

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 74 of 1996

Pravakar Sardar

-Vs-

The State of West Bengal

For the Appellant : Mr. Kalyan Kumar Bhattacharyya

For the State : Mr. Avishek Sinha

Judgment on : 22.05.2026

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment and order dated 12.02.1996 passed by the Learned Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No.6(6)1993 arising out of Sessions Case No.1(12)1992 convicting the appellant under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/- in default to suffer rigorous imprisonment for 1 year.
2. The prosecution case precisely stated that the victim girl returning from Calcutta by bus on 13.09.91 to her village Gopalpur and alighted at Kotulpur, and proceeded towards her village at Gopalpur. She went to the Tea-stall of one Jatai Koley and inquired for her co-villager of Gopalpur to accompany her being intimidated to advance alone. One Nepal Sardar and

Manohar Sardar of Gopalpur advised her to be escorted by the appellant and eventually both moved ahead together. On the way, the appellant assaulted her and snatched away certain ornaments and wrist watch. Thereafter, the appellant committed rape on her and thereafter, the victim girl informed the incident to her brother and local people, resulting the filing of the complaint.

3. On the basis of the aforesaid complaint, the Kotulpur P.S. Case No.52/91 dated 13.09.1991 under Sections 376/394 of the Indian Penal Code was initiated for investigation against the appellant.
4. Charges were framed against the appellant under Sections 376/394 of the Indian Penal Code to which he pleaded not guilty and claimed to be tried.
5. In order to prove its case, the prosecution examined as many as 9 witnesses and exhibited certain documents while the defence examined 2 witnesses.
6. The Learned Advocate for the appellant submitted as follows:–
 - i. *“Inquest Report:- It was apparent from the depositions of PW-7, Dr. Netai Mukherjee on September 24, 1991 when Dr. Netai Mukherjee examined the victim no injury mark was found regarding the statement of the patient. If a married lady was raped forcibly against her will then there was every possibility of injury, such injury depends upon the age of the male person and force of rape upon the lady by that person but no injury found in private parts and no sign of recent mark of injury. For that PW-7 Dr. Netai Mukherjee, medical officer of Bishnupur Sub-Divisional Hospital to could not provide any corroboration to the story of rape on the victim lady.*

It was apparent from the deposition of PW-8, Dr. Tapas Ghosh on September 14, 1991 that day when PW-8, Dr. Tapas Ghosh examined the victim there was no apparent external injury was found. For that the lack of any signs of injury on the back and buttocks of the victim lady also would indicate that the story of rape was a false and concocted one.

- ii. First Information Report:- However in the First Information Report, was ante dated received corroboration from the evidence of PW-8, Tapas Ghosh, medical officer of Kotulpur Primary Health Center who had examined the victim lady on September 14, 1991 and no explanation for less a plausible explanation had been offered from such delay, the Primary Health Center being only 1/2 km away from the police station.*
- iii. Witnesses:- PW-1, Ram Lal Majumder brother of the victim lady, had stated to PW-8, Dr. Tapas Ghosh that the victim lady had been assaulted and molested and there was no whisper of rape.*
- iv. Medical Evidence:- All the medical document produce in that Court were secondary evidence but there was nothing to show that the compare copies were properly prepared and where free from any defect error. It comes of medical evidence that Doctor Mukherjee had treated that patient she has very much alive at the time of trial but no endeavors were made procured had attendance in court rather Medical evidence. In that case were abused by witnesses who admittedly personal knowledge about it.*

Although the medical evidence suggest that the married lady was raped forcibly against her will then there was every possibility of injury, such injury depends upon the age of the male person and force of rape upon the lady by that person but no injury found in private parts and no sign of recent mark of injury.

- v. Motive:- In view of the aforesaid facts, circumstances and submissions, it was humbly prayed that the applicant may kindly be discharged under Section 227 of the Criminal Procedure Code, in the interest of justice.”*

7. The Learned Advocate for the State submitted as follows:-

- i. “It was trite law that the conviction given under Section 376 of the Indian Penal Code can base upon solitary statement of the victim if the same found to be reliable. Thereby to prove that the same has been correctly given by the Learned Trial Judge, the evidence of the prosecution witnesses and medical evidence was reiterated:-*
- ii. Fact of the Case:-*

The F.I.R., was lodged on the very night of the incident on 13.09.1991 at 22:45 hrs., so it clearly shows that there was no delay in lodging the same and the incident actually took place.

On 13.09.1991 at about 07:30 p.m., PW-6, the victim girl was coming to Gopalpur from Calcutta by bus and got down at Kotulpur and was proceeding towards Gopalpur. After getting down from the bus she went to the tea shop of one Jatai Koley for searching the villagers of

Gopalpur as she was afraid of going alone to Gopalpur. At that time one Nepal Shaw, PW-5 advised her to take help of the appellant to Gopalpur and then she proceeded towards Gopalpur with the appellant.

