

GAHC010027032023



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

Case No. : Crl.A./101/2023

DIPAK GHOSH
S/O SRI DILIP GHOSH,
RESIDENT OF VILLAGE KATHALGURI, NAGAON, PO PATHALIPAM, PS
BOGINADI, DIST LAKHIMPUR ASSAM 787056

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SMTI GITANJALI NATH
W/O BABU NATH

RESIDENT OF VILLAGE KATHALGURI
NAGAON
PO PATHALIPAM
PS BOGINADI
DIST LAKHIMPUR ASSAM 78705

Advocate for the Petitioner : MR G PEGU

Advocate for the Respondent : MR. M P GOSWAMI(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 01-03-2024

1. Heard Mr. B. Kaushik, learned counsel for the appellant. Also heard Mr.

M.P. Goswami, the learned Additional Public Prosecutor representing the State respondent No. 1 and Mr. M.H. Laskar, learned counsel for the respondent No. 2.

2. The appellant has filed this application u/s 374(2) of the Code of Criminal Procedure, 1973 (Cr.PC for short) seeking defasance of the Judgment and Order dated 09.12.2022 passed by the learned Additional Sessions Judge (FTC), Lakhimpur at North Lakhimpur, convicting Sri Dipak Ghosh (hereinafter referred to as appellant) u/s 376 of the Indian Penal Code (IPC for short) to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs. 10,000/- with default stipulation.

3. The victim/informant, lodged an FIR on 08.04.2017 contending that the appellant was sexually harassing her for the last few days. Taking advantage of the absence of her husband, the appellant gagged her by her mouth and forcefully committed sexual harassment on her. The appellant also threatened her not to divulge about the incident, lest he would eliminate her, along with her husband and her child. When the victim/informant was unable to tolerate the harassment exercised upon her any further, she finally revealed about the act of sexual harassment, to the Gaonbura on 25.03.2017. She disclosed about the incident of sexual harassment to other villagers also. A village meeting was held,

and the appellant accepted that he had committed sexual harassment on the victim. Even after the village meeting, the appellant did not hesitate from displaying explicit behaviour. The informant was impelled to lodge the FIR which was registered as Boginodi P.S. Case No. 75/2017 u/s 448/376/506/509 IPC.

4. The Investigating Officer (IO in short) embarked upon the investigation and on conclusion of investigation, charge-sheet was laid by the IO on 30.04.2017, against the appellant u/s 376/506 of IPC. The case was committed for trial and subsequently transferred to the Court of the Assistant Sessions Judge, Lakhimpur, but finally the case was transferred to the Court of the Additional Sessions Judge, (FTC) in view of the notification vide No. ZEJ/93/2018-Estt-JUDI/5-A dated 24.05.2018, issued by the Judicial Department, Govt. of Assam.

5. During trial, 13 witnesses were examined by the prosecution. Thereafter, on the evidence projected by the prosecution, several questions were asked u/s 313 Cr.PC to the appellant, who denied all the incriminating materials against him. The appellant did not tender any evidence in defence. The appellant has taken a stand that, he was present in the village assembly and the people who gathered in the assembly assaulted him physically and as he was petrified, he accepted the allegation out of fear in order to save his life. Further the appellant

stated that he went to attend the marriage ceremony of his sister at Barpeta, and he was not aware of any allegation during that time. His wife informed him about the incident over phone and she also informed him that some neighbours pelted stones towards his house. The villagers also threatened his wife that their house would be gutted and they would also not hesitate to assault her. After a few days, the appellant took his wife to attend the marriage ceremony of his sister and then he returned back to his village and on 25.03.2017 he participated in the village meeting. In the said assembly, he was compelled to accept the allegations leveled against him.

