Dola @ Dolagobinda Pradhan vs The State Of Odisha on 29 August, 2018

Equivalent citations: AIR 2018 SUPREME COURT 4020, (2019) 195 ALLINDCAS 184 (SC), (2018) 10 SCALE 270, (2018) 2 ALD(CRL) 674, (2018) 3 ALLCRIR 2508, (2018) 3 CRILR(RAJ) 911, (2018) 3 UC 1725, (2018) 4 ALLCRILR 485, (2018) 4 BOMCR(CRI) 631, (2018) 4 CURCRIR 474, (2018) 4 RECCRIR 137, (2018) 72 OCR 308, 2018 CRILR(SC MAH GUJ) 911, 2018 CRILR(SC&MP) 911, (2019) 106 ALLCRIC 949, (2019) 195 ALLINDCAS 184, (2019) 1 JLJR 253, (2019) 1 PAT LJR 322, 2019 (3) SCC (CRI) 239, AIR 2018 SC(CRI) 1404, AIRONLINE 2018 SC 234

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Bench: Mohan M. Shantanagoudar, N.V. Ramana

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1095 OF 2018
(Arising from SLP (Crl.) No. 8578/2017)

DOLA @ DOLAGOBINDA PRADHAN & ANR. ..APPELLANTS

VERSUS

THE STATE OF ODISHA ..RESPONDENT

JUDGMENT

MOHAN M. SHANTANAGOUDAR, J.

Leave granted.

2. The judgment dated 10.05.2017 passed in CRA No. 267 of 1992 by the High Court of Orissa at Cuttack confirming the judgment of conviction and order of sentence dated 20.07.1992 passed by the Assistant Sessions Judge, Bonai, in ST No. 65/2 of 1991-1992, is called in question in this appeal.

By the impugned judgment, the High Court has confirmed the judgment and order of conviction passed against the appellants for the offence under Section 376(2)(g) of the Indian Penal Code (for short 'the IPC') and order of sentence of Rigorous Imprisonment for ten years.

3. The case of the prosecution in brief is that when the victim-prosecutrix was enroute home from her road side "eating house" (hotel) near Khuntagaon weekly market at about 8:00 p.m. on 24.03.1990, the appellants suddenly emerged from behind a 'Mahulatree' and gagged her mouth by a napkin and physically carried her to a roadside date-palm clump. Akshya Pradhan (Appellant No.2) threatened the victim with dire consequences by showing a knife at her, and being frightened, the victim could not raise any alarm. The appellants made her lie on the field and both of them committed rape on her. The victim thereafter rushed to her house and narrated the entire episode to her husband. She also showed her torn inner garments worn at the time of occurrence and the injury sustained by her on her cheeks. The next day, at about 11.00 a.m. the victim and her husband went to the police station and lodged the First Information Report (Ext. 1). The Investigating Officer (PW-7) took up the investigation and filed the charge-sheet against both the accused for the above-mentioned offence. After framing the charges, the Sessions Court held the trial. As mentioned supra, the Trial Court convicted both the accused for the offence punishable under Section 376(2)(g) of the IPC and the same came to be confirmed by the High Court.

4. Ld. Counsel for the appellants, taking us through the material on record, submitted that an implicit reliance cannot be placed on the uncorroborated testimony of the victim, who had a strong motive to implicate the appellants falsely in a serious crime. The victim's husband has not supported the case of the prosecution. The story as put forth by the victim bristles with inherent improbabilities and exaggerations. The case of the prosecution is not supported by the medical evidence and the entire case of the prosecution is a cooked-up story against the appellants in order to take revenge against them because of a business rivalry.

Ld. Counsel for the State argued in support of the judgments of the Trial Court as well as the High Court.

5. It is well settled law that if the version of the prosecutrix is believed, basic truth in her evidence is ascertainable and if it is found to be credible and consistent, the same would form the basis of conviction. Corroboration is not a sine qua non for a conviction in a rape case. The evidence of a victim of sexual assault stands at par with the evidence of an injured witness and is entitled to great weight, absence of corroboration notwithstanding. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration, except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. When a grown up and married woman gives evidence on oath in Court that she was raped, it is not the proper judicial approach to disbelieve her outright.

