GAHC010003222011

2024:GAU-AS:10580

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

Case No. : Crl.Rev.P./18/2011

MD. ANIZUL HOQUE
S/O LT. UZIR ALI VILL- TAKIMARI BORBILA, P.O. TAKIMARI, P.S. LAKHIPUR, DIST. GOALPARA, ASSAM.

VERSUS

THE STATE OF ASSAM

Advocate for the Petitioner : MR.J AHMED

Advocate for the Respondent : MR. D. DAS, ADDL. P.P, ASSAM.

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : 18.07.2024

Date of Judgment : 29.10.2024

JUDGMENT & ORDER (CAV)

Heard Mr. J. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Sections 401 and 397 of the Code of Criminal Procedure, 1973, against the impugned Judgment and Order dated 06.12.2010, passed by the learned Sessions Judge, Goalpara, in C.A. Case No. 17/2010, whereby the Judgment and Order dated 22.09.2010, passed by the learned Assistant Sessions Judge, Goalpara, in Sessions Case No. 40/2009 under Sections 366/376(1)/34 of the IPC, was affirmed. In that case, the present petitioner was convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 2,000; in default, simple imprisonment for another three months for the offence under Section 366 of the IPC. The petitioner was also sentenced to rigorous imprisonment for seven years and to pay a fine of Rs. 2,000; in default, another rigorous imprisonment for three months for the offence under Section 376 of the IPC. Both sentences run concurrently.

3. The case of the petitioner, in brief, is that one Mograb Ali lodged an FIR on 16.01.2007 against the petitioner, alleging that the daughter of the informant was kidnapped by him while she went outside of their house for her nature call. Accordingly, the FIR was registered as Lakhipur P.S. Case No. 10/2007 under Sections 447/366/34 of the IPC. After the completion of the investigation, the

investigating agency submitted the charge-sheet against the present petitioner under Sections 366/376/34 of the IPC. During the course of the trial, the prosecution examined total of 12 witnesses, while the defence examined 3 witnesses. After the conclusion of evidence from both parties, arguments were heard, and accordingly, Vide Judgment and Order dated 22.09.2010, the learned Assistant Sessions Judge, Goalpara, passed the order of conviction and sentenced the petitioner as stated above.

4. Being highly aggrieved and dissatisfied with the impugned Judgment and Order dated 22.09.2010, passed by the learned Assistant Sessions Judge, Goalpara, in Sessions Case No. 40/2009, the petitioner preferred an appeal which is registered as C.A. Case No. 17/2010 before the learned Sessions Judge, Goalpara. However, the appeal was dismissed, and the judgment and order passed by the learned Assistant Sessions Judge, Goalpara, was upheld. Consequently, the petitioner has preferred the instant criminal revision petition, praying for the setting aside and quashing of the impugned judgments and orders dated 22.09.2010 and 06.12.2010 respectively.

5. Mr. Ahmed, learned counsel for the petitioner, has submitted that the learned Trial Court committed irregularities and illegalities while convicting and sentencing the petitioner. In passing the judgments and orders, the Trial Courts failed to appreciate the evidence on record, particularly the medical evidence provided by the doctor. According to the radiological report, the victim was approximately 20 years old and showed no signs of injury to her private parts. Additionally, the examination of the vaginal smear did not yield any positive test for the presence of sperm, indicating a lack of evidence for rape based on the medical report. However, the Trial Courts passed its judgments and orders without properly considering the evidence in its true perspective, arriving at a

wrong decision which is liable to be set aside and quashed.

6. Moreover, the prosecution witnesses, specifically P.Ws. 1 to 7, provided contradictory statements. At the same time, these witnesses are relatives of the victim, which raises doubts about the reliability of their testimonies unless they corroborate or inspire confidence. He further submitted that the Trial Courts failed to consider the evidence presented by D.W. Nos. 1 to 3. The judgments and orders were based solely on the testimonies of the P.Ws., without giving appropriate consideration to the evidence of the D.Ws.

7. Additionally, the Trial Courts did not accept the medical evidence which indicates no signs of rape on the victim and based its judgments solely on ocular evidence. It is noteworthy that the case was filed by the informant out of personal animosity against the petitioner, which is corroborated by the testimonies of both the P.Ws. and D.Ws.