Decision by the Trial Court

6. It was held by the learned trial Court that the delay in lodging the FIR was due to the threats exercised by the appellant to the victim. Initially, no case was lodged against the appellant but when the appellant did not mend his ways, the victim was compelled to lodge the FIR against him. It was thereby held by the learned trial Court that the FIR cannot be disputed on the grounds of delay. Relating to the inconsistencies in the contents of the FIR and the evidence adduced by the informant as well as her statement u/s 164 Cr.PC, it was held by the learned trial Court that in her statement, the informant (PW-3) u/s 164 Cr.PC has mentioned about only one incident which had occurred on 23rd

January, 2017 which has been erroneously mentioned as 26 January, 2017, by PW-1, but the trial Court dismissed the inconsistencies as minor contradictions as the victim was a rustic villager and as it is rational that memories fade and such minor contradictions may surface.

7. It was held by the learned trial Court that the evidence of the victim as PW-3 proves that on 23rd January, 2017 at about 6:30 PM, as she was about to proceed to the shop, the appellant gagged her by her mouth and dragged her inside his newly constructed house and forcefully committed rape on her. The learned trial Court has brushed aside the suggestions of the defence that the victim was in a relationship outside marriage with the appellant. It was held by the learned trial Court that in addition to the incident of rape, there were several allegations against the appellant of sexual harassment to the victim. It was held by the learned trial Court that the statement of the victim u/s 164 Cr.PC and her evidence was similar without any embellishment or exaggeration. It was held by the learned trial Court that the evidence of the victim's husband as PW-1 withstood the test of cross-examination and stood firm and could not be demolished by the defence. The learned trial Court has held that the victim's father-in-law has accepted the suggestion of the defence that his son used to suspect that his wife i.e. the victim had a relationship outside marriage with the

appellant but this cannot be a reason to entangle the appellant with a false case. It was held by the learned trial Court that the evidence of the other witnesses PWs-4, 5, 6, 7, 8, 9 and 10 who are residents of the same village were present in the *bichar* and the evidence incriminates that the appellant admitted about his involvement, in the *bichar*. The extra judicial confession was admitted by the appellant when his statement was recorded u/s 313 Cr.PC. This statement has been substantiated by the evidence of independent witnesses PW-4 to PW-10. The learned trial Court has dismissed the allegation of threats by the appellant because not a single witness deposed that the appellant succumbed to pressure, and he admitted that he committed sexual harassment on the victim as he was terrified on being assaulted by the villagers. PW-9 has mentioned in his cross-examination that after the appellant admitted his guilt, he was then assaulted by some youths of the village. It was thereby held by the learned trial Court that the extra judicial confession was not an outcome of fear and coercion. Even PW-11 who turned hostile deposed that when the appellant denied the allegations, the villagers started to assault him. Then PW-11 rescued him and took the appellant to his house and he informed the villagers and suggested they take recourse to law. It was also observed by the learned trial Court that the date inserted in the format of charge while framing charge was erroneously inserted as 25.03.2017 instead of 23.01.2017 at 6:30 PM. The

learned trial Court discussed at length, the provisions of Section 216 Cr.PC and Section 464 Cr.PC and thereafter held that trial would not be vitiated due to the error apparent relating to the date and the time of the incident at the time of framing the charge. The learned trial Court went ahead and convicted the appellant u/s 376 IPC and sentenced him to undergo Rigorous Imprisonment for 10 years and fine.

SUBMISSIONS

8. The learned counsel for the appellant has strenuously submitted his argument assailing the judgment and order of conviction. It is contended by the learned counsel for the appellant that there is no indication of a particular incident in the FIR. The FIR, in an omnibus manner depicts several incidences. What prevented the victim from divulging about the incidents and how did she garner enough courage to divulge about the incident, if she was under any threat or duress? It is further submitted that on her statement u/s 164 Cr.PC the victim finally came up with a date and time i.e. 23.01.2017, at 6:30 PM, and this is not similar to the contents of the FIR. The incident allegedly occurred on 23.01.2017 whereas the FIR was lodged after a delay of several months i.e. on 08.04.2017. The conduct of the victim does not inspire confidence as she initially informed about the incident to the Gaonbura and the villagers, after a

prolonged period instead of informing about the incident to her husband. It is submitted that the appellant is a married man with a family and it is not plausible that a woman could be forcefully taken into his house and sexually assaulted in presence of his wife and children. The extra judicial confession in presence of PW-4 to PW-11 is no confession at all as the statement of the appellant u/s 313 Cr.PC clearly depicts that the appellant was assaulted and coerced to confess about the crime allegedly committed by him. This extra judicial confession of the appellant cannot be accepted as evidence. There is a major contradiction relating to the place of occurrence (PO in short) as the informant/victim stated u/s 164 Cr.PC that the PO is a verandah while in her evidence-in-chief she deposed that the PO is the appellant's newly constructed house.