6. In this regard it would be useful to quote certain observations of this Court in the case of Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, [(1983) 3 SCC 217] wherein it is observed that:

"10. By and large these factors are not relevant to India, and the Indian conditions. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault on account of any such factor as has been just enlisted. The statement is generally true in the context of the urban as also rural Society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because: (1) A girl or a woman in the tradition bound non- permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the Society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being over powered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross examination by Counsel for the culprit, and the risk of being disbelieved, acts as a deterrent.

11. In view of these factors the victims and their relatives are not too keen to bring the culprit to books. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated. On principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. And while corroboration in the form of eye witness account of an independent witness may often be forthcoming in physical assault cases, such evidence cannot be expected in sex offences, having regard to the very nature of the offence.

It would therefore be adding insult to injury to insist on corroboration drawing inspiration from the rules devised by the courts in the Western World (Obeisance to which has perhaps become a habit presumably on account of the colonial hangover). We are therefore of the opinion that if the evidence of the victim does not suffer from any basic infirmity, and the "probabilities factors" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming, subject to the following qualification: Corroboration may be insisted upon when a woman having attained majority is found in a compromising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self-preservation. Or when the 'probabilities factor' is found to be out of tune".

(emphasis supplied)

7. In Sadashiv Ramrao Hadbe v. State of Maharashtra, [(2006) 10 SCC 92], this Court reiterated that the sole testimony of the prosecutrix could be relied upon if it inspires the confidence of the Court:

> "9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

8. However, as is also evident from the observations above, such reliance may be placed only if the testimony of the prosecutrix appears to be worthy of credence. In this regard, it is also relevant to note the following observations of this Court in the case of Raju v. State of Madhya Pradesh, [(2008) 15 SCC 133], which read thus:

> "10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.
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> 11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that

ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration." Having due regard in our mind to the above-mentioned settled position in law, we have assessed the entire material on record meticulously.

9. The victim/prosecutrix (PW-1) has deposed that on the night of the incident, at about 7:00 p.m., the accused persons forcibly lifted her while she was going alone to her house from her hotel, her husband having left already. Though she wanted to shout, she could not do so since the accused showed a knife and threatened her with dire consequences. After this, both the accused persons committed rape on her. According to her, her saya (petticoat) (MO No. II) was stained with semen. The police had seized her saree, saya, and blouse, and she was examined by the doctor at the instance of the police. Although in the examination-in-chief she has deposed about the exact names of each of the accused, and the details of the incident, her admissions in the cross-examination raise several doubts as to the veracity of her version as found in the examination-in-chief. In her cross-examination, she admitted that both the accused persons have a hotel near her hotel; she is the first wife of her husband; her sister is the second wife of her husband and is also residing with her husband; the spot of the incident is in between her hotel and Nuadihi Chowk; the road bifurcates at Nuadihi Chowk and buses usually turn at that chowk; there are shops on that chowk; her hotel is towards the west of that road; the hotel of one Purna Bira is near her hotel; the house of Purna Bira is close to the hotel where he resides with his family members; Nuadihi U.P. School is near that chowk; there are 4 to 5 residential houses near that U.P. School; and teachers also live on the school campus. The scene of offence is a corner place in between the U.P. School and residential houses situated near the school. She further deposed that there are village roads near the scene of offence which connect to the main road. There are cultivable lands between the village road and the spot. The spot is encircled by cultivable lands. There are small stones near the spot. The spot is not plain, but it is uneven. She further admitted in the cross-examination that she did not meet anybody while going to her house after the alleged incident, and that none of the neighbours came to her house when she disclosed the matter to her husband. Her husband, her brother-in-law, one servant boy and she herself work in the hotel. One Mr. Dasarathi Sahu is a partner for this hotel business. Vehicles ply throughout the day and night in front of her hotel. In her hotel, food is usually served till 10.00 p.m. Curiously, she admitted that she could not say if the occurrence took place on 24.03.1990. On the day of the occurrence, there was a weekly market in the village and in that market, business is usually carried on from morning till 10.00 p.m.

