

GAHC010057402023



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./103/2023

BALURAM DEKA
S/O SRI SATRAM DEKA
RESIDENT OF VILLAGE BARSATRA, PO DIGIRPAR PS MANGALDAI, DIST
DARRANG, ASSAM 784144

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

2:SRI REKHAMANI DEKA
D/O SRI PADORAM DEKA

RESIDENT OF VILLAGE BARSATRA
PO DIGIRPAR PS MANGALDAI
DIST DARRANG
ASSAM 78414

Advocate for the Petitioner : MR. R Deka, MR. D DEKA, S I AKAND

Advocate for the Respondent : PP, ASSAM, MS. N M DEKA (R-2)

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

JUDGMENT & ORDER (ORAL)

Date : 29-08-2024

Heard Mr. R. Deka, learned counsel for the accused-appellant. Also heard Mr. R.R. Kaushik, learned Additional Public Prosecutor for the State respondent.

2. This appeal is presented under Section 374 (2) of the Code of Criminal Procedure, 1973 (herein after referred to as Cr.P.C.) against the Judgment and Order dated 13.12.2022 passed by the learned Court of Sessions Judge, Darrang, Mangaldoi in Sessions Case No. 119(DM)/2022, whereby, the accused appellant was sentenced to suffer Rigorous Imprisonment for a period of 10(ten) years and fine of Rs.5,000/- (Rupees Five Thousand), in default Rigorous Imprisonment for another 6 (six) months for the offence under Section 376(1) of the Indian Penal Code(herein after referred to as IPC) and also Rigorous Imprisonment for 6 (six) months for the offence under Section 448 of the IPC; to run concurrently.

3. The case of the prosecution in brief is that, on 03.03.2022, victim/informant/PW-1 lodged an FIR before the jurisdictional Police Station alleging *inter alia* that on 02.03.2022, at around 11:30 AM, while she was alone and was sleeping in her house, the accused-appellant entered into her house and by gagging her mouth forcefully committed rape on her and threatened her not to disclose the same to anybody.

4. Upon receipt of the aforesaid FIR, a case was registered as Mangaldoi P.S. Case No.93/2022 under Sections 448/376/506 of the IPC.

5. During the course of investigation, PW-5 (Pranita Taid, Investigating Officer) recorded the statement of the victim/informant/PW-1 and further got the statement of the victim/informant/PW-1 recorded by PW-6 (Dr. Gitanjali Devi) i.e. Judicial Magistrate, under Section 164 Cr.PC and had also sent the victim/informant/PW-1 for medical examination before PW-3 (Dr. Ajanta Bordoloi, Medical Officer) who after medically examining the victim/informant/PW-1 submitted a report which was received by the PW-5 and thereafter arrested the accused appellant. Upon completion of the investigation, PW-5 submitted charge-sheet against the appellant accused under Section 448/376/506 of IPC.

6. Thereafter, the jurisdictional Magistrate Court upon production of the accused appellant, committed the case to the Court of Sessions and the Trial Court thereupon framed the charges under Section 448/376/506 of IPC against the accused appellant, whereafter the accused appellant pleaded not guilty and claimed for trial.

7. Accordingly, the trial commenced, wherein, the prosecution examined 6(six) witnesses, namely PW-1 the victim/informant, PW-2 Himani Deka, PW-3 Dr. Ajanta Bordoloi, PW-4 Manisha Deka, PW-5 Pranita Taid, Investigating Officer and PW-6 Dr. Gitanjali Devi and also exhibited 5(five) numbers of documents being, Exhibit P-1/PW-1 FIR, Exhibit P-2/PW-1 Statement of victim, Exhibit P-3/PW-3 Medical report, Exhibit P-4/PW-5 Sketch map and Exhibit P-5/PW-5 Charge sheet.

8. Thereafter, all the incriminating circumstances were put to the accused appellant under Section 313 Cr.P.C., wherein, the accused appellant generally

denied the said circumstances and declined to adduce evidence.

9. Upon completion of trial, the Trial Court rendered its Judgment and Order dated 13.12.2022, whereby the accused appellant was convicted under Section 376(1)/448 of IPC and sentenced thereof.