Then on the way towards Gopalpur, the appellant beat the victim lady and snatched away her articles and committed rape upon her and thereafter she reported the matter to her brother PW-1 and local people and ultimately formal F.I.R., was drawn up (Exbt.-2) and filed before Kotulpur P.S. under Section 376/394 of the Indian Penal Code dated 13.09.1991.

- iii. *Intention to cause Bodily harm:- The appellant was well aware of the fact that the victim was a widow. He took advantage of her faith and hapless condition and snatched away the articles of the victim and committed rape on her. Thus, the appellant performed the said act with the knowledge coupled with the ultimate intention to bodily harm the victim with a malicious intent.*
- iv. *Corroborative accounts of the victim and Independent witnesses:-*
 - a) *PW-6, being the victim lady herself stated that the appellant was known to her. He was the neighbour of the victim lady. She went to the P.S. with PW-1, the brother of the victim and PW-3, the neighbour to whom the victim intimated the entire fact at the earliest who also corroborated the factum of rape as was derived from the victim herself.*

- b) *She went to the Bishnupur Hospital for her medical Examination. PW-7, the doctor who examined her categorically stated that the victim at the earliest opportunity had categorically taken the name of the appellant to be the perpetrator of crime.*
- c) *PW-8 was the Doctor who examined the victim girl on the next date of the incident on 14.09.1991. He found external injury on different parts of the body which probabalise the prosecution version. Then the patient was referred to Bishnupur Sub-Divisional Hospital for expert opinion and examination as there was no special equipment was available for examination of the victim to the said primary health centre.*
- d) *PW-1 was the brother of the victim, he corroborated the said incident and also informed to the panchayat member and then went to the P.S. with the victim lady.*
- e) *PW-2, was the neighbor and scribe of the F.I.R.*
- f) *PW-3, was the independent witness and neighbor of PW-1. After the incident took place victim went his house at about 8/9 p.m., and fell down and ask him to call his elder brother. She narrated the entire incident in front of him immediately after the incident.*
- g) *PW-5, was the independent local witness, who had corroborated the incident of appellant accompanying the victim and as such the witness to “last seen” with the victim.*

- h) PW-7 was the Doctor who examined the lady after 11 days from the day of incident. He did not find any injury mark which was probable due to the interim delay.
- i) PW-9 was the I.O., who recorded the statement of all the witnesses and the appellant and charge-sheet submitted on 06.02.1991 under Sections 376/394 of the Indian Penal Code.
- j) After examination of the appellant under Section 313 of Cr.P.C., he adduced two DW's. DW-1, was the co-villager who stated that there was a quarrel between the appellant and the victim lady over a plot and the victim lady has filed a case against the accused for the same.

But the aforesaid version was not corroborated by any prosecution witnesses nor any suggestion was given to them over that issue.

DW-2 also a co-villager. He stated that one Compromise Deed was prepared in between appellant and victim (Exbt.-A) but he candidly admitted that in such deed there was no mention that due to a quarrel the victim filed a false case.

- k) Again, it was also not corroborated by any witnesses.
- v. The Learned Trial Judge rightly did not rely upon the defence witnesses as it was crystal clear that both of them introduced such story at a belated stage to shield the actual making the false allegation against the victim lady.

- vi. *In the present that the victim's testimony was corroborated by his brother PW-1 and neighbour PW-3. Even the doctor who examined victim initially found injuries on various part of the body which suggests that there was forceful violation of her body.*

Under such circumstance the Learned Trial Court has rightly relied on the said facts as no legal deformities had cropped up. At that stage acquittal would be bad in law. Thus, the conviction given under Section 376 of the Indian Penal Code should be inherently upheld to meet the ends of law and to avoid gross miscarriage of justice."

8. A comprehensive scrutiny of the evidence adduced on behalf of both the prosecution and the defence discloses a narrative resting principally upon the testimony of the prosecutrix, reinforced by the immediate disclosures made after the occurrence, the attendant surrounding circumstances, the medical materials placed on record and the investigative steps undertaken by the police authorities. The defence, in turn, sought to attribute the genesis of the prosecution to a prior land dispute and relied upon an alleged compromise deed to assail the veracity of the accusation.
9. PW-1, the brother of the victim lady, deposed that his sister, who ordinarily resided at Calcutta, came to Gopalpur on the evening of the occurrence at about 07:30/08:00 p.m. She had travelled alone and alighted at Kotulpur bus stop. After visiting a relative's house for a brief interval, she proceeded alone on foot towards Gopalpur, none being available to escort her. According to PW-1, while she was proceeding along the road, the appellant

met her and accompanied her towards the village. Near the Gopalpur canal, the appellant allegedly snatched away her ornaments and thereafter forcibly ravished her. PW-1 further stated that after the occurrence the victim lady somehow reached the house of PW-3, wherefrom information was conveyed to him. Upon his arrival there, the victim lady narrated the entire occurrence after regaining composure. He thereafter informed a panchayat member and escorted her to the police station, from where she was referred for medical examination. In cross-examination, PW-1 admitted that the victim lady remained in the house of PW-3 for nearly one and a half hours and that the written complaint had been drafted at the police station by PW-2.

