of the charges levelled against the appellant.

22. The ingredients to constitute an offence punishable under section 354 of The Indian Penal Code are the Assault or use of criminal force. Section 350 of the code defines the offence of criminal force and the essential ingredients are 1) the intentional use of force on any person, 2) Such force must have been used without the consent of the person and 3) the force has been applied in order to commit an offence or with the intention to cause or knowing it to be likely that he will cause injury, fear or annoyance to the person whom it is used. Assault on the other hand is defined under section 351 of the code where the basic ingredients are 1) making of any gesture or preparation by a person in presence of another person and 2) intention or knowledge or likelihood that such gesture or preparation will cause the person to apprehend that making it is about to use criminal force. Therefore to bring home the charge of 354 IPC the intention of the perpetrator will have to be proved. In fact the mens rea or the intention is the essence of criminal jurisprudence and its presence is sine qua non. The defence tried to make out a case of existing land dispute between the brother of the victim and Samar which could not be established but the said contention if it can be merged with the evidences adduced and the case made out by the victim it

certainly draws an inference about the motive of the accused person. The version of the complainant was the appellant came from backside ,lifted her up and put her in the ground on her back ,dragged her in the sugarcane field. So as discussed above the ingredients are very well proved and so the charge under Section 354 of Indian Penal Code is well established against the Appellant.

23. So far the charge under section 376 of Indian Penal Code is concerned the learned court mostly relied upon the evidence of the prosecutrix while holding the appellant guilty of the offences under section 376/511 IPC. It is the observation of the Hon 'ble Apex Court in **Aman Kumar & Anr vs State of Hariyana AIR 2004 Supreme court 1497** *'that the plea relating to the applicability of section 376/511 needs careful consideration . In every crime, there is first intention to commit, secondly preparation to commit it, thirdly attempt to commit it. If in the third stage the attempt is successful, then the crime is complete. If the attempt fails the crime is not complete but the law punishes the person attempting the act.. Section 511 is a general provision dealing with attempts to commit offences not made punishable by other specific sections. It makes punishable all attempt to commit offence punishable with imprisonment and not only those punishable with death An attempt is made punishable ,because every attempt .although it falls short of success ,must create alarm ,which by itself is an injury and the moral guilt of the offender is the same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment .As the injury is not as great as if the act had been committed, only half the punishment is awarded.*

The Hon'ble Apex court has further defined *Attempt* since it not specifically defined and held;

An attempt to commit an offence is an act ,or a series of acts ,which leads inevitably to the commission of the offence ,unless something ,which the doer of the act neither foresaw or intended ,happens to prevent this. An attempt may be described to be an act done in part execution of a criminal design ,amounting to more than mere preparation ,but falling short of actual consummation ,and possessing ,except for failure to consummate ,all the elements of the substantive crime .In other words ,an attempt consists in it the intent to commit a crime ,falling short of ,its actual commission .'

11.In order to find an accused guilty of an attempt with intent to commit a rape ,court has to be satisfied that the accused ,when he laid hold of the prosecutrix ,not only desired to gratify his passions upon her person ,but he intended to do so at all events and notwithstanding any resistance on her part . 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 exist. Surrounding circumstances many times throw beacon light on that aspect"

24. In the instant case the Learned Trial Court gave much weightage to the evidence adduced by the above-mentioned witnesses and observed "the statement of the prosecutrix and the other prosecution witnesses inspires confidence over the scuffling made between the accused and the victim during occurrence when the accused person had tried to commit rape." The Learned Trial Court relied upon the decision reported in **1976 (4 SCC) 369**