10. Mr. R. Deka, learned counsel for the appellant accused submits that the Judgment and Order dated 13.12.2022, passed by the learned Trial Court suffers from lacuna for which the conviction ought not to be sustained.

11. He further submits that the victim/informant/PW-1's version of commission of rape is not supported by the medical evidence and therefore, the prosecution has failed to bring home the charge of Section 376 of IPC.

12. He further submits that there are inconsistencies in the testimony of the victim/informant/PW-1 and therefore, the prosecution has failed to prove the case beyond all reasonable doubt.

13. He further submits that despite the availability of other prosecution witnesses especially to whom victim/informant/PW-1 has alleged to have stated about the incident has not been examined in the matter and therefore, for non-examination of such witnesses, the case of the prosecution is doubtful.

14. He further submits that despite the victim/informant/PW-1 being examined within 48 hours of the incident, no injury or instances of sexual activities was noted by the Medical Officer and therefore, the impugned Judgment and Order dated 13.12.2022 warrant interference from this Hon'ble Court.

15. In support of the aforesaid submissions he relies upon the following citations.

1. (2004) CRI. L.J. 226 (Orissa High Court) - Santa Jani vs. State.

2. (2006) Legal Eagle (RAJ) 379 (Rajasthan High Court) - Ratan Lal vs. State of Rajasthan.

3. 2006 11 and 12 SBR 320 (Apex Court) - Raj Kumar Vs. State of Bihar.

16. Per-contra, Mr. R.R. Kaushik, learned Additional Public Prosecutor for the State respondent submits that the Judgment and Order dated 13.12.2022, passed by the learned Trial Court suffers from no infirmities and therefore, warrants no interference from this Court.

17. He further submits that the testimony of the victim/informant/PW-1 herself is sufficient to bring home the charge of Section 376 of the IPC. He further submits that since the testimony of the victim/informant/PW-1 is wholly trustworthy, therefore, no further corroboration is required in a case of such nature. He further submits that the other prosecution witnesses, i.e. PW-2, PW-4 and PW-5 supports the story of the prosecution and therefore, the prosecution has established the case beyond reasonable doubt.

18. I have given my prudent consideration to the arguments made by the learned counsel for the parties and have perused the materials available on records, including the trial court records.

19. On perusal of the FIR dated 03.03.2022, it indicates that the victim/informant/PW-1 lodged the FIR on the next day of the incident, wherein, it was alleged that she was raped by the accused appellant, while she was alone in the house and was sleeping by entering into the house and by gagging her mouth.

20. It appears that the case of the prosecution is based on the sole testimony of the PW-1, i.e. the victim herself.

21. Therefore, let me analyze the testimony of PW-1 at the outset.

22. PW-1 deposed before the Court that on the date of the incident at about 11:00 AM, when she was alone in her house and was sleeping, the accused/appellant entered her house and forcefully committed rape on her. She further deposed that at that time her father had gone to collect mustard seed and her mother had also gone to the L.P. School where she works as a cook. She further deposed that the accused appellant gagged her mouth with a pillow and committed rape upon her. She further deposed that after the incident she disclosed the fact to one of her relatives (Jalita Deka) and to her paternal aunt (Makan Deka) and also to her mother. She further deposed that since she was injured due to the rape committed by the accused appellant, there was bleeding from her private parts, which was also observed by her family members. She further deposed that on the next day, when PW-2 (i.e. another sister-in-law) asked her about the cause of the bleeding, she told her that she was injured because of the rape committed upon her by the accused appellant. She further deposed that her family members

came to know about the incident and on the next day, she along with her family members, the Gaonburah and PW-4 went to the house of the accused appellant. She further deposed that the accused appellant scolded and rebuked them and later on, in the evening she lodged the FIR before the O/C of Mangaldoi Police Station. She further deposed that after lodging of the FIR, she was medically examined by the Medical Officer, PW-6 and her statement was also recorded before the learned Magistrate, PW-7 under Section 164 Cr.P.C.