10. PW-2, a resident of Gopalpur and formerly associated with the panchayat, stated that PW-1 informed him regarding the incident involving his elder sister and requested him to accompany him to the police station. PW-2 deposed that the complaint was reduced into writing by him at the police station upon the narration of the victim lady and under the guidance of the police authorities. The victim lady thereafter affixed her left thumb impression upon the written complaint, marked as Exhibit-1. In cross-examination, he stated that he remained at the police station for nearly half an hour and reiterated that the complaint had been prepared according to the dictation of the victim lady.

11. PW-3, a cultivator by profession, stated that the victim lady came to his house at about 08:00/09:00 p.m. and suddenly collapsed there. She requested him to summon her elder brother and disclosed that the appellant

had committed rape upon her on that very night. PW-3 thereafter informed PW-1, who came there and subsequently accompanied the victim lady to the police station. During cross-examination, PW-3 stated that police interrogated him on the following day and that he bore no enmity towards the victim lady. He further stated that after informing PW-1 he did not communicate the matter to any other person in the locality.

12. PW-4 did not support the prosecution case and was declared hostile.
13. PW-5 deposed that on the evening of the occurrence, at about 07:30 p.m., he was taking tea at the tea stall of Jetai Koley when a woman came there asking the route towards Gopalpur. According to him, the appellant then accompanied the victim lady towards Gopalpur. Thereafter he heard that the victim lady had been raped by the appellant. In cross-examination, PW-5 admitted that he had not been interrogated by police during investigation and that prior to the date of occurrence he had never seen the victim lady.
14. The central edifice of the prosecution case rests upon the testimony of the victim lady examined as PW-6. She stated that she travelled from Calcutta to Gopalpur by bus and after alighting near Kotulpur bank in the evening proceeded towards her paternal home on foot. On the road she met Kanohar Sardar and Debu Sardar. After one of them left, she continued towards Gopalpur accompanied by Monohar. She further stated that an unknown boy advised her to accompany the appellant as he belonged to their locality. Thereafter she proceeded with the appellant along the side of the canal. The appellant suggested that they proceed through the jungle by a shorter route,

which she declined. According to PW-6, the appellant, who was carrying a bicycle, thereafter assaulted her physically and beat her in such a manner that she found herself incapable of raising alarm. He snatched away her wristwatch, nose ornament and ear-rings, forcibly removed her clothes and thereafter ravished her against her will.

15. PW-6 further deposed that after the occurrence the appellant departed from the place carrying his bicycle, leaving her alone. She then went to the house of Nemaï Sardar, who summoned her brother. Thereafter she narrated the occurrence before PW-2, who reduced her statement into writing under her instructions. She affixed her left thumb impression upon the complaint and handed it over at the police station. On the following day she was produced before the Magistrate, where her statement was recorded, and thereafter she was medically examined at Bishnupur Hospital and admitted there.
16. During cross-examination, PW-6 stated that she did not remember whether she had specifically narrated before the Magistrate that Monohar and Debi accompanied her upto Gogra P.H.C. or that an unknown boy advised her to accompany the appellant. She also expressed inability to recollect whether she had specifically stated that the appellant was carrying a bicycle or had beaten her in a manner preventing her from shouting. Nevertheless, she consistently maintained both before the Magistrate and in the written complaint that the appellant removed her wearing apparels and committed rape upon her. She also stated that thereafter she went to the house of PW-3. Certain peripheral omissions and lapses of memory emerged in her cross-

examination regarding the precise details narrated earlier, yet her assertion regarding the forcible sexual assault remained unshaken upon the essential particulars.

17. PW-7, the Gynecologist attached to Bishnupur Sub-Divisional Hospital, examined the victim lady on 24.09.1991 in connection with Kotulpur P.S. Case No. 52 of 1991 under Sections 376/394 IPC. He found no injury marks upon her genital region or body. He noted that she was a married woman habituated to sexual intercourse and had previously borne children. According to him, in the case of a married woman accustomed to sexual intercourse, absence of recent injuries would not necessarily exclude the possibility of forcible intercourse. During cross-examination, PW-7 clarified that in cases of forcible rape injuries may or may not be present depending upon the age and strength of the assailant and the degree of force employed. His evidence therefore did not negate the allegation of rape merely because definite genital injuries were absent.