10. From the aforementioned admissions of the victim, it is clear that the scene of offence is a busy area wherein a number of buses ply, many shops and residential houses exist, and a school is also situated. The scene of offence is near a circle wherein buses pass through frequently. The business in that area generally ends only at 10.00 p.m., which means that the area in question is a very busy area till 10.00 p.m. According to the prosecution, both the accused persons lifted the victim forcibly from the road, sometime between 7:00 and 8:00 p.m. and took her from that busy area and committed the offence of rape on her. Such a story put forth by the prosecution which prima facie appears to be improbable needs to be proved by the prosecution beyond reasonable doubt. Though both the Courts concurrently concluded against the accused persons, we, in order to satisfy our

conscience, have gone through the evidence on record.

11. In her cross-examination, it was also admitted by the victim that there is a Village Forest Protection Committee at village Sadhubahal, and that people sometimes used to sell firewood by removing the same from the forest and the adjoining forests. She denied knowing that the Appellant No.1, Dolagobinda Pradhan, was the President of the Village Forest Protection Committee, and that the Committee had asked her husband to not remove firewood from the forest. However, she admitted that there was a hot exchange of words between her husband and the accused Dolagobinda, and that her husband was assaulted by the people of village Sadhubahal, wherein Dolagobinda also gave him blows. The occurrence of the said assault had taken place in the morning on the date of occurrence of rape. Again, on the very day in the evening, the people of Sadhubahal created a disturbance at the hotel of the victim/prosecutrix, demanding shifting of her hotel from that place. According to the victim, the rape took place sometime after that disturbance. Additionally, the prosecutrix deposed that she, along with her husband, reported to the police about the assault on her husband. Dolagobinda and the others involved did not go to the police station when called. She also stated that she, as well as her husband, was called to the police station two days after the occurrence. In view of such admissions of the victim, the submission made on behalf of the accused that they have been falsely implicated in order to take revenge against them appears to be well founded. It is the case of the defence that the prosecutrix and her husband used to indulge in cutting of firewood from the forest and selling the same in the market, due to which the villagers, as well as the President of the Forest Protection Committee (Appellant No.1), were aggrieved, and a tussle had taken place in that regard.

12. Curiously, the victim has not sustained any injury except some bruises on her cheeks. Her clothes were not even soiled with mud. In her cross-examination, she admitted that there was a tussle at the time of the alleged incident, and that she tried to save herself. She also stated that both the accused persons physically lifted her from the spot, and her bangles had been broken, by which she had sustained bleeding injuries on her hands. Furthermore, she said that she also sustained marks of violence on her hands. She did not sustain any injury on her knee, breasts and buttocks. She stated that she has no acquaintance with the accused persons and she did not have any kind of dealings with them. She further admitted that she had worn eight bangles on each of her hands and all her bangles on the right hand were broken and only one bangle of the left hand remained unbroken, and that all the bangles were broken at the spot of offence.

13. Although the prosecutrix admitted that she sustained bleeding injuries on her hand because of the shattering of eight bangles worn by her on her right hand and seven bangles on her left hand, and had marks of violence present on her body, the medical records do not support the said version. The report of the medical examination is at Ext. 4. It is clearly mentioned in the said report that there is a bruise mark measuring half a centimeter, which can be caused by a hard and sharp object, on the right cheek. No other mark of injury was seen anywhere on the body. There is no injury on the breasts, there is no internal injury on any part of the body and no injury was found on the vulva, pelvis and vagina. There are no signs of injury on the thighs as well. Except for one bruise on cheek which measures half a centimeter, no other injury was found on the victim and the same is clear from the medical report (Ext. 4).

14. Thus, medical evidence does not support the case of the prosecution. The Doctor (PW-4), who examined the victim, however, has deposed that there were four bruises, each measuring half a centimeter on the left cheek and four bruises each measuring half a centimeter on the right cheek. The Doctor opined that the injuries are simple in nature and might have been caused by a hard and sharp object. The Doctor did not find any other injury on the body of the victim. There was no injury on the back side of the body of the victim. Although the Doctor has deposed in the examination-in-chief that the injuries could have been caused by human bite, he has admitted in his cross-examination that he has not mentioned the shape of the injuries in his report. He further admitted that a bruise can be caused by a blunt object like stone, wood, fist blow etc. and can also be caused by a fall. While a bruise is always accompanied by swelling, an abrasion caused by a human bite is elliptical or circular in form, and is represented by separated marks corresponding to the teeth of the upper and lower jaw. If we were to believe that the abrasion was caused by a bite, the same should have been elliptical or circular in form. The said material is not forthcoming from the records.