(Sarwan Singh & Ors vs State of Punjab) where it was observed that once the prosecution case is believed the non-examination of some other witness is not to affect the testimony of those already examined and the prosecution is not bound to produce every possible witnesses. The Learned Trial Court heavily considered the statement of the victim and the injury report as a corroborative piece of evidence of the written complaint which was marked as exhibit 1/1 and therefore came to conclusion that 'the same cannot be discarded for no reason and her evidence is enough to prove the charge of the prosecution under Section 354/376/ 511 of Indian Penal Code against the accused Samar Debangsi.' In terms of the specific averment of the victim the accused tried to commit Rape so requirement to attract 375 primarily does not apply. The learned court observed there was enough preparation for commission of the offence as the accused stripped of the saree of the victim, he took off his lungi and tried to put the said lungi inside the mouth of the victim. The presence of Samar at the spot is well established and also that he was running out on seeing the witnesses and local villagers. Victim sustained injuries on account of the scuffling took place between the victim lady and the accused. Talks of settlement progressed but could not materialized which caused delay in lodging the F.IR .

- 25.** There is a difference between an attempt to commit and preparation for commission of Rape however there is no definite provision for an attempt to commit Rape and therefore it is to be borne in mind that the question whether certain Acts amounts to an attempt to commit a particular offence is a question of fact dependant on the nature of the offence and the steps necessary to take order to commit it. In the instant case the victim alleged

an attempt to Rape in the F.I.R and she was about to strangle by the accused. In her deposition said the accused first stripped of her saree then put off his lungi and with that he closed her mouth so that she can't shout. He pressed her breast and tried to commit Rape on her. Scuffling took place and then she shout. During cross examination she said that the accused saw her with (lacklustre). P.W 2 Mira Mondal said she saw her in naked condition and P.W 3 Ananga Mohan Mondal said in half naked condition .P.W 4 Nabadwip saw her to put her saree and the saree and blouse was in torn condition. P.W 6 Nemaï deposed that when he reached the scuffling was going on and on seeing him the accused run away.

In this case the Appellant cited two defence witnesses who deposed as D.W 1 & 2 .On careful perusal of their evidences it transpires they came to depose at the instruction of the accused however none of them could make out any case of Inimical relationship between Samar and the defacto or her brother but they only tried to highlight the marital discord between the husband of the victim lady and herself. They further tried to portray the character of the victim lady of having bad character . The entire evidence did not come out for much help to the accused person as in plethora of decision it has been decided that character of a woman in case of sexual offences cannot have much relevance . It can be gathered that the land of the said Samar Debangsi was adjacent to the land of the brother of the victim and during the relevant time the other people were very much present around that area. The sugarcane field was nearby where the victim was dragged and she sustained some injuries.

26. It is a fact that the details of the preparation to commit rape was not mentioned in the written complaint and the victim stated the same before the court for the first time but the victim very much stated that the accused tried to commit Rape on her .The evidences adduced by the other witnesses has proved the charge under section 354 IPC against the Appellant as the accused disrobed the victim by applying force has been proved so there is no room to doubt the version of the victim regarding preparation for commission of the offence under section 375 of IPC. The I.O did not seize the torn saree from the P.O. The negligence of the I.O not to seize the wearing apparels of the victim does not ipso facto makes the case of the victim or prosecution unbelievable when all the ingredients under section 354 IPC has been well established beyond all reasonable doubts . The court also cannot be oblivious of taking note of the talks of settlement took place on the very date of the incident between the victim and her family members with that of the accused persons through some Morols of the village which was not even challenged So the inference can very well be drawn upon culmination of the entire evidence that the preparation stage necessary to attempt the commission of Rape is proved and the appellant in course of cross examination was unable to shake the credibility of the witness in any manner whatsoever .

27. Therefore in the above backdrop I have no impediment to hold that the conviction and sentence imposed on the Appellant be uphold.

Accordingly the Judgement and order passed by the Learned Trial court on 25th day of April, 2006 in ST case no.67/2002 be and the same is hereby affirmed.

28. CRA 325 of 2006 is dismissed.

29. The period of detention suffered by the appellant during investigation. Inquiry or trial shall be set off under section 428 of the code criminal procedure.

30. Copy of the judgement along with the T.C.R be sent down to the trial court at once.

31. Urgent Photostat certified copy of this order, if applied for be supplied expeditiously after complying with all necessary formalities.

(CHAITALI CHATTERJEE DAS, J.)