18. PW-8, the Medical Officer attached to Kotulpur Primary Health Centre, examined the victim lady shortly after the occurrence. He found abrasions over the nose, breast and forehead together with a small hematoma measuring approximately 1 cm × 1 cm on the right side of the forehead. Although no obvious genital injury was detected, he referred the victim lady to Bishnupur S.D. Hospital for expert examination and opinion. During cross-examination, PW-8 stated that the report did not mention the exact time of examination or whether the victim lady had been brought by police or

had come voluntarily. Nonetheless, his testimony records the existence of physical injuries upon the person of the victim lady immediately after the occurrence.

19. PW-9, the Investigating Officer and Officer-in-Charge of Kotulpur Police Station, deposed that upon receipt of the written complaint from the victim lady he registered Kotulpur P.S. Case No. 52 dated 13.09.1991 under Sections 376/394 IPC. He filled up the formal FIR, visited the place of occurrence, prepared the sketch map and index, examined witnesses under Section 161 of the Code of Criminal Procedure and seized certain wearing apparels under a seizure list marked as Exhibit-4. He stated that the victim lady was first referred to Kotulpur P.H.C. and thereafter to Bishnupur S.D. Hospital for medical examination. He further deposed that on 14.09.1991 the appellant was arrested and later medically examined. Upon completion of investigation, charge-sheet was submitted against the appellant under Sections 376/394 IPC.

20. PW-9 further stated that witness Monohar @ Mana Sardar informed him that he had seen the appellant and another person near the tea stall of Jetain Koley and had learnt that the appellant committed rape upon the victim lady by the side of the canal and snatched away her ear-rings, nose ornament and wristwatch. During cross-examination, PW-9 stated that after receiving the complaint on the very night of occurrence he proceeded to the place of occurrence along with the victim lady and remained there throughout the

night before returning to the police station the following morning. He also admitted that seizure was not effected on the very night of the occurrence.

21. The defence sought to construct an alternative foundation for the prosecution by suggesting that the present case arose out of a pre-existing land dispute between the parties. DW-1 deposed that there had been a quarrel between the appellant and the victim lady concerning a plot of land and that a case had earlier been instituted by the victim lady against the appellant in respect of the said dispute. According to him, during pendency of that matter a village settlement was convened, resulting in preparation of a compromise deed marked as Exhibit-A. DW-1 stated that the compromise deed was written by him under the instructions of the victim lady and was signed by the victim lady, her mother and her brother. He further stated that by virtue of such compromise both parties agreed not to continue disputes amongst themselves.

22. However, during cross-examination, DW-1 admitted that the compromise deed did not contain any recital regarding the present occurrence or any reference to a quarrel between the appellant and the victim lady. He further admitted that his assertion regarding a land dispute was being introduced for the first time during evidence.

23. DW-2 also attempted to support the defence theory by stating that he had heard of a dispute over land between the appellant's family and the victim lady and that a rape case had been instituted because of such dispute. He referred to the same compromise deed and stated that in the settlement the

victim lady allegedly admitted institution of a false case. Yet, in cross-examination, DW-2 conceded that the compromise deed contained no recital that the rape allegation had been falsely instituted owing to the land dispute.

24. Thus, the defence evidence, though suggestive of a prior discord over land, remained substantially founded upon hearsay assertions and a compromise deed which conspicuously omitted any express recital attributing falsity to the accusation of rape. The defence witnesses themselves admitted that the compromise deed did not record the alleged reason for false implication.

25. Viewed in its entirety, the evidentiary canvas reveals a prosecution version sustained by the direct testimony of the prosecutrix, the prompt disclosure made immediately after the occurrence, the surrounding circumstances placing the appellant in her company shortly before the incident, the medical evidence indicating bodily injuries, and the investigative materials placed on record. The defence attempted to project a motive for false implication through a prior land dispute, yet the documentary material relied upon by the defence did not expressly support such assertion. The evidence, therefore, presents a contest between a direct accusation consistently maintained upon material particulars and a defence founded principally upon prior village discord and an equivocal compromise arrangement lacking explicit reference to the present accusation.

26. The Learned Advocate appearing on behalf of the appellant mounted a sustained challenge to the prosecution case by contending that the materials on record, when examined in their proper evidentiary perspective, disclosed

serious infirmities touching the medical evidence, the authenticity and timing of the First Information Report, the credibility of the witnesses and the foundational reliability of the prosecution narrative itself. The submission proceeded upon the assertion that the conviction could not safely rest upon evidence which, according to the defence, remained medically unsupported and procedurally doubtful.