8. The petitioner is a teacher at an EGS Centre in the village, which was later provincialized. P.W. 2 wished for his own brother to be appointed as a teacher at that centre but was unable to do so due to community demands. The present petitioner was appointed based on his academic credentials. As, P.W. 2 could not fulfill his desires, he conspired with P.W. 1 to file a case only to harass the petitioner and to have him dismissed from service.

9. The Trial Court failed to assess the credibility of both the P.Ws. and D.Ws., resulting in a wrongful findings convicting the appellant under Sections 376 and 366 of the IPC. Furthermore, the father of the victim claimed to have heard his daughter crying from the house but surprisingly did not enter the petitioner’s home to rescue her. Although he lodged the FIR, the victim's mother, P.W. 11, was unaware of any incident, which raises reasonable doubt about the veracity

of prosecution's case. Additionally, the petitioner contends that P.Ws. 1, 2, and 6 were accused in a case filed by the petitioner's brother regarding fishing in the Beel. P.W. 1 admitted during cross-examination prior to lodging of the present case an FIR was lodged against him for fishing in the Beel, and P.W. 2 also revealed that he was an accused in a case filed by the petitioner's brother.

10. Moreover, in the statement made by the victim under Section 164 of the Cr.P.C., she claimed the petitioner raped her by showing a dagger, but she did not mention anything about a dagger in her statement recorded under Section 161 of the Cr.P.C. Thus, he submits that, without proper medical evidence, the petitioner cannot be convicted under Section 376 of the Cr.P.C.

11. In support of his submission, he cites the following decisions from the Hon'ble Apex Court:

i). ***Arulvelu & Anr. vs. State Rep. by the Public Prosecutor & Anr.***, reported in ***2009 (10) SCC 206***; and

ii). ***Lalliram and Anr. vs. State of M.P.***, reported in ***2008 (10) SCC 69***.

12. Mr. Ahmed, learned counsel for the petitioner, further submitted that this is not a fit case for convicting the petitioner under Section 376 of the IPC; rather, it may be a case under Section 354 of the IPC. He accordingly requests that the sentence be reduced.

13. On the other hand, Mr. Das, learned Additional Public Prosecutor, has submitted that even if the medical evidence not indicate any signs of rape or injury on the victim's private parts, it is well settled that medical evidence is always suggestive and not a substantive piece of evidence. Moreover, the incident occurred on 15.01.2007, and P.W. 8 (the doctor) examined the victim on 18.07.2007, that is three days after the occurrence; thus, the medical officer

may not have found any injury marks on the victim’s private parts.

14. He further submits that to prove a case under Section 375 of the IPC, even the slightest penetration is sufficient, and the degree of penetration is not material for proving a case under Section 376 of the IPC. From the evidence of the victim, i.e. P.W. 3, which remains unchallenged, her testimony regarding the sexual assault by the accused/petitioner is consistent. Additionally, other material witnesses corroborated the victim's evidence and supported the prosecution's case.

15. Both the learned Assistant Sessions Judge and the learned Sessions Judge arrived at concurrent findings in this case, concluding that the accused/petitioner committed the offences of kidnapping and rape against the victim. Accordingly, he submits that there is no reason to interfere with the judgments and orders passed by the learned Trial Court and the Appellate Court, which convicted and sentenced the accused/petitioner under Sections 366 and 376 of the IPC. The judgment and order dated 22.09.2010 was rendered after a proper appreciation of the evidence on record by the learned Assistant Sessions Judge, Goalpara.

16. After hearing the submissions made by the learned counsels for both sides, it is deemed necessary to assess the evidence on record presented by both the P.Ws. and the D.Ws.

17. P.W. 1, Md. Mogrob Ali, the informant in this case, deposed that on the day of the incident, 15.01.2007, his daughter, who was around 15 or 16 years old and preparing for her matriculation examination, was found missing. Around 11:00 P.M., he got up and noticed her absence. He went outside his house and heard his daughter crying from the house of the accused/petitioner, Anizul

Hoque. However, he did not feel safe going alone into the accused's house due to a prior incident involving fishing. He then immediately informed one Asan Master, who, with the help of VDP personnel, recovered his daughter from the house of the accused/petitioner. Afterward, he lodged the FIR.