9. It is submitted that the trial Court scrutinized the evidence through the lens of the guilt of the appellant and accepted the extra judicial confession which was not voluntarily made. The FIR is not similar to the statement of the victim u/s 164 Cr.PC and her evidence as PW-3 is inconsistent to her statement u/s 164 Cr.PC. The cross-examination of several witnesses clearly establishes the fact that the villagers are keen to drive away the appellant from the locality and they have foisted this case against him.

10. The learned counsel for respondent No. 2 has submitted that the trial Court has rightly passed the judgment and order of conviction. There is clinching and overwhelming evidence against the appellant. This appeal is devoid of merits and is liable to be dismissed. The appellant has confessed before the entire village that he is guilty of the charges.

11. Per contra, the learned Addl. PP laid stress in his argument that the plea of the appellant that the villagers are keen to drive him away from the village is a weak plea. It is unbelievable that in order to drive away a person from a village a false case of such a heinous and aggravated form of offence will be initiated against an innocent person. The independent witnesses have stated that the appellant has confessed. The cross-examination of PW-11 reveals that the appellant was not coerced to confess. There is no dispute that the appellant was assaulted, but he was assaulted after he confessed and not before he confessed. The appellant is a permanent resident and his plea that the villagers are keen to drive him out the village cannot be accepted. There is corroborative evidence and two witnesses have stated in concert that, after the appellant admitted that he had committed the offence, he was assaulted by the villagers. Any prudent person will never believe that a person will be entangled in an offence as heinous as rape, only because the villagers had the intention to drive away the person from the village. The corroborative evidence of PWs-9 and 11

clearly reveal that after the appellant confessed, he was assaulted by the villagers and not before.

ANALYSIS OF EVIDENCE AND DECISION

12. Now the question that falls for consideration is that, whether the learned trial Court has erred in convicting the appellant u/s 376 IPC. To decide this case in its proper perspective, the evidence is reappreciated.

13. The victim's husband-say 'Y' deposed as PW-1 that the incident took place on 26.01.2017, at about 6.30 PM, in his absence. The appellant, by gagging his wife near the gate forcefully dragged her towards his house and thereafter he forcefully committed rape on his wife. The appellant threatened his wife, warning her not to disclose the incident lest he would set her ablaze along with her children. On 2nd of February, his wife informed him about the matter. The villagers assembled, on being informed, and the appellant confessed his guilt. In his cross-examination, PW-1 however denied that he used to suspect his wife with the appellant. He also denied the suggestion that the members present in the meeting assaulted the accused-appellant and exercised threats and coerced him to admit his guilt.

14. The victim's father in law Sri Manik Chandra Nath deposed as PW-2 that he heard about the incident that his daughter-in-law was sexually assaulted by

the appellant. Thereafter, a village meeting was held and the appellant confessed his guilt.

In his cross-examination PW-2 stated that he did not know where the PO is located. He has also admitted that his son used to suspect his daughter-in-law with the appellant. He admitted in his cross-examination that he, along with his wife, two sons and daughter-in-law resides in the same household. The residences of Sachin Ghosh, Dhiren, Ghana Kanta, Dipali Chamuah are located near his house. If any one raises their voice in their house, it can be clearly heard from Dipali and Ghana Kanta's residences, which are adjacent to his house.