27. The principal thrust of the argument centred around the medical evidence of PW-7, Dr. Netai Mukherjee, the Gynecologist attached to Bishnupur Sub-Divisional Hospital. Learned Counsel submitted that the doctor had categorically stated that upon examination of the victim lady no injury mark was detected either externally or upon the private parts. Particular emphasis was laid upon the medical finding that there was no sign of recent injury notwithstanding the allegation of forcible sexual assault. Referring to the cross-examination of PW-7, it was argued that the witness himself admitted that in the event of forcible rape upon a married woman there existed every possibility of injury, the nature and extent whereof would depend upon the age and strength of the assailant and the degree of force employed. Learned Counsel submitted that, in the present case, the complete absence of injury upon the genital region substantially undermined the allegation of violent sexual assault and rendered the prosecution version medically uncorroborated.

28. Developing the same line of reasoning, Learned Counsel further contended that PW-8, Dr. Tapas Ghosh of Kotulpur Primary Health Centre, had likewise

not found any apparent external injury suggestive of the prosecution story as narrated during trial. According to the defence, the absence of marks of violence upon the back and buttocks of the victim lady assumed considerable significance in view of the allegation that she had been forcibly assaulted, beaten and ravished by the appellant. It was argued that the medical findings did not harmonise with the narrative of a violent physical struggle and therefore cast a substantial shadow upon the truthfulness of the accusation.

29. The defence thereafter assailed the First Information Report by contending that the same appeared to be ante-dated and lacking in spontaneity. Learned Counsel submitted that although the incident allegedly occurred on the night of 13.09.1991, the victim lady was examined by PW-8 on 14.09.1991 and yet no satisfactory explanation had been furnished by the prosecution regarding the delay and sequence in lodging the complaint. Particular emphasis was placed upon the circumstance that the Primary Health Centre was situated at a distance of merely half a kilometre from the police station, and despite such proximity, the prosecution failed to provide any cogent explanation accounting for the alleged procedural chronology. According to the defence, such unexplained irregularity created a legitimate doubt regarding the genuineness and contemporaneity of the FIR.

30. The Learned Advocate further sought to derive support from the evidence of PW-8 by contending that the history narrated before the doctor did not contain any allegation of rape. It was argued that PW-1, the brother of the

victim lady, had merely informed the doctor that the victim had been assaulted and molested and that there was “no whisper of rape” at that stage. This omission, according to the defence, assumed considerable evidentiary importance because the earliest version placed before the medical officer ought naturally to have contained a clear accusation of rape had such an occurrence truly taken place. The silence of the medical history on that aspect was therefore projected as a circumstance eroding the credibility of the later embellished prosecution narrative.

31. The defence also questioned the admissibility and reliability of the medical documents produced during trial. Learned Counsel argued that the medical papers exhibited before the Court were in the nature of secondary evidence and that no satisfactory foundation had been laid to establish that the copies produced were properly prepared, accurate and free from defect or interpolation. It was further submitted that although the concerned medical practitioner had treated and examined the victim lady and was alive at the relevant time, no adequate endeavour had been made to procure the best possible evidence in accordance with law. According to the defence, the prosecution instead attempted to rely upon imperfect documentary materials and derivative testimony, thereby depriving the accused of a fair opportunity to test the medical evidence in its most reliable form.

32. The Learned Counsel then invited attention to the broader surrounding circumstances emerging from the evidence on record, particularly the defence suggestion regarding prior hostility and land dispute between the

parties. It was submitted that the prosecution case could not be divorced from the admitted existence of prior discord between the appellant and the family of the victim lady. The defence maintained that the compromise deed brought on record demonstrated the existence of earlier disputes and furnished a plausible motive for false implication. The argument proceeded on the footing that the prosecution case had evolved not from a genuine occurrence of rape but from antecedent animosity and village discord.

33. It was thus contended that the prosecution evidence, far from constituting an unbroken and trustworthy chain, suffered from material infirmities arising out of absence of medical corroboration, doubtful procedural chronology, omissions in the earliest version, questionable documentary proof and pre-existing hostility between the parties. Learned Advocate submitted that these deficiencies were neither minor nor peripheral but went to the very root of the prosecution story.

34. On the cumulative strength of the aforesaid submissions, Learned Counsel urged that continuation of the prosecution against the appellant would occasion grave miscarriage of justice. It was therefore prayed that the appellant be discharged under Section 227 of the Code of Criminal Procedure and be relieved from the charges framed against him in the interest of justice.

35. The Learned Advocate appearing on behalf of the State stoutly defended the judgment of conviction and contended that the learned Trial Judge had appreciated the evidence in its correct legal perspective and arrived at

findings fully supported by the materials on record. The submissions advanced on behalf of the prosecution proceeded upon the settled principle that conviction for an offence under Section 376 of the Indian Penal Code may lawfully rest upon the solitary testimony of the prosecutrix, provided such testimony inspires confidence and bears the imprint of truthfulness. According to the State, the evidence of the victim lady in the present case possessed intrinsic reliability and stood further reinforced by contemporaneous disclosures, surrounding circumstances, medical materials and independent corroborative evidence.