Moreover, the medical report (Ext. 4) is contrary to the version of the Doctor with regard to the number of injuries as well. The medical report merely states that the victim has sustained a bruise mark measuring half a centimeter in size, which means that only one bruise was found on the right cheek of the victim. However, during his deposition the Doctor has exaggerated to say that the victim has sustained four bruises on each of her cheeks. In any event, merely on the basis of a bruise or bruises on the cheeks, which can be caused even by a fall or by an assault with a hard substance, it cannot be said that the victim has suffered sexual assault.

15. The sample of semen and saliva including the petticoat (saya) of the victim were sent to the Forensic Science Laboratory (for short 'the FSL') for examination. The FSL's report disclosed that semen was not detected on the saya (petticoat). All other exhibits collected and sent to the FSL, i.e. the samples of saliva and semen collected for testing purposes from the two accused and the prosecutrix's husband, were unsuitable for serological examination. Since the saya (petticoat) did not contain any seminal stain, it would be hard for the Court to believe that sexual assault had taken place on the victim, more particularly when the other material does not support the case of the prosecution, and when it is not the case of the prosecution that the victim has changed her dress or that she had washed her clothes, etc. Per contra, the evidence on record discloses that the victim stayed in her house all night and thereafter, leisurely at 11.00 a.m. the next day, she went to the police station and lodged the FIR, after which she was taken for medical examination. If the offence of rape had really taken place, and her saya was in fact stained with semen, the same would have been depicted in the FSL report.

16. It was also admitted by the prosecutrix in her cross-examination that she had not clearly seen the face of anyone at the time of occurrence and she could not recognize the persons committing the rape by face, but she could recognize them hearing their voice. If we were to believe that the victim did not have any acquaintance with any of the accused persons, and that she could not see and recognize the faces of any of the accused persons at the time of occurrence, it would appear improbable for her to recognize the accused merely by hearing their voice. There cannot be any dispute that when the persons are known to each other, a person can certainly identify the other

person by voice. However, the question of identification by voice has to be dealt with by the Court carefully. In Kirpal Singh vs. State of U.P., [AIR 1965 SC 712], this Court, while dealing with the question of voice identification, observed as follows:

> "4...It is true that the evidence about the identification of a person by the timbre of his voice depending upon subtle variations in the overtones when the person recognizing is not familiar with the person recognized may be somewhat risky in a criminal trial. But the appellant was intimately known to Rakkha Singh and for more than a fortnight before the date of the offence he had met the appellant on several occasions in connection with the dispute about the sugarcane crop. Rakkha Singh had heard the appellant and his brother calling Karam Singh to come out of the hut and had also heard the appellant, as a prelude to the shooting referring to the dispute about sugarcane." (emphasis supplied) In light of the above observations, the Court found that the voice identification of the accused by a witness, whose credibility had otherwise been accepted by the courts below, was not improbable. This principle was also applied by this Court in Mohan Singh vs. State of Punjab, [AIR 2011 SC 3534].
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> In this case, voice identification was accepted, inter alia, on the ground that there was no evidence adduced to challenge the evidence of the witness that he had acquaintance with the accused and that he knew the voice of the accused. The Court also adverted to the decision of this Court in Inspector of Police vs. Palanisamy, [(2008) 14 SCC 495], wherein it was held that though identification from voice is possible, no evidence had been adduced to show that the witnesses were closely acquainted with the accused to enable voice identification and that too from very short replies.
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> Thus, from the above cases we may cull out the principle that identification from the voice of the accused may be possible if there is evidence to show that the witness was sufficiently acquainted with the accused in order to recognize him or her by voice.
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> In the matter on hand, the prosecutrix herself has admitted that there was no acquaintance between the victim and accused. In such a scenario, it would be difficult for us to accept the version of the victim that she recognized the accused from their voice. We reiterate the observations in Kirpal Singh (supra) that the identification of a person by the timbre of his voice is risky in a criminal trial, when the identifying person is not familiar enough with the accused to be able to differentiate between subtle variations in the overtones. In the view of the lack of acquaintance between the prosecutrix and the accused, it will not be safe for us to accept her version regarding the identity of the accused, given the absence of a Test Identification Parade.