15. The victim/informant deposed as PW-3, that the incident occurred on 23.01.2017 at about 6:30 PM. While she was about to proceed to the area in front of the appellant's gate, he dragged her inside his newly constructed house and forcefully committed rape on her. She resisted, but the appellant paid no heed. However, she managed to save herself. After three days she informed the matter to her husband and then to the villagers. Thereafter, a village meeting was held, but the appellant did not follow the villager's verdict. She then filed the instant case. She proved her statement recorded u/s 164 Cr.PC as Ext-2. In her cross-examination PW-3 stated that the appellant's house is adjacent to her

house. The residences of Sachin Ghosh, Dhiren, Ghana Kanta, Dipali Chamuah are adjacent to their house. She had a cordial relationship with the appellant and his wife who used to visit her house. She vehemently denied the suggestion that her husband used to suspect her relationship with the appellant. It was decided in the village meeting that the appellant had to leave the locality by disposing off his property. She however denied the suggestion of the defence that as the appellant was not a local resident, she has filed this false case with an intention to grab his property. She has admitted that she has not ascribed the reasons of the inexplicable delay in lodging the FIR as late as 08.04.2017.

16. The cross-examination of PW- 1 and PW-3 reflects that contradictions could be elicited through their cross-examination and the cross-examination of the IO, PW-13 as per Section 145 of the Indian Evidence Act (the Evidence Act for short) qua Section 162 of the Cr.PC. This case casts a shadow of doubt over the veracity of the evidence of PW-3. PW-13, I/O, Sri Dina Nath Mili admitted in his cross-examination that PW-1 and PW-3 did not state before him in their initial statements that as PW-3 was about to proceed towards a shop, the appellant held her hand in front of the gate and forcefully took her to his newly constructed house and committed rape on her. This is a major contradiction which casts a shadow of doubt over the veracity of their evidence. PW-3's statement u/s 164 Cr.PC, her FIR and her deposition in the Court reflects that

she has given varying statements. Her omission to state before the IO u/s 161 Cr.PC that the appellant caught her by her hand in front of gate and took her to his newly constructed house is a major contradiction which thwarts the evidence. When a victim herself has failed to mention in her statement u/s 161 Cr.PC that the appellant pulled her from the gate towards his newly constructed house, doubt creeps into one's mind if the witness can be relied upon, without hesitation.

17. The evidence-in-chief of the witnesses also transpires major contradictions in the evidence. The statement of the victim u/s 164 Cr.PC marked as Ext.-2(1) and the deposition of the victim is contradictory to the contents of her FIR. She has stated that after the incident, she informed the matter to the villagers and her husband after three days, whereas in the FIR marked as Ext.-1 the victim/PW-3 stated that she was sexually abused by the appellant continuously for several days. The appellant threatened her not to divulge about the incident and he threatened her that if she disclosed about the incident, he would kill her family members. Surprisingly she has not mentioned in the FIR that the appellant committed rape on her. Her FIR reveals that the appellant committed sexual harassment on her. Moreover, the victim, PW-3 mentioned in the FIR that initially, after such threats and after much hesitation, she initially informed the Gaonbura about the incident, whereas in her statement u/s 164 Cr.PC and in her

evidence-in-chief the victim, PW-3 has mentioned that after 3 days of the incident, she mentioned about the incident to her husband and to the villagers. It is intriguing that in her statement u/s 164 Cr.PC (Ext.-2), the victim stated that the appellant pulled her from the gate and took her inside his newly constructed house and then he forcefully committed rape on her and he threatened her not to divulge about the incident by threatening her that, if she discloses about the incident of rape, he would inform her husband that she forcefully exercised pressure upon him (appellant) to indulge in such a relation with her. In her statement u/s 164 Cr.PC the victim has not mentioned that the appellant threatened her that he would kill her family members or set them on fire.

The cross-examination of PWs-1, 2 and 3 reveals nuances of a relationship outside their marriage between the appellant and the victim.