36. At the very threshold, Learned Counsel submitted that the First Information Report had been lodged with remarkable promptitude on the very night of the occurrence, namely on 13.09.1991 at about 10:45 p.m. It was argued that such immediacy in setting the criminal law into motion substantially eliminated the possibility of fabrication, tutoring or calculated embellishment. The prosecution maintained that the prompt lodging of the FIR furnished strong assurance regarding the spontaneity and authenticity of the accusation and clearly demonstrated that the incident had indeed taken place.

37. The Learned Counsel thereafter reconstructed the factual sequence emerging from the evidence on record. It was submitted that on the evening of 13.09.1991, at about 07:30 p.m., the victim lady (PW-6) arrived from Calcutta and alighted at Kotulpur while proceeding towards Gopalpur. Being apprehensive of travelling alone during the evening hours, she went to the

tea stall of one Jatai Koley in search of local villagers who could accompany her safely towards Gopalpur. At that stage, PW-5, Nepal Shaw, advised her to proceed with the appellant, who belonged to the locality. Relying upon such assurance, the victim lady commenced her journey towards Gopalpur in the company of the appellant.

38. According to the prosecution, while proceeding towards the village, the appellant exploited the vulnerability of the victim lady, assaulted her physically, snatched away her belongings and thereafter committed rape upon her. Learned Counsel emphasized that the appellant was fully aware that the victim lady was a widow travelling alone and took advantage of her isolated and helpless condition. It was submitted that the acts attributed to the appellant unmistakably disclosed not merely sexual aggression but also deliberate infliction of bodily harm accompanied by criminal intent and violence. The prosecution therefore contended that the ingredients of Sections 376 of the Indian Penal Code stood fully attracted.

39. The Learned Counsel then undertook an elaborate analysis of the corroborative features supporting the testimony of the prosecutrix. It was argued that PW-6 consistently identified the appellant as the perpetrator of the crime from the very inception and there was no uncertainty regarding his identity, he being a co-villager known to her previously. The victim lady had immediately proceeded to the police station accompanied by PW-1 and PW-3 and narrated the occurrence without delay. Her conduct after the

occurrence, according to the prosecution, was wholly natural and consistent with the behaviour of a traumatized victim of sexual assault.

40. The State laid considerable emphasis upon the testimony of PW-3, describing him as an independent witness before whom the victim lady made her earliest disclosure immediately after the occurrence. Learned Counsel submitted that the victim lady reached the house of PW-3 at about 08:00/09:00 p.m. in a distressed condition, collapsed there and narrated the entire incident to him. Such immediate disclosure, made at the first available opportunity, was projected as a highly significant circumstance lending assurance to the prosecution story.
41. The testimony of PW-1, the brother of the victim lady, was also relied upon as furnishing substantial corroboration regarding the conduct and condition of the victim immediately after the occurrence. Learned Counsel submitted that PW-1 was informed of the incident by PW-3, whereafter he met the victim lady, informed local panchayat members and accompanied her to the police station. His evidence, according to the State, established continuity in the chain of events beginning from the occurrence itself till the lodging of the FIR.
42. The prosecution further relied upon the evidence of PW-2, the scribe of the FIR, who stated that the written complaint had been prepared on the narration of the victim lady herself. Learned Counsel submitted that the preparation of the complaint at the earliest stage under the direct instruction

of the victim lady dispelled the defence suggestion of fabrication or subsequent embellishment.

43. Special emphasis was laid upon the evidence of PW-5, who was described as an independent local witness. According to Learned Counsel, PW-5 corroborated the circumstance that the appellant had accompanied the victim lady towards Gopalpur shortly before the occurrence. His testimony therefore constituted important “last seen” evidence placing the appellant in the company of the victim immediately preceding the alleged assault.
44. The State thereafter adverted to the medical evidence. Learned Counsel submitted that PW-8, Dr. Tapas Ghosh, who examined the victim lady on the very next day of the incident, found injuries on various parts of her body including abrasions and hematoma. Such injuries, according to the prosecution, probalised the allegation of physical assault and demonstrated forcible violation of her body. It was argued that the victim lady was thereafter referred to Bishnupur Sub-Divisional Hospital only because the Primary Health Centre lacked adequate specialised equipment for detailed gynecological examination.
45. With regard to the evidence of PW-7, Dr. Netai Mukherjee, Learned Counsel contended that the absence of genital injury did not erode the prosecution case. It was argued that the victim lady was examined by PW-7 after an interval of nearly eleven days from the occurrence and therefore absence of visible injuries at that stage was neither unnatural nor destructive of the allegation of rape. Learned Counsel pointed out that PW-7 himself had

explained that in the case of a married woman habituated to sexual intercourse, injuries may not necessarily be present and their existence would depend upon multiple variables including the force employed and the physical condition of the parties.