From his cross-examination, it appears that he did not provide his daughter's School Certificate to the police during the investigation. He was also not aware as to who recovered his daughter from the house of the accused/petitioner. Nonetheless, his testimony is consistent that he heard his daughter's cries from the accused's house and reported the matter to others, who then came and rescued her. Additionally, it was revealed during cross-examination that prior to lodging the FIR, the petitioner's brother had filed a case against P.W. 1 and P.W. 2 regarding fishing in the beel.

18. P.W. 2, Md. Asan Ali, is one of the most important witnesses for the prosecution. According to him, on the night of the incident, around midnight, P.W. 1 came to his house and stated that when he found his daughter missing at about 11 P.M, when he got up and heard her crying from the house of the accused/petitioner. Subsequently, the matter was discussed with some elderly persons and VDP personnel, and thereafter, victim girl was recovered from the house of the accused/petitioner.

From his cross-examination, it is evident that he did not enter the house of the petitioner; instead, the VDP personnel entered the house and rescued the P.W.1's daughter. After her recovery, she narrated the entire incident, explaining how she was forcibly taken by the accused/petitioner while she was going out for nature call and committed rape on her. It is also admitted that he was a co-accused in a case lodged by the petitioner's brother. Thus, it is clear that he did not enter the house of the accused/petitioner at the time of the victim's

recovery. However, his testimony remains consistent regarding the recovery of the informant's daughter from the house of the accused/petitioner.

19. P.W. 3, is the victim of the case and she deposed that in the night of incident she went out to attend her nature call, when the accused/petitioner came and gagged her mouth, and forcibly took her into his house and committed rape on her by opening her cloths. She further deposed that her mouth was gagged with cloths while she was trying to raise alarm. Thereafter, her father heard the sound of her crying and he informed the villagers and with the help of VDP personnel etc, she was rescued from the house of the accused/petitioner. She further deposed that when the accused/petitioner came to know that the villagers and the VPD personnel are coming, the accused/petitioner gagged her and tight her hands and fastened her in a jute mate. Initially the accused/petitioner did not opened the door, but after some time he opened the door and then the VDP personal entered the house of the accused/petitioner and rescued her. But by that time, the accused/petitioner had fled from his house. Thereafter, she was taken to her uncle's house, where she was interrogated by the villagers. She narrated the entire story, and the next morning, her father lodged the FIR. The police recorded her statement, and she was also examined by a doctor. Her statement was recorded under Section 164 of the Cr.P.C. by the Magistrate. Exhibit-1 is her statement, and Exhibits-1(1) and 1(2) are her signatures.

In her cross-examination, she remained consistent in her statement that the accused/petitioner forcibly took her when she came out of her house to attend her call of nature, gagged her mouth, and tied her hands behind her back, and committed rape on her. She also describe as to how he committed rape on her at the time of her cross examination. However, from the cross

evidence, it is seen that blood was not coming out from her vagina though he released his semen inside her vagina. From her cross-examination, it was also revealed that the police did not seize the wearing apparel at the time of the seizure.

20. P.W.4, Md. Khadem Ali, deposed that at the time of the incident, he was called by P.W.1 and P.W.2, who informed him about the incident. He stated that the victim needed to be recovered from the house of the accused/petitioner. Thereafter, he informed the VDP personnel, and he, along with the VDP personnel, went to the house of the accused/petitioner, where they heard the victim crying and successfully recovered her.

From his cross-examination, it is evident that he does not belong to the same 'Samaj' as the accused and the informant. However, it was noted that P.W.2 is his nephew. Additionally, from his testimony, it revealed that the brother of the accused/petitioner also lodged a case against the P.W. 1 and P.W.2. It was also mentioned that many people gathered outside the house of the accused/petitioner at the time of the incident, and some VDP personnel and villagers went inside the house and rescued the girl. He denied the suggestion that he testified falsely against the accused/petitioner due to a previous grudge, as the brother of the accused/petitioner had lodged a case against the informant and his nephew, P.W.2.

21. P.W.5 and P.W.6 are members of the VDP. According to them, they were informed about the matter by P.W.2. They then met Tazimuddin, Nausad Ali, the other VDP members, P.W.1, and P.W.4 at the house of P.W.2. Subsequently, P.W.1 and P.W.2 requested their assistance in recovering the victim girl from the house of the accused/petitioner.

These two witnesses were also cross-examined at length, but their statements regarding the recovery of the victim and their knowledge of the incident of rape remained unrebutted. There is no reason to disbelieve these two witnesses, who are VDP members engaged in the recovery of the victim girl.