18. The learned counsel for the appellant laid stress in his argument that the father-in-law, PW-2 has admitted in his cross-examination that his son was suspicious of the relationship between his wife and the appellant whereas PW-2's son i.e. the PW-1 and his daughter-in-law, PW-3 have vehemently denied that PW-1 was suspicious about the relationship between the appellant and PW-3. Thus, there are glaring contradictions in the evidence. The contradictions

have been culled out and explained by the learned Counsel for the appellant that these contradictions corrodes the evidence and the contradictions are *ex facie* evident in the evidence-in-chief of PWs- 1, 2 and 3.

19. The decision of the Hon'ble Supreme Court is relevant to this case. It has been held by the Hon'ble Supreme Court in ***Darshan Singh v. State of Punjab {2024 (O) Supreme (SC) 16}*** that:-

“26. If the PWs had failed to mention in their statements u/s 161 CrPC about the involvement of an accused, their subsequent statement before court during trial regarding involvement of that particular accused cannot be relied upon. Prosecution cannot seek to prove a fact during trial through a witness which such witness had not stated to police during investigation. The evidence of that witness regarding the said improved fact is of no significance. [See: (i) Rohtash Vs. State of Haryana, (2012) 6 SCC 589 (ii) Sunil Kumar Shambhu Dayal Gupta Vs. State of Maharashtra, 2011 (72) ACC 699 (SC). (iii) Rudrappa Ramappa Jainpur Vs. State of Karnataka, (2004) 7 SCC 422 (iv) Vimal Suresh Kamble Vs. Chaluverapinake, (2003) 3 SCC 175].”

20. Reverting back to this case, it is held that the prime witnesses PWs-1, 2 and 3 have not stated before the IO in their earlier statements that the appellant grabbed PW-1's hand, near his gate and took her to his newly constructed house, and committed rape on her.

I find force in the argument of the learned counsel for the appellant. These major contradictions thwart the evidence. Now the core question is, whether the extra judicial confession of the appellant can be accepted as evidence.

21. The learned counsel for the appellant has strenuously and fervently

emphasized through his argument that the statement of the appellant u/s 313 Cr.PC, substantiated by the cross-examination of the witnesses clearly depicts that the extra-judicial confession of the appellant was nothing but confession extracted through threats and force by the villagers.

22. The learned Addl. PP has however dismissed the submission of the learned counsel for the appellant that as the villagers were more interested in the property of the appellant, they foisted a case against him, so as to grab his property and oust him from the village. The learned Addl. PP has submitted that the appellant is not an outsider. He is a permanent resident and such aspersions will never be cast upon an innocent person only for the sole purpose of grabbing his property, by an entire village.

23. Now let us scrutinize in what manner, the extra judicial confession was made. The appellant has admitted in his statement u/s 313 Cr.PC that his wife was threatened by many villagers that they would set fire to the house. He was not present at the time of the incident. He was informed by his wife about the false allegations leveled against him by the victim. When he returned to his village on 25.03.2017, he participated in the village assembly. He was coerced into admitting his guilt after being assaulted by the villagers. Through this statement u/s 313 Cr.PC, the appellant has admitted about the village meeting

as mentioned in the FIR. This meeting was indeed held on 25.03.2017 and the appellant tried to explain through his statement u/s 313 Cr.PC, that he was forced to admit that he had committed sexual assault on the victim as the villagers had assaulted him and compelled him to accept his guilt.

24. The learned counsel for the appellant has drawn the attention of this Court to the evidence of Ghana Kanta Das, PW-4, who has mentioned in his cross-examination that some village youths have assaulted the appellant in the village meeting. It is argued by the learned counsel for the appellant that the evidence of the independent witnesses are replete with contradictions.

25. Smt. Deepali Chamuah, PW-6 has denied in her cross-examination that some youths have assaulted the appellant in the village meeting. She has stated that the appellant has admitted in the meeting that he committed rape on the victim. PW-6 has admitted in her cross-examination that she was keen to buy the land of the appellant, but she denied the question posed to her during cross-examination that she has given false evidence as the appellant did not transfer his land to her. It has been highlighted through the argument by the learned counsel for the appellant that, it is not only the informant and the victim who were keen to grab the appellant's land but, another independent witness, PW-6 was also keen to grab the appellant's land.