23. During cross-examination PW-1 clarified that the accused appellant removed her wearing, i.e. pant and panty and gagged her mouth with a pillow and that she could not raise alarm as her mouth was gagged with a pillow. She further clarified that the accused appellant is their neighbour and that they have talking terms with him and that he also used to visit their house regularly. She further clarified that some of the family members persuaded her not to lodge the FIR immediately. She further clarified that she has been ailing for about three years as during menstruation cycle she bleeds and in this connection she has been taking treatment at Mangaldai Civil Hospital, Darrang as well as at GNRC Hospital. She further clarified that on the day of incident, the accused appellant came with his cousin (Biswa Deka) to their house and took some pomelos (Robab Tenga) and thereafter, they had left. However, she further clarifies that accused/appellant thereafter came alone and committed rape upon her.

24. The aforesaid testimony of the PW-1 appears to be in conformity with the version given by her in the FIR.

25. PW-2 and PW-4 who are the sister-in-law and cousin of PW-1, respectively corroborated the testimony of PW-1 to the effect that PW-1 informed them about the incident of rape.

26. PW-2 deposed before the court that on the next day of the incident when she had gone to wash her clothes, she met the victim/informant/PW-1 whereupon, she noticed blood in the cloth of the victim/informant/PW-1 and upon being asked as to what happened, the victim replied that on the previous day, the accused appellant came to her house and committed rape upon her and that she was injured in her private parts and that the accused appellant threatened her. She further deposed that she informed PW-4 and other members of her family and thereafter, they went to the house of the accused appellant along with the Gaonburah and the victim/informant/PW-1. However, the accused appellant scolded and rebuked them and thereafter, the FIR was filed.

27. During cross-examination PW-2 clarified that she did not advice or tell the victim/informant/PW-1 to lodge the FIR at that moment.

28. PW-4 deposed before the court that the accused appellant committed rape upon the victim/informant/PW-1 in her house and after the incident the victim/informant/PW-1 disclosed and revealed the said fact to her sister-in-law (Jalita Deka) and that the accused appellant is the brother-in-law of the said (Jalita Deka). She further deposed that both the accused/appellant and Jalita Deka asked the victim not to disclose the said fact to anyone. She further deposed that PW-2 reported her that she saw blood stains in the clothes of victim/informant/PW-1 and that she was raped by the accused/appellant. She further deposed that thereafter she asked the victim/informant/PW-1 about the same and the victim told her that she was raped by the accused/appellant. She further deposed that she along with the other family members including the Gaonburah and PW-2 went to the house of the accused/appellant where after the accused/appellant threatened and intimidated

them and thereafter, the FIR was filed.

29. During cross-examination, PW-4 clarified that the accused appellant is her neighbour and that before the incident they had talking and visiting terms with the accused appellant.

30. Thus, it is evident from the above testimonies that PW-2 and PW-4 fully corroborates the story of PW-1. That apart, PW-5, the Investigating Officer also corroborates the surrounding circumstances in support of the prosecution's story.

31. **PW-5** deposed before the court that on 03.03.2022, while she was working as I/C of Women Cell at Mangaldoi P.S., upon receiving an FIR from PW-1, a case was registered. Accordingly, she investigated the case and recorded the statement of the victim and also recorded statements of other witnesses and arrested the accused appellant from his residence and sent the accused appellant for medical examination. She further deposed that she also prepared a sketch map of the place of occurrence and the victim was also sent for medical examination at Mangaldoi Civil Hospital and since the complete medical examination could not be completed there as the X-ray machine was out of order, the victim was taken to Udalguri Civil Hospital for X-ray examination and ultra sonography. She further deposed that thereafter the victim was produced before the learned Magistrate (PW-6) for recording her statement under Section 164 Cr.P.C. Upon completion of the investigation and collection of the medical report of the victim she filed the charge-sheet against the accused/appellant being Exhibit-P5.

32. During cross-examination, PW-5 clarified that the victim/informant

stated during her examination under Section 161 Cr.P.C. that her age is 25 years old. She further clarified that the reason for delay in lodging the FIR is mentioned in the FIR as that the accused appellant had threatened her not to disclose the incident. She further clarified that she did not examine the Gaonburah.

33. PW-6, who is the Judicial Magistrate First Class, Darrang, Mangaldoi deposed that on 04.03.2022, the statement of the victim was recorded by her under Section 164 Cr.P.C. which is exhibited as Exhibit-P6.

34. Reading of the aforesaid testimonies leaves no room of doubt as regards the factum of rape committed by the accused appellant upon the victim.