46. The prosecution also relied upon the testimony of PW-9, the Investigating Officer, who recorded the statements of the witnesses, visited the place of occurrence, arranged medical examination and ultimately submitted charge-sheet against the appellant under Sections 376/394 IPC. Learned Counsel submitted that the investigation had proceeded in a natural and legally proper manner and no material irregularity had surfaced so as to undermine the prosecution case.

47. The State then addressed the defence evidence relating to alleged land dispute and compromise between the parties. Learned Counsel submitted that the evidence of DW-1 and DW-2 lacked credibility and had rightly been discarded by the learned Trial Judge. It was argued that the theory of prior land dispute was introduced belatedly and was never put to the prosecution witnesses during cross-examination in a manner warranting serious consideration. The prosecution further emphasized that even the compromise deed relied upon by the defence did not contain any recital that the rape allegation had been falsely instituted owing to land dispute or prior hostility. DW-2 himself candidly admitted that no such assertion appeared in the document. According to the State, the defence witnesses merely

attempted to construct an artificial foundation to shield the appellant from criminal liability.

48. The Learned Counsel thus submitted that the testimony of the prosecutrix stood firmly corroborated by PW-1, PW-3, PW-5, the prompt FIR and the medical evidence of bodily injuries noticed by PW-8. The prosecution maintained that no legal infirmity or evidentiary defect of such magnitude had emerged as would justify interference with the judgment of conviction. It was contended that the learned Trial Judge had appreciated the evidence in accordance with settled legal principles and that any acquittal in the circumstances would itself occasion grave miscarriage of justice.
49. On the cumulative strength of these submissions, Learned Advocate for the State prayed that the conviction recorded under Section 376 of the Indian Penal Code be affirmed and upheld in order to preserve the sanctity of the judicial process and to secure the ends of justice.
50. The prosecution case, when subjected to the touchstone of criminal jurisprudence governing a charge under Section 376 of the Indian Penal Code, reveals infirmities of such magnitude that the conviction recorded against the appellant cannot be permitted to stand without doing violence to the settled principles regulating proof in criminal trials. The evidence brought on record, though evocative of suspicion and moral unease, falls short of the degree of certainty which the law insists upon before branding a person guilty of the grave offence of rape.

51. The foundational principle governing a prosecution under Section 376 IPC is that the prosecution must establish, beyond reasonable doubt, the essential ingredients of sexual intercourse without consent or against the will of the woman. The law undoubtedly recognises that conviction may rest upon the sole testimony of the prosecutrix if such evidence inspires confidence and possesses intrinsic reliability. Yet, the rule is equally well entrenched that where the testimony of the prosecutrix suffers from material inconsistencies, improbabilities or surrounding circumstances generating genuine doubt, the Court is not absolved from the obligation of seeking assurance from other dependable evidence.
52. In the present case, the testimony of PW-6, the victim lady, does not emerge with the degree of coherence and certainty necessary to sustain conviction on a charge carrying severe penal consequences. Her evidence, when carefully examined alongside the surrounding materials, reveals substantial infirmities affecting its evidentiary assurance.
53. The prosecution case proceeds upon the allegation that the appellant physically assaulted the victim lady, beat her in such a manner that she became incapable of resistance, forcibly removed her clothes and thereafter ravished her by the side of the canal. Such allegation inherently carries within it the expectation of at least some corresponding medical manifestation of force or violence. Yet the medical evidence remains singularly deficient in substantiating such assertion.

54. PW-7, the Gynecologist attached to Bishnupur Sub-Divisional Hospital, categorically found no injury upon the genital region and no sign of recent injury upon the private parts of the victim lady. Though the witness stated that injuries may not invariably be present in the case of a married woman habituated to sexual intercourse, he simultaneously admitted during cross-examination that forcible rape ordinarily carries the possibility of injury depending upon the force employed and surrounding circumstances. In the present case, the prosecution version is not one of passive submission or subtle coercion but of violent assault accompanied by beating, forcible disrobing and robbery. The complete absence of genital injury assumes considerable significance in that factual backdrop.

55. Equally important is the evidence of PW-8, Dr. Tapas Ghosh, who examined the victim lady shortly after the occurrence. Though he noticed certain superficial abrasions and a minor hematoma, he found no apparent external injury consistent with the prosecution narrative of violent resistance and forcible ravishment. The injuries noted were neither extensive nor of such nature as would unmistakably point towards a forcible sexual assault. More importantly, the medical history placed before PW-8, according to the defence submission not effectively displaced by the prosecution, referred merely to assault and molestation without any immediate allegation of rape. Such omission in the earliest medical history assumes evidentiary significance because the spontaneous first disclosure ordinarily carries substantial probative value.