26. It is further argued by the learned counsel for the appellant that the independent witness Smt. Mitali Kaman, PW-7, is also not reliable. Her cross-examination reveals that she has denied the question posed to her by the defence counsel that the village youths have assaulted the appellant. It is further submitted by the learned counsel for the appellant that this independent witness is also not reliable. This witness appears to be a partisan witness. She went a step further and deposed that the admission made by the appellant was converted into writing. It is submitted that both PWs-6 and 7 are partisan witnesses and their depositions are contradictory to the deposition of PW-4 who has stated that the village youths have assaulted the appellant.

27. Smt. Kalpana Kaman, PW-5, has also denied in her cross-examination that the villagers had assaulted the appellant in the village meeting. She has stated in her evidence-in-chief that the appellant confessed before the villagers that he committed sexual assault on the victim.

28. The learned counsel for the appellant further laid stress in his argument that Sri Uttam Kumar Doley deposed as PW-8 that, he was informed by the victim that the appellant committed rape on her while she was working as a helper in his house.

29. A scrutiny of the evidences of PWs-4, 5, 6, 7 and 8 clearly reveals that

contradictions could be elicited through the cross-examination of the witnesses, PWs-4 to 8. Their evidence-in-chief also reflects certain contradictions and dissimilarities. The PW-8 has not substantiated the evidence of PW-1 and 3 that the victim was pulled from the gate and sexually assaulted in the appellant's newly constructed house. PWs-8's evidence-in-chief depicts that the victim was sexually assaulted by the appellant while she was serving in his house as a domestic help. He went a step ahead and stated that as per persuasion of the victim, a village assembly was held and the appellant admitted before the villagers that he committed rape on the victim. He also stated in his evidence-in-chief that they asked the appellant to leave the village. Thus the argument of learned counsel for the appellant has force. PW-6 has admitted in her cross-examination that she was keen to procure the land belonging to the appellant. PW-8 has also stated in his cross-examination that they asked the appellant to leave the village.

30. It cannot be denied that some of the villagers wanted the appellant to leave the village, but at the same time it cannot be considered to be the cause to foist a case against the appellant. However, there are too many contradictions in the evidence of the witnesses to rope in the accused with such a serious allegation. If the PW-3 was sexually harassed by the appellant, continuously for a prolonged period, what prevented her from informing the villagers or her

husband about the incident and finally how she could garner strength and courage to divulge about the incident, if she and her family were under such serious threats. Moreover, it is also intriguing that PW-3 insisted and persuaded the villagers to hold a village assembly on 25.03.2017. According to her statement u/s 164 Cr.PC, Ext.-2, the incident occurred on 23.01.2017 and she lodged the FIR on 08.04.2017. The FIR was lodged after a delay of more than three months. In her evidence-in-chief, the victim has stated that the incident occurred on 23.01.2017 whereas her husband, PW-1 stated that the incident occurred on 26.01.2017. The independent witnesses PW-7, PW-9 and PW-10 have given the date of the village meeting as 25.03.2017, whilst the key witnesses PWs-1, 2 and 3 have not given the date of the village meeting. They have mentioned about the village meeting, but they have not given the dates. Thus an overview of the evidence of the independent witnesses clearly reflects that the witnesses are partisan. There is not a whisper in the evidence of the witnesses that the victim was working as a housemaid or helper in the appellant's house whereas PW-8 insisted through his evidence-in-chief and his cross-examination that the victim was working as a helper in the appellant's house.

31. It could be culled out through the cross-examination of PW-8 vis-à-vis the cross-examination of Sri Dina Nath Mili, the IO, PW-13, that PW-8 has not

mentioned in his initial statement that the victim did not inform him that she was sexually assaulted by the appellant, when she went to serve in the appellant's house as a domestic help, but PW-8 mentioned in his initial statement that he learnt about the incident in the village meeting.