17. The crown to these suspicious circumstances is that PW-3, the prosecutrix's husband, was declared hostile. In his examination-in-chief, he deposed that the victim reached their house between 7-8 p.m., crying. He refused to speak about what she told him, out of shame. In his cross-examination by the prosecution, he denied being told by his wife that the accused forcibly

lifted and raped her. He only admitted being told that the accused dragged her on the way. Thus, he maintained that his wife had not narrated the rape incident to him, even upon a specific query by the public prosecutor in this regard.

He also admitted to the occurrence of the tussle over the allegations of theft of forest produce levelled against him by the accused and around forty other persons, all of whom assaulted him on the morning of the alleged incident of rape and asked him to shift his hotel away from its current location, which was near the hotel operated by the accused. He specified that he was not deposing falsely out of fear.

During his cross-examination on behalf of the accused, he also admitted that a dispute occurred at his hotel on the day before the date of the incident, in the absence of his wife. He reiterated that on the day of the incident, around 50 persons had created a disturbance at his hotel in the morning, though he could not specify who hit him. He even went on to say that his wife had sent someone to the police station after this assault, whereupon the police came to his hotel, and even called everyone to the police station, though the accused did not oblige.

With regard to the rape incident, he deposed that he accompanied his wife to the police station on Sunday morning, i.e. the day following the day of the alleged incident, reaching around 10:00 a.m. and returning around 05:00 p.m. It may be noted that the prosecutrix herself deposed in her cross-examination that they returned around 1.30 to 2:00 p.m. He claimed that having remained outside the police station while his wife was examined, he had no knowledge of what transpired inside. Finally, he admitted to not telling anyone in the village about the rape incident or the visit to the police station.

18. According to the prosecution, the incident has taken place at about 7:00 p.m. to 8:00 p.m. on 24.3.1990. As per the admissions of both the prosecutrix and her husband, PW-3, in the morning as well as in the evening of the date of incident, a number of people had gathered and created disturbance in the hotel of the victim and PW-3, and assaulted him. It seems that the running of the hotel by the victim and her husband was not palatable to the accused and forty other persons in the village. Added to this, PW-3 was stated to have been involved in the theft of forest produce and in that regard the villagers had a grievance against him.

19. As mentioned supra, the spot where the alleged rape had been committed and the spot from where the victim was forcibly physically lifted by the accused were not deserted places, inasmuch as in the normal course of a day, numerous passersby and vehicles ply there. It is unlikely that no one had noticed the victim being lifted and subjected to forcible sexual intercourse. Though the victim narrated the entire incident to her husband (PW3), he has denied before the Court that the victim informed him about the commission of forcible sexual assault on her. Firstly, the husband (PW-3) refutes that the victim told him that she was lifted from the spot and subjected to forcible sexual intercourse. Secondly, PW-3 has deposed that the victim told him that the appellants had dragged the victim on the way. And finally, he has also denied stating to the Investigating Officer that the victim told him that while she was returning home from the hotel, the appellants have committed rape on her. The deposition of PW-3 as mentioned supra, practically does not support the version of

the victim. There is no reason as to why PW-3, being the husband of the victim, would contradict her version. Moreover, the victim has deposed that she did not see the face of anyone clearly, at the time of occurrence and that she did not recognize the faces of the persons committing rape on her. As we have observed supra, in the instant case, the contention of voice recognition cannot be accepted. That apart, though PW-3 was informed by the victim about the incident immediately afterwards, which is the natural conduct of a victim, strangely he was never examined by the police, as per his own admission, though he was standing outside the Police Station all throughout the recording of his wife's statement. The victim alone was taken inside the Police Station for reasons best known to the prosecution. In that context, the contentions of the defence that there is a likelihood of creating a false case against the accused assume importance.