22. P.W.7 also supported the prosecution case. According to him, at the request of P.W.6, he visited the house of P.W.2 and learned that the victim was confined by the accused/petitioner in his house. Consequently, he, along with the VDP members, went to recover the victim girl.

From his cross-examination, it is revealed that he was not on VIP duty at the time of the incident; however, at the request of the other P.Ws and VDP personnel, he and some others entered the house of the accused/petitioner and rescued the girl. His testimony regarding entering the house and recovering the girl remained unchallenged, and he supported the prosecution case in respect of the recovery of the victim from the house of the accused/petitioner.

23. P.W.8 is a doctor and an important witness for the prosecution. She examined the prosecutrix on 18.01.2007 while serving as the Senior Medical and Health Officer at Goalpara Civil Hospital. According to her medical report and testimony, she did not find any injuries on the private parts of the victim at the time of examination, and the vaginal swab also yielded a negative result for the presence of sperm. She stated that the radiological age of the victim girl was approximately 20 years at the time of the incident.

However, during her cross-examination, it was noted that the hymen was absent at the time of the victim's examination.

24. P.W.9, Md. Sahar Ali, heard some noise outside the house, and when he

came out, he learned that the victim girl was kept confined in the house of the accused/petitioner.

25. P.W.10, Mohiruddin Mandal, also supported the prosecution case, stating that on the night of the incident, when he heard noise outside his house, he came out and saw some VDP personnel along with other people recovering the victim from the house of the accused/petitioner.

26. P.W.11 is the mother of the victim; however, she did not provide any information and testified that she does not know about the incident, despite the victim being her own daughter.

27. P.W.12 is the investigating officer who investigated the case upon receiving the ejahar. During the investigation, he visited the place of the occurrence, prepared a sketch map, recorded the statements of witnesses, sent the victim girl for a medical examination, and also recorded her statement under Section 161 of the Cr.P.C. After completing the investigation, he filed a charge sheet against the accused/petitioner under Sections 366/376/34 of the IPC. Exhibit 2 is the charge sheet, and Exhibit 2(1) is his signature.

From his cross-examination, it is seen that the ages disclosed by the victim and the informant were contradictory.

28. Thus, the case of the prosecution is that on the night of the incident when the victim girl went out to attend her nature call, the accused/petitioner forcibly took her by gagging her mouth to his house and then committed rape on her by tying her hands and gagging her mouth. When the victim's father learned that his daughter was missing from the house, he went out and heard her crying. He initially informed P.W.2, and then other VDP personnel were notified. With the assistance of these VDP members, the villagers were also informed, and the girl

was rescued from the house of the accused/petitioner.

29. The defence, on the other hand, contended that a false and fabricated case had been lodged against the accused/petitioner due to a prior grudge, as the petitioner's brother had filed an FIR against P.W.1, P.W.2, and others for fishing in the beel. To substantiate this claim, the defence presented three witnesses in support of their case.

30. D.W.1 is the uncle of the accused/petitioner. He deposed that he went to the house of the accused/petitioner on the night of the incident at around 7:00 P.M. His father informed him that the accused/petitioner was not at home, as he had gone to Dhumerghat to visit one Mozid Ali. The next morning, when the police arrived at the complainant's house, he learned about the incident.

In his cross-examination, he admitted that he went to the house of the accused/petitioner to write an application to the co-operative for purchasing goods for his fair shop. Although he found that the accused/petitioner was absent, he did not make a second attempt to meet him to write the application.

31. D.W.2 is the grandfather of the accused/petitioner. He deposed that on the day of the incident, he went to the house of the accused/petitioner, but learnt from his father that the accused was not available, as he had gone to Dhumerghat. The next morning, when he visited the complainant's house, he came to know that a case had been filed solely to harass the accused/petitioner.

32. D.W.3, Abdul Mozid, deposed that on 15.01.2007, the accused/petitioner came to his house at about 3:00 P.M. and returned to his own house on 17.01.2007.