32. PW-9 is Sri Dambaru Kaman and he stated that a village assembly was held on 25.03.2017 and when the appellant was confronted by the villagers, he admitted his guilt. He has vehemently denied in his cross-examination that when the appellant denied his guilt, he was assaulted. He has admitted in his cross-examination that after his confession, the appellant was assaulted by some elderly villagers. He has denied the question posed to him in his cross-examination that some youths have assaulted the appellant.

33. The learned Addl. PP has drawn the attention of this Court to the cross-examination of PW-1, stating that the appellant was not coerced or pressurized into admitting his guilt. He was assaulted by some elderly villagers and youths, after he admitted his guilt. Through these submissions, the learned Addl. PP has emphasised that the appellant was not coerced into admitting his guilt and the extra judicial confession can be relied on to bring home the charges against the appellant. The judgment and order of conviction was correctly passed by the learned trial Court and the judgment and order should be upheld as the

judgment and order is sustainable.

34. The learned Addl. PP has also drawn the attention of this Court to the evidence of Sri Profunath Madak who testified as PW-10 that in the month of January 2017, the victim called him for a village assembly stating that the appellant committed rape on her. The appellant went missing along with his wife and after 1 month, i.e. on 25.03.2017 at 7:30 AM, the village meeting commenced, and the appellant admitted that he committed rape on the victim. He (PW-10) was present in the meeting.

This evidence of PW-10 has been contradicted by the cross-examination of the IO, PW-13 as per Section 145 of the Evidence Act qua Section 162 Cr.PC. The IO has stated in his cross-examination that PW-10 did not mention before him in his initial statement that the victim requested him for a village assembly in connection with the allegation of rape.

Thus, it can be held that the evidence of PW-10 also does not inspire confidence, considering the veracity of his evidence. Except the cross-examination of PW-9, there is no corroborating evidence that after the confession of the appellant in the village meeting, he was assaulted by some elderly villagers, and by some youths. This cross-examination also cannot be taken into consideration, as the cross-examination of the other independent

witnesses PWs, 4, 5, 6,7 and 8 does not at all reveal that the appellant was assaulted by some elderly villagers. For the first time, this witness has stated that some elderly villagers have also assaulted the appellant. PW-4 has denied that the appellant's confession was reduced into writing, whereas PW-7 stated that the appellant's confession was reduced to writing. PWs-4, 6 and 7 have vehemently denied that the appellant was assaulted by village youths, whereas PW-5 and PW-9 have stated that the appellant was assaulted by the village youths and PW-9 went a step ahead and stated that some elderly villagers have also assaulted the appellant. Although, PW-10 was present in the meeting, he stated that he did not see any person assaulting the appellant. Thus, this case is fraught with contradictions. Contradictions also could be culled out through the evidence-in-chief of the witnesses.

35. The PW-11 was declared a hostile witness. Sri Tarun Kakati deposed as PW-11 that one meeting was held in front of the 'Namghar' and the appellant was confronted with allegations of sexual assault on the victim. When the appellant denied the allegations, the villagers assaulted him, and he (PW-11) protected the appellant, rescued him, and took him to his house and he then went back to the villagers and suggested to take recourse to law. This witness was cross-examined by the prosecution after he was declared a hostile witness, but the cross-examination of this witness (PW-11) by the prosecution could not

rebut his evidence, that the appellant was assaulted by the villagers and was compelled to admit his guilt. Thus, it can be safely held that the appellant's extra judicial confession cannot be accepted as evidence. The evidence of the Medical Officer Dr. Maichena Bailung (PW-12) was not very helpful as the victim was examined after 4 months, after the incident.

36. The learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in ***Sahadevan and Another v. State of Tamil Nadu***, reported in **(2012) 6 SCC 403** wherein it has been held and observed that:-

"Upon a proper analysis of the above-referred judgments of this Court, it will be appropriate to state the principles which would make an extra-judicial confession an admissible piece of evidence capable of forming the basis of conviction of an accused. These precepts would guide the judicial mind while dealing with the veracity of cases where the prosecution heavily relies upon an extra-judicial confession alleged to have been made by the accused.