35. Let me now turn to the testimony of the PW-3 (Dr. Ajanta Bordoloi), the Medical Officer, who examined the victim/informant.

36. PW-3 deposed that she medically examined the victim/informant and submitted a report being Exhibit P-3 with the remarks that "no evidence of recent sexual intercourse was found". Relevant portion of the aforesaid report is reproduced hereunder for ready reference:-

"On examination I found following:

Height-4 feet 9 inch

weight - 32 KG

Teeth-14/14

Secondary sexual characteristics are developed.

Per vaginal examination: No injury seen on her private parts,

hymen- torn partially, vulva- vagina and uterus are normal.

Vaginal swab examination: No spermatozoa seen examination of urine for pregnancy: negative.

Ultrasonography of abdomen: No obvious abnormality seen.

HIV test: found negative.

Remarks:

No evidence of recent sexual intercourse found.

No injury seen on her private parts.

No pregnancy.

HIV test negative.”

37. Apparent from the testimony of PW-3 that there was no injury found on the private parts of the victim. However, hymen was reported to have been partially torn. It further appears that the said Medical Officer, i.e. PW-3 has opined that no evidence of recent sexual intercourse was found.

38. Thus, the case stands on one hand with the testimony of the victim/informant/PW-1 which stands fully corroborated by the other prosecution witnesses, *vis-à-vis* the medical report.

39. It is well settled that in the case of rape, conviction can be passed solely on the evidence of the prosecutrix. However, if the Court finds it difficult to accept the version of the prosecutrix on its face value, it may look for evidence, direct or circumstantial, which would lend assurance to her testimony.

40. Therefore, if the evidence of the prosecutrix inspires confidence in the

Court, there is no reason to insist on corroboration from medical evidence.

41. Reference is made to the decision of the Apex Court in the case of **Ganesan Vs. State** reported in **(2020) 10 SCC 573**, wherein the Apex Court has observed and held that where the testimony of victim is found reliable and trustworthy, conviction on the basis of her testimony is permissible. The Apex Court observed as hereunder:-

“10.1. Whether, in the case involving sexual harassment, molestation, etc., can there be conviction on the sole evidence of the prosecutrix, in Vijay [Vijay v. State of M.P., (2010) 8 SCC 191 : (2010) 3 SCC (Cri) 639] , it is observed in paras 9 to 14 as under: (SCC pp. 195-98)

9. In the case of State of Maharashtra vs. Chandraprakash Kewalchand Jain [State of Maharashtra vs. Chandraprakash Kewalchand Jain, (1990) 1 SCC 550 : 1990 SCC (Cri) 210] this Court held that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Court observed as under: (SCC p. 559, para 16).

16. A prosecutrix of a sex offence cannot be put on

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

conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.'

10. In State of U.P. v. Pappu [State of U.P. v. Pappu, (2005) 3 SCC 594 : 2005 SCC (Cri) 780] this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12)

12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is

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

11. In State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] , this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the

prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix. ... The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed

considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. ... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. ... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances.

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

prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.’(emphasis in original)

12. In State of Orissa v. Thakara Besra [State of Orissa v. Thakara Besra, (2002) 9 SCC 86 : 2003 SCC (Cri) 1080] , this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In State of H.P. v. Raghubir Singh [State of H.P. v. Raghubir Singh, (1993) 2 SCC 622 : 1993 SCC (Cri) 674] this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of

circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. [Wahid Khan v. State of M.P., (2010) 2 SCC 9 : (2010) 1 SCC (Cri) 1208] placing reliance on an earlier judgment in Rameshwar v. State of Rajasthan [Rameshwar v. State of Rajasthan, 1951 SCC 1213 : AIR 1952 SC 54] .

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

10.2. In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

10.3. Who can be said to be a “sterling witness”, has been dealt with and considered by this Court in Rai Sandeep v. State (NCT of Delhi) [Rai Sandeep v. State

(NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] . In para 22, it is observed and held as under: (SCC p. 29)

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a

version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

42. In the case of **State (NCT of Delhi) vs. Pankaj Chaudhary**, reported in **(2019) 11 SCC 575**, the Apex Court has observed and held as hereunder:-

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283 : (2006) 1 SCC (Cri) 217]]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. [State of Rajasthan v. N.K. [State of Rajasthan vs. N.K., reported in (2000) 5 SCC 30: 2000 SCC (Cri) 898]”

43. In the case of **Sham Singh v. State of Haryana**, reported in **(2018) 18 SCC 34**, the Apex Court has observed and held at Para 6 and 7 as hereunder:-

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating

statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See *Ranjit Hazarika v. State of Assam* [*Ranjit Hazarika v. State of Assam*, (1998) 8 SCC 635 : 1998 SCC (Cri) 1725].)”