56. The prosecution also encounters serious difficulty in the internal consistency of the testimony of PW-6 herself. During cross-examination, the victim lady expressed inability to recollect whether several material particulars had been stated either in the written complaint or before the Magistrate. She did not remember whether she had earlier stated that the appellant carried a bicycle, whether he beat her in a manner preventing her from shouting, or whether certain accompanying persons had escorted her during the relevant period. These are not merely peripheral embellishments divorced from the core narrative; rather, they form integral components of the prosecution story explaining the manner in which the alleged occurrence unfolded.
57. The Court remains conscious that minor discrepancies or lapses of memory are not uncommon in the testimony of victims of traumatic incidents. Yet the present inconsistencies cannot be brushed aside as insignificant omissions arising from passage of time. The evidence of the prosecutrix suffers from uncertainty touching material circumstances forming the substratum of the prosecution narrative itself. Her testimony, therefore, does not attain the level of sterling quality capable of safely sustaining conviction without independent and unimpeachable corroboration.
58. The surrounding evidence also fails to furnish such dependable assurance. PW-3 merely deposed regarding the post-occurrence disclosure allegedly made by the victim lady. PW-5 only claimed to have seen the appellant accompanying the victim lady towards Gopalpur. Neither witness spoke to

the actual occurrence. Their evidence, therefore, remains merely circumstantial and derivative in nature.

59. The defence version relating to prior land dispute and village discord, though not conclusively established, cannot be wholly discarded as inherently impossible or fanciful. Both DW-1 and DW-2 spoke regarding pre-existing disputes between the parties and existence of a compromise arrangement. True it is that the compromise deed does not expressly record that the rape allegation was false. Nevertheless, the defence evidence succeeds at least in demonstrating antecedent hostility between the parties, thereby furnishing a possible motive for embellishment or exaggeration. In criminal law, the defence is not required to prove its version beyond reasonable doubt; it is sufficient if the defence succeeds in creating a reasonable possibility consistent with innocence.
60. The prosecution further failed to dispel doubts arising from the procedural irregularities surrounding the FIR and medical evidence. Though the FIR was formally shown to have been lodged on the night of occurrence, the sequence relating to medical examination, recording of statements and preparation of documents does not present an entirely seamless narrative. The evidence regarding timing and procedural chronology remains less than satisfactory.
61. Another feature which cannot escape judicial notice is the conspicuous absence of reliable forensic or physical evidence connecting the appellant to the alleged offence. No convincing recovery of stolen articles was proved. No

scientific material was produced to corroborate the allegation of forcible intercourse. The prosecution case, therefore, rests almost entirely upon oral testimony whose reliability itself remains uncertain.

62. The cumulative effect of these circumstances creates a zone of reasonable doubt which the prosecution has failed to dispel. Criminal courts do not adjudicate upon moral suspicion or social conjecture. A conviction under Section 376 IPC, carrying grave civil and penal consequences, cannot be founded upon evidence wavering between probability and certainty. The law insists upon proof of such quality that the conscience of the Court reaches a state of moral certainty excluding every reasonable hypothesis consistent with innocence.

63. In the present case, the evidence on record does not satisfactorily establish the essential ingredients constituting the offence under Section 376 IPC. The testimony of the victim lady, though deserving of sensitivity and careful consideration, does not emerge as wholly trustworthy and free from material doubt. The medical evidence fails to furnish convincing corroboration of forcible sexual assault, while the surrounding circumstances introduce substantial uncertainty regarding the prosecution narrative.

64. The Learned Trial Court, in proceeding towards conviction, appears to have attached overriding weight to the accusation itself without subjecting the evidence to the rigorous scrutiny demanded in a criminal prosecution of this nature. Suspicion, however grave, cannot substitute legal proof.

65. Accordingly, this Court is unable to hold that the prosecution succeeded in establishing the guilt of the appellant beyond reasonable doubt. The appellant is therefore entitled to the benefit of doubt.
66. The appeal thus deserves to be allowed. The judgment of conviction and order of sentence passed against the appellant under Sections 376/394 of the Indian Penal Code are set aside. The appellant is acquitted of the charges levelled against him.
67. Accordingly, the instant criminal appeal being CRA 74 of 1996 is allowed.
68. The order dated 12.02.1996 passed by the Learned Additional Sessions Judge, 1st Court, Bankura in Sessions Trial No. 6(6)1993 arising out of Sessions Case No.1(12)1992 is set aside.
69. There is no order as to costs.
70. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
71. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)