The Principles

- i) The extra-judicial confession is a weak evidence by itself. It has to be examined by the court with greater care and caution.
- ii) It should be made voluntarily and should be truthful.
- iii) It should inspire confidence.
- iv) An extra-judicial confession attains greater credibility and evidentiary value, if it is supported by a chain of cogent circumstances and is further corroborated by other prosecution evidence.
- v) For an extra-judicial confession to be the basis of conviction, it should not suffer from any material discrepancies and inherent improbabilities.
- vi) Such statement essentially has to be proved like any other fact and in accordance with law."

37. In the instant case, a scrutiny of the evidence and the cross-examination of the witnesses reveal that the extra judicial confession of the appellant is indeed a weak evidence by itself. The appellant cannot be held guilty of the alleged offence only on the basis of the extra judicial confession of the

appellant. There are too many contradictions and material discrepancies and inherent improbabilities to rope in the appellant with the allegation of rape.

38. The IO is the formal witness and he deposed as PW-13. His evidence reveals that on 08.04.2017, the victim, PW-3 lodged the FIR and he registered a Chaoldhoa Outpost G.D. Entry No. 137 dated 08.04.2017 and forwarded the FIR which was registered as Begunodi P.S. Case No. 75 of 2017 registered u/s 448/376/506/509 IPC and he was endorsed with the investigation. He proved his signature on the FIR as Ext.-1(2) and identified the signature of the OC of Begunodi P.S. Sri Utpal Sharma as Ext.-1(3). His evidence further reveals that he embarked upon the investigation and forwarded the victim for recording her statement u/s 164 Cr.PC and also for medical examination. He recorded the statement of the witnesses. He proved the sketch-map as Ext.-P3/PW-13 and his signature as P3(1)/PW-13. On completion of the investigation, he laid charge-sheet which he has proved as Ext.-P4/PW-13 and P4(1)/PW-13 as his signature. It is true that the incident as alleged occurred on 23.01.2017 and the FIR was lodged on 08.04.2017. There was indeed an inexplicable delay in the lodgment of the FIR.

39. It has been observed by the Hon'ble Supreme Court in ***Satpal Singh v. State of Haryana***, reported in **(2010) 8 SCC 714** that the delay in lodging

FIR more often than not, results in embellishment and exaggeration which is a creature of an afterthought or the prosecution must furnish satisfactory explanation for the delay, failing which the prosecution case must be rejected in its entirety.

40. In this instant case there was a delay of more than 3 months in lodging the FIR and no plausible explanation was offered by PW-3. The PW-3 has admitted in her cross-examination that she has not ascribed any reasons for the inexplicable delay in lodging the FIR. Indeed there was sufficient time for fabrication and embellishment. Moreover, the substratum of the evidence of the witnesses, is found to be unreliable.

41. In the wake of the foregoing discussions, it is thereby held, that the evidence adduced by the prosecution is fraught with contradictions.

42. It is concluded that:-

- (i) The evidence adduced by the prosecution is fraught with contradictions,
- (ii) The extra judicial confession obtained by coercion cannot be accepted as evidence. It has already been held in my foregoing discussions why the extra judicial confession cannot be accepted as evidence, and

(iii) The abnormal laches and delay in initiating the criminal prosecution, for example over 3 months delay in reporting the matter without satisfactorily explaining the reasons of delay casts a shadow of doubt over the veracity of evidence.

43. The benefit of doubt has to be extended to the appellant. The decision of the learned trial Court does not stand the scrutiny of law and is thus set aside. The appellant Dipak Ghosh is acquitted from the charges u/s 376 IPC on benefit of doubt and is set at liberty forthwith.

44. However, keeping in view the provisions of Section 437-A Cr.PC, the appellant Dipak Ghosh is directed to furnish a personal bond in the sum of Rs. 30,000/- (Rupees Thirty Thousand) and a surety bond in the like amount before the learned trial Court, which shall be effective for a period of 6 (six) months.

Send back the trial Court record.

JUDGE

Comparing Assistant