44. Therefore, the test is to take the testimony of the victim/informant/PW-1 in the context of the facts of each case and to ascertain whether her testimony can be said to be trustworthy, reliable, credible and is of sterling quality. In doing so, whether the surrounding circumstances deposed by her is supported by other witnesses or not and the manner in which she has recounted the incident right

from the beginning to the end also amongst others to be taken into account (See:- **The State of Mizoram Vs. Lalramliana and Anr.**, reported in **2024 SCC Online Gau 403**).

45. Keeping the aforesaid parameters in mind, let me now apply the test as laid herein above to the context of the present case.

46. It appears that the victim/informant/PW-1 has been consistently maintaining her version as regards the commission of rape by the accused appellant right from the stage of lodging the FIR, while being examined under Section 161 Cr.P.C. and also while her statement was recorded under Section 164 Cr.P.C. to her final deposition before the Trial Court.

47. If further appears that PW-2 and PW-4, has fully corroborated her testimony. Thus, in view of the continuity in the chain of events supported by other witnesses and the manner in which the informant/victim had disclosed about the incident right from the beginning to the end, it conclusively proves that she is trustworthy, reliable and credible.

48. This takes me to the argument of the learned counsel for the appellant to the effect that absence of injury in the private parts by the Medical Officer, who examined the victim/informant after the incident with the remark that no recent activity of sexual intercourse was detected, bellies the testimony of PW-1.

49. In the medical report Exhibit P-3, partial tear of hymen was detected. However, no injury and recent activity of sexual intercourse were noticed. Pertinent

that the victim was examined on 04.03.2022 as evident from the Exhibit P-3 i.e. two days after the date of incident (02.03.2022). Thus, it is not unusual for any injury or recent activity of sexual intercourse to be absent when the victim was examined after about two days of the incident of rape. Further, penetration of the slightest degree is sufficient for constituting an offence of rape.

50. Section 375 of the IPC is reproduced for ready reference :-

“375. Rape. - A man is said to commit "rape" if he

- (a) Penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a person; or woman or makes her to do so with him or any other
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into into the vagina, the urethra or anus of to do so with him or any other person; or A woman of makes her
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do s so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

under the circumstances falling under any of the following seven descriptions:-

First - Against her will.

Secondly - Without her consent.

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

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

Fifthly - With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly - With or without her consent, when she is under

eighteen years of age.

Seventhly - When she is unable to communicate consent.

Explanation.1 - For the purposes of this section, "vagina" shall also include labia majora.

Explanation.2 - Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception.1 - A medical procedure or intervention shall not constitute rape.

Exception.2 - Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.”

51. A bare reading of Section 375 of the IPC it is clear that partial penetration or even an attempt to penetration is also sufficient to bring the offence under

Section 375 of the IPC home and therefore, absence of injury is of no consequence in such situation.

52. Pertinent to refer to the decision of the Apex Court in the case of **Ranjit Hazarika Vs. State of Assam** reported in **(1998) 8 SCC 635**, wherein the Apex Court in paragraph 5 as reproduced hereunder has held that to constitute the offence of rape, penetration, however slight is sufficient:

“5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled her vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix,

nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

53. Reference is also made to the decision of the Apex Court in the case of **State of Tamil Nadu Vs. Ravi @ Nehru**, reported in **(2006) 10 SCC 534**, wherein it has observed as follows:-

“14. In *Madan Gopal Kakkad v. Naval Dubey* [(1992) 3 SCC 204] the accused was charged with the rape of a minor girl of eight years. This Court held that even slightest penetration of penis into vagina without rupturing the hymen would constitute rape.

15. We may also notice the opinion expressed by Modi in *Medical Jurisprudence and Toxicology* (21st Edn.) at p. 369 which reads thus:

“Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of

penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda, with or without emission of semen, or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.”

16. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

“Sexual intercourse.—In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.”

17. In Encyclopædia of Crime and Justice (Vol. 4) at p. 1356, it is stated:

“...even slight penetration is sufficient and emission is unnecessary.”

18. It is now well-accepted principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. It is also well-accepted principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence. A woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion treating her as if she were an accomplice. (See State of Punjab v. Gurmit Singh [(1996) 2 SCC 384].

19. So also in Ranjit Hazarika v. State of Assam [(1998) 8 SCC 635] this Court observed that non-rupture of hymen or the absence of injury on the victim's private parts does not belie the testimony of the prosecutrix.

20. The evidence of a victim of sexual assault stands on a par with the evidence of an injured witness. Just as a witness who has sustained an injury 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-offender is entitled to great weight, absence of corroboration notwithstanding. (See *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [AIR 1983 SC 753].

54. That apart, the prosecution had not been able to bring anything on record to doubt the veracity of the testimony of PW-1 or to suggest that PW-1 would falsely implicate the appellant accused and put her own reputation at rest. In fact, the appellant accused chose not to give any explanation whatsoever, while he was examined under Section 313 Cr.P.C. In view of the above, the two decisions relied by the learned counsel for the accused/appellant i.e. **Ratan Lal (supra)** and **Sania Jani (supra)** have no relevance in context of the present case.

55. Therefore, in the case in hand mere absence of injury in the private parts of the victim is no ground whatsoever to disbelieve the story of the prosecutrix. Hence, I am of the considered view that the testimony of PW-1 is trustworthy, cogent, reliable and credible. Accordingly, the said argument of the learned counsel for the accused appellant is rejected.

56. The next argument of the learned counsel for the accused appellant to the effect that the delay of filing the FIR vitiated the case of the prosecution also cannot be accepted as the victim has clearly explained the reason for the one day

delay in filing the FIR which has found sufficient corroboration from the other evidences on record. Be that as it may, it is natural that in cases involving sexual offences, delay occurs in lodging of the FIR for variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police station and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. (See:- **State of Punjab vs. Gurmit Singh and Ors.**, reported in **(1996) 2 SCC 384**).

57. Accordingly, the said argument of the learned counsel for the accused appellant is also rejected. Pertinent that the decision of the Apex Court reported in **Raj Kumar (supra)** relied by the accused appellant, is not relevant in context of the present case.

58. That apart, as regards the plea of the learned counsel for the accused appellant that for non-examining of other relevant witnesses, the prosecution case fails, is also not acceptable to this Court inasmuch as it is not the quantity of witnesses that matters, but the quality of the evidence that is material. Reference is made to **Namdeo Vs. State of Maharashtra**, reported in **(2007) 14 SCC 150**, wherein the Apex Court has held that it is quality of evidence and not quantity of evidence which is material and that the quantity of evidence cannot be considered to be a test for deciding criminal trial.

59. Reverting back to the present case, as stated above, the testimony of PW-1 as regards the commission of rape by the accused appellant, having fully inspired the confidence of this Court, needs no further corroboration. Be that as it may PW-2 and PW-4 has corroborated the testimony of PW-1 to the effect that the victim/informant informed them about the commission of rape upon her by the

accused appellant. Therefore, non-examination of other witnesses who are said to have been also told by the victim/informant about the said incident is of no consequence. Thus, the said argument of the learned counsel for the accused appellant is also rejected.

60. It appears that the learned Trial Court after analyzing the evidences of the victim/informant/PW-1 and also looking into the evidence of PW-2, PW-4 and PW-5 had come to the conclusive finding that the prosecution has proved the case beyond all reasonable doubt.

61. In view of above, I am of the considered opinion that there is no infirmity or illegality or irregularity whatsoever in the manner the learned Trial Court has recorded a finding of conviction in favour of the accused/appellant.

62. As such, the instant appeal is devoid of any merit.

63. Resultantly, the Judgment and Order dated 13.12.2022, passed by the learned Court of Sessions Judge, Darrang, Mangaldoi in Sessions Case No. 119(DM)/2022 stands confirmed and accordingly, this appeal stands **dismissed**.

64. Return the TCR.

JUDGE

Comparing Assistant