20. The evidence of the victim/prosecutrix and her husband (PW-3) are unreliable and untrustworthy inasmuch as they are not credible witnesses. Their evidence bristles with contradictions and is full of improbabilities. We cannot resist placing on record that the prosecution has tried to rope in the appellants merely on assumptions, surmises and conjectures. The story of the prosecution is built on the materials placed on record, which seems to be neither the truth, nor wholly the truth. The findings of the courts below, though concurrent, do not merit acceptance or approval in our hands with regard to the glaring infirmities and illegalities vitiating them, and the patent errors apparent on the face of record resulting in serious and grave miscarriage of justice to the appellants.

21. In the matter on hand, on going through the entire material on record, we are of the clear opinion that the prosecutrix apparently had motive to seek revenge against the accused persons. The testimony of the victim in the peculiar facts and circumstances of this case needs to be discarded, since her testimony is a result of seeking revenge against the accused and as her evidence is not free from blemish. The prosecutrix's evidence with regard to identification of the accused was unworthy of credence as she has deposed that she could not identify the faces of any of the accused persons, coupled with the factum that no spermatozoa was found evidencing recent sexual intercourse, as also there was no injury on her body, except of course, a bruise on her cheek measuring half a centimeter. No doubt, solely relying on the version of the victim, a conviction can be recorded, but such version should be reliable. If really the victim had deposed about the incident to her husband immediately after the incident, there is no reason for PW-3 being the husband of the victim, to not depose about the same before the Court. The testimony of PW-3 contradicts the story laid down by the informant. At the cost of repetition, it can be observed that firstly, PW-3 denies specifically that the informant told him that she was lifted from the spot and subjected to forcible sexual intercourse. Secondly, it is specified by PW-3 that the informant merely told him that the accused were dragging her. Finally, he also denies having stated to the Investigation Officer that the victim told him that while she was returning from hotel, the accused committed rape on her. The Courts have accepted the voluntary statement of the victim while discarding various other probabilities. The alleged scene of offence could hardly be described as a deserted place or a secluded place for the commission of such a ghastly crime. The spot where the alleged rape was committed is practically near the market, and near the main road wherein vehicles frequently ply and more particularly when the day of the incident was a market day which used to be busy up to 10.00 p.m. All the attending glaring inconsistencies and improbabilities as also the other evidence on record which demolishes the

version of the victim are conveniently ignored by the Trial Court and the High Court. The Police have failed to recover the napkin which was used for gagging the mouth of the victim. So also the knife allegedly used by the accused Akshya Pradhan for threatening the victim was not recovered. The knife would have contained the fingerprints of the accused if it was really used by the accused. A careful reading of the evidence of the prosecutrix and her husband (PW-3) therefore leads us to the conclusion that the case as made out by the prosecution appears to be concocted. It cannot be said that the offence of rape has been proved beyond reasonable doubt.

22. In our considered opinion, the Trial Court as well as the High Court have convicted the appellants without considering the aforementioned factors in their proper perspective. The testimony of the victim is full of inconsistencies and does not find support from any other evidence whatsoever. Moreover, the evidence of the informant/victim is inconsistent and self-destructive at different places. It is noticeable that the medical record and the Doctor's evidence do not specify whether there were any signs of forcible sexual intercourse. It seems that the First Information Report was lodged with false allegations to extract revenge from the appellants, who had uncovered the theft of forest produce by the informant and her husband. The High Court has, in our considered opinion, brushed aside the various inconsistencies pointed out by us only on the ground that the victim could not have deposed falsely before the Court. The High Court has proceeded on the basis of assumptions, conjectures and surmises, inasmuch as such assumptions are not corroborated by any reliable evidence. The medical evidence does not support the case of the prosecution relating to the offence of rape. Having regard to the totality of the material on record and on facts and circumstances of this case, it is not possible for this Court to agree with the concurrent conclusions reached by the courts below. At best, it may be said that the accused have committed the offence of hurt, for which they have already undergone a sufficient duration of imprisonment, inasmuch as they have been stated to have undergone two years of imprisonment. Accordingly, the appeal is allowed. The judgments of the Trial Court as well as the High Court are set aside. The appellants are acquitted of the charges levelled against them. They should be released forthwith, if they are not required in any other case.

……J. [N.V. RAMANA] ……J. [MOHAN M. SHANTANAGOUDAR] NEW DELHI;

AUGUST 29, 2018.