33. Thus, all the D.Ws primarily emphasized that the accused/petitioner was not present on 15.01.2007, the day of the incident, as he was in Dhumerghat

and had gone to D.W.3's house. The defence raised the plea of alibi, asserting that the accused/petitioner was not at home at the relevant time of the incident. However, D.W.1 stated that he visited the house of the accused/petitioner at around 7:00 P.M., but he was unaware of the accused/petitioner's presence afterward and did not know what happened in the house after that time. Similarly, D.W.2 also visited the house of the accused/petitioner on the day of the incident, but he too was unaware of what had happened after 7:30 P.M. Therefore, both D.W.1 and D.W.2 do not know what happened after 7:00 P.M. because they claimed to have visited the house at that time. Furthermore, D.W.3, who stated that the accused/petitioner visited his house on the day of the incident and stayed there until he returned home on 17.01.2007, revealed during cross-examination that he follows the Bengali calendar and could not accurately identify the date when the accused/petitioner visited. Instead, he mistakenly stated that the accused/petitioner visited his house on 07.03.2000. Thus, the testimony of D.W.3 cannot be believed, as he is uncertain about both the date of the incident and the date of the accused/petitioner's visit to his house.

34. After careful examination of the evidence presented by the P.Ws and D.Ws, it is clear that the defence could not rebut the testimony of the victim during cross-examination. Her statements remained consistent, indicating that the accused/petitioner forcibly took her by gagging her mouth when she came out of her house to answer a call of nature. It is also seen that she was preparing for her matriculation examination, studying late in the night. Following her abduction, P.W.1, the informant, only realized that his daughter was missing after hearing her cries from the house of the accused/petitioner.

35. This part of the evidence is supported by other P.Ws who learned about

the incident that night. With the assistance of the VDP Secretary, some VDP personnel and others entered the house of the accused/petitioner and rescued the victim. It is also noted that a previous case had been filed by the brother of the accused/petitioner regarding a fishing dispute, in which P.W.1, P.W.2, and some other witnesses were also implicated as accused. This fact was acknowledged by the P.Ws regarding lodging of the earlier case. However, previous enmity and grudges can be considered as a double-edged sword: a person may be falsely prosecuted due to past grievances, or conversely, such grievances may lead an individual to commit offences.

36. However, in the instant case, after a thorough examination of the evidence on record, it is evident that the prosecution could not be compelled to concede that the case was lodged solely due to previous grudges or enmity. Although the defence raised the issue of prior enmity and cross-examined the P.Ws, it is surprising that when presenting the evidence of the D.Ws, the defence did not pursue this line of argument and instead relied solely on the plea of alibi.

37. As discussed above, they could not establish through the D.Ws that the accused/petitioner was absent for the entire night. Both D.W.1 and D.W.2 stated they were unaware of any incident that may have occurred after 7:30 P.M. Furthermore, D.W.3 could not accurately identify the date when the accused/petitioner visited his house, mistakenly stated that the accused visited him on 07.03.2000.

38. Coming to the evidence of the doctor, it is seen that she did not find any injury marks on the private parts of the victim during her examination. However, it must be acknowledged that she examined the victim only on 18.01.2007, which was almost three days after the alleged incident. Furthermore, the doctor did not provide any opinion as to whether there were any signs of recent

intercourse with the victim; her report merely stated that no injury marks were found on her private parts. The examination also revealed that the hymen was absent, but the doctor did not specify or clarify the reasons for the absence or what other factors could have contributed to it. Additionally, the defence did not cross-examine the doctor to elicit any further material related to the allegations of rape against the victim.

39. The Hon'ble Apex Court in the case of ***Radhakrishna Nagesh Vs. State of Andhra Pradesh*****,** reported in ***(2013) 11 SCC 688***, has held in paragraph No. 15 of the said judgment that "*settled principle of law that a conflict or contradiction between the ocular and the medical evidence has to be direct and material and only then the same can be pleaded. Even where it is so, the Court has to examine as to which of the two is more reliable, corroborated by other prosecution evidence and gives the most balanced happening of events as per the case of the prosecution."* Paragraph Nos. 18 & 19 of the said judgment reads as under:-

> "*18. In order to establish a conflict between the ocular evidence and the medical evidence, there has to be specific and material contradictions. Merely because, some fact was not recorded or stated by the doctor at a given point of time and subsequently such fact was established by the expert report, the FSL Report, would not by itself substantiate the plea of contradiction or variation. Absence of injuries on the body of the prosecutrix, as already explained, would not be of any advantage to the accused.*
>
> *19. In any case, to establish a conflict between the medical and the ocular evidence, the law is no more res integra and stands squarely answered by the recent judgment of this Court in the case of Dayal Singh and Others v State of Uttaranchal [(2012) 7 SCALE 165]"*

40. For ready reference, Section 375 of IPC is extracted hereinbelow:

"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 woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(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 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."

41. The absence of injury marks on the private parts of the victim cannot be solely regarded as grounds for the acquittal of the accused/petitioner. Moreover, medical evidence or the opinion of an expert cannot be treated as substantive evidence on its own. A conviction may still be based on the sole testimony of the prosecutrix, provided that her testimony inspires the confidence of the Court.

42. The Hon'ble Apex Court in the case of ***Sudhansu Sekhar Sahoo vs. State of Orissa***, reported in ***2003 SCC (Crl.) 1484***, it was held that:

> "It is well settled that in rape cases the conviction can be solely based on the evidence of the victim, provided such evidence inspires confidence in the mind of the court. The victim is not treated as accomplice, but could only be characterised as injured witness. It is also reasonable to assume that no woman would falsely implicate a person in sexual offence as the honour and prestige of that woman also would be at stake. However, the evidence of the prosecution shall be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material."

43. The Hon'ble Apex Court in the case of **Moti Lal Vs. State of M.P. [(**2008) 11 SCC 20**]** has held in paragraph Nos. 7 & 9 as under:

> "*7. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the*

police. The Indian women as tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour.

9. A prosecutrix of a sex-offence cannot be put on 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 conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled 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 Indian Evidence Act, 1872 (in short Evidence Act) similar to illustration (b) of 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 own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses 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. This position was highlighted in State of Maharashtra v. Chandraprakash kewalchand Jain (1990 91) scc 550).”

44. Again, in the case of **State of Himachal Pradesh v. Raghubir Singh, (1993) 2 SCC 622; 1993 SCC (Cri) 674**, the Hon’ble Supreme 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 the honourable Supreme Court in Wahid Khan v. State of Madhya Pradesh (2010) 2 SCC 9; AIR 2010 SC 1, placing reliance an earlier judgment in Rameshwar S/o kalian Singh v. State of Rajasthan, AIR 1952 Sc 54. Thus the law that emerges on the issue is to the effect that the statement of 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.

45. Addressing the issue raised by the learned counsel for the petitioner regarding the delay in lodging the FIR, it is noted that the incident occurred on the night of 15.01.2007, and the girl was recovered the following morning at around 1:30 A.M. The FIR was lodged on 16.01.2007 at approximately 3:00 P.M., after her recovery. However, it is an admitted fact that there is no explanation for the delay in lodging the FIR, but, the delay cannot be considered fatal to the prosecution's case. It is acknowledged that the girl was recovered on 16.01.2007 at around 1:30 A.M. and that the FIR was lodged later that same day, after discussions with other family members. The learned

Assistant Sessions Judge, Goalpara, vide Judgment and Order dated 22.09.2010 addressed this issue in paragraph 28 of the judgment, which reads as follows:

> "28. In ***State vs. Gurmit Singh***, the Hon'ble Supreme Court stated "the Court cannot over looked the fact that in sexual offence delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complained about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged."

46. From the discussion above, it is evident that the learned Assistant Sessions Judge and the learned Sessions Judge, Goalpara, rightly concluded that the accused/petitioner committed rape on the victim on the night of the incident. Consequently, the Judgment and Order dated 22.09.2010 was passed by convicting and sentencing the accused/petitioner. Another issue raised by the learned counsel for the petitioner pertains to the reduction of the sentence, and also relied on the decisions of this Court. However, considering the nature of the offence and the overall circumstances of the case, it is clear that this case does not fall under Section 354 of the IPC, as submitted by the learned counsel, who is requesting for reduction of the sentence imposed on the accused/petitioner.

47. Therefore, considering all the facts and circumstances of the case, I do not find any reason to interfere with the impugned Judgment and Order dated 06.12.2010, passed by the learned Sessions Judge, Goalpara, in C.A. Case No. 17/2010, which affirmed the Judgment and Order dated 22.09.2010, passed by the learned Assistant Sessions Judge, Goalpara, in Sessions Case No. 40/2009, convicting the accused/petitioner under Sections 366/376(1)/34 of the IPC. As a

result, I find no merit in this revision petition, and accordingly, it stands dismissed.

48. With above observations, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant