

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

DIVISION BENCH: THE HON'BLE MRS JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

CRL. A. No. 13 of 2022

Tshering Thendup Bhutia,
Aged about: 24 years
Son of Shri Passang Tshering Bhutia,
Resident of Ralong, Namlung, Ravangla,
P.O. and P.S: Ravangla
Dist: Namchi, Sikkim.

*Presently in Judicial Custody at
State Correction Home, Rongyek,
Gangtok, East Sikkim.*

..... Appellant

versus

State of Sikkim

..... Respondent

**Application under Chapter XXIX, Section 374(2) of
the Code of Criminal Procedure, 1973**

[against the judgment passed by the Ld. Judge, Fast Track Court, South & West Sikkim
at Gyalshing in S.T. (Fast Track) Case No. 03 of 2021 in the matter of
State of Sikkim vs. Tshering Thendup Bhutia]

Appearance:

Mr. Rahul Rathi and Ms Khusboo Rathi, Advocates for the Appellant.

Mr. Yadev Sharma, Additional Public Prosecutor and Mr. Sujan Sunwar,
Assistant Public Prosecutor for the Respondent.

Date of hearing : 13th May, 2024

Date of judgment : 3rd June, 2024

JUDGMENT

Bhaskar Raj Pradhan, J.

1. The testimony of the victim is once again sought to be questioned on the ground that it is not reliable; there is no corroborative evidence; the first information report (FIR) (exhibit 1)

lodged by her was after five days and there are inconsistencies in the prosecution case and there is evidence to suggest that the victim had lodged the false FIR to avenge the appellant not having accepted the proposal of marrying the victim's sister. The learned Judge, Fast Track Court, South and West Sikkim at Gyalshing (Ld. Trial Judge), has examined each of these issues and found that the sole testimony of the victim is reliable, there is corroboration from the evidence of PW-2 (victim's husband), PW-3 (elder sister of the victim), PW-4 (sister-in-law of the victim) and PW-5 (other sister of the victim), the delay in lodging the FIR has been adequately explained, the inconsistencies pointed out by the defence are immaterial and the defence of false FIR an afterthought.

2. The conviction and sentence of the appellant dated 26.04.2022 under sections 341, 376(1) and 506 of the Indian Penal Code, 1860 (IPC) is challenged in the present appeal. Charges were framed under sections 341, 376(2)(f), 376(2)(l) and 506 IPC. Ten witnesses including the Investigating Officer (PW-10) were examined by the prosecution after charges were framed on 31.07.2021. The appellant's examination under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was conducted on 26.03.2022, where he took a stand that the accusation was not true and he had been implicated since he had declined to marry the victim's sister.

3. The conviction of the appellant was substantially based on the evidence of the victim which was found to be reliable and unimpeached during cross-examination. The lack of injuries on her

body including her private part was not found fatal by the learned Trial Judge as it was held that it was settled law that mere absence of injuries on a victim of rape does not disprove the prosecution's case, nor does it render a testimony false, if the Court is of the opinion that her testimony inspires confidence and is found to be reliable and trustworthy. The defence of the appellant that it was a false case brought against him as attempt to match make the appellant with one of the sisters was also held to be improbable. Similarly, delay in lodging the FIR of five days was held to be sufficiently explained by the victim who testified that she was too ashamed and scared after the incident to tell anyone. The learned Trial Judge was also of the opinion that the testimony of the victim was corroborated by PW-2 (victim's husband), PW-3 (elder sister of the victim), PW-4 (sister-in-law of the victim) and PW-5 (the other sister of the victim).

4. Mr. Rahul Rathi, learned counsel for the appellant, submitted that there was unexplained delay in lodging the FIR. He also pointed out that although the victim has given vivid description of how she was raped by the appellant in the cowshed on 13.04.2021, PW-9 (the Medical Officer) deposed that no struggle marks were seen on genital examination of the victim and no injuries were noticed on her body when she was examined on 18.04.2021. It was also submitted that this was a clear case of false accusation as the appellant had refused to marry the victim's sister which was brought out from the evidence of PW-6 (appellant's sister) and PW-7 (appellant's mother). Some of the material

witnesses were not examined by PW-10 (the Investigating Officer). Mr. Rathi relied upon the judgment of the Supreme Court in **Santosh Prasad @ Santosh Kumar vs. State of Bihar**¹.

5. Mr. Yadev Sharma, learned Additional Public Prosecutor, submitted that the victim has deposed exactly what she had stated before the Magistrate in her statement under Section 164 Cr.P.C.; her evidence is cogent, consistent, without any embellishment and therefore, it is reliable. He submits that the evidence of the victim is trustworthy and reliable and therefore can form the sole basis of conviction. He submitted that the story of match-making was clearly an afterthought as neither PW-6 (appellant's sister) nor PW-7 (appellant's mother) stated about it in their statement recorded under Section 161 Cr.P.C. According to the learned Additional Public Prosecutor, the victim has sufficiently explained the delay in lodging the FIR.

6. We shall first deal with the grounds re-agitated by Mr. Rahul Rathi on behalf of the appellant.

Delay in lodging the FIR

6 (i). The incident is of 13.04.2021. The FIR was lodged on 18.04.2021, after five days of the incident. The allegation was of rape by the appellant who was not only her neighbour but also a friend of PW-2 (victim's husband). The victim in her deposition has given a detailed narration of what transpired after she was raped on the night of 13.04.2021. According to her, she first informed PW-6

¹ (2020) 2 SCC (Cri) 77

(appellant's sister) on 14.04.2021 and thereafter to PW-7 (appellant's mother). On 16.04.2021, the victim went to her maternal home but could not disclose anything, however, on 17.04.2021, she informed her two sisters-in-law about it, who advised her to inform PW-2 (victim's husband). On 17.04.2021, the victim did call PW-2 (victim's husband) but when she learnt that the appellant was also with him at Lingding, she did not do so as she thought that they would get into a fight. However, on 18.04.2021, the victim called PW-2 (victim's husband) early in the morning and asked him to come to Ravangla Thana. Thereafter, the victim lodged the FIR. The victim deposed that after raping her, the appellant threatened her. She also deposed about the emotional trauma she underwent after being raped by the appellant.

6 (ii). The delay in lodging the FIR by five days has been adequately and reasonably explained by the victim in her deposition which has been accepted by the learned Trial Judge. We have no hesitation in upholding the view in the impugned judgment as it stands to reason that victim of such a heinous crime may suffer from emotional upheavals as narrated by her. The victim has also given a detailed sequence of events of what transpired after the rape which has been adequately corroborated by the deposition of PW-2 (victim's husband), PW-4 (sister-in-law of the victim), PW-5 (other sister of the victim) and PW-6 (appellant's sister). We are of the opinion that the delay of five days has been sufficiently explained by the victim and the facts have been corroborated by the evidence of the prosecution witnesses.

No struggle marks and injury on the victim

6 (iii). The medical evidence of PW-9 (the Medical Officer) and the medical reports of the appellant (exhibit-6) and that of the victim (exhibit-7) do not corroborate the prosecution allegation as the medical examination was conducted on them only on 18.04.2021, after five days of the alleged incident.

6 (iv). The delay in the victim's medical examination was due to the fact that the FIR was lodged after five days which delay has been explained. The learned Trial Judge was of the opinion that absence of injuries on a victim of rape does not disprove the prosecution's case, nor does it render the testimony of the victim false, if Court is of the opinion that her testimony inspires confidence and is found reliable and trustworthy. It is, therefore, important for us to examine the testimony of the victim. If the victim's testimony is found creditworthy lack of injury on her body when she was medically examined only after five days would not materially affect the prosecution case.

False accusation by the victim

6 (v). The appellant in his statement under section 313 Cr.P.C, PW-6 (appellant's sister), PW-7 (appellant's mother) and PW-8 (appellant's aunt), during their cross-examination, introduced the story of the appellant rejecting the proposal to marry the victim's sister. On the basis of these statements, the defence raises a plea of false accusation by the victim to avenge the rejection.

6 (vi). The above suggestion was made to various prosecution witnesses by the defence. While the witnesses who were related to

the victim denied the suggestion, the appellant's family members and relative supported the suggestion. Both PW-6 (appellant's sister) and PW-7 (appellant's mother) were declared hostile and cross-examined. Their evidence is to be approached with caution. Both PW-6 (appellant's sister) and PW-7 (appellant's mother) were confronted with their statements recorded under section 161 Cr.P.C. in which they had supported the prosecution case as narrated by the victim. However, both of them denied having made such statements to the police. It is apparent that PW-6 (appellant's sister) and PW-7 (appellant's mother) introduced the allegation that the appellant had rejected the proposal of marrying the victim's sister for the first time in Court. Although, both of them being natural witnesses were put up by the prosecution as their witnesses, they turned hostile and did not support their statement recorded under section 161 Cr.P.C. This was quite apparent as both of them were closely related to the appellant who was accused of a heinous crime. The evidence of PW-8 (appellant's aunt) on this aspect is in the nature of hearsay evidence. We are, therefore, of the view that the learned Trial Judge has correctly appreciated their evidence and rejected the theory sought to be propounded in defence of the appellant.

Consensual sexual intercourse

6 (vii). There is no direct suggestion made by the defence of consensual sexual intercourse. However, some questions asked may indicate that they had attempted to suggest so. We, therefore, propose to deal with it. This we gather from the questions asked in cross-examination of the victim suggesting that the appellant would

visit her when PW-2 (victim's husband) was away at work and that she would not have filed the FIR if her husband had not come to Ravangla Police Station. Firstly, we notice that the defence has not asked any question directly about the consent. The above suggestion made to the victim by the defence has been emphatically denied by her. In any case, even if one was to consider the suggestion it beats any logical reasoning as to why the victim in such a situation would go around telling everybody about the act when there was no eye witness to it.

Material witnesses not examined

6 (viii). The failure of the prosecution to examine the minor children of the victim and the two ladies the victim interacted with but to whom she did not disclose about the incident, would not in our opinion, fatally affect the prosecution case.

Contradictions in the prosecution case

6 (ix). The learned counsel for the appellant submits that although the victim deposed that her younger brother had prepared the FIR which was signed by her at the Police Station, PW-3 (elder sister of the victim) did not depose that the scribe of the FIR was there when the FIR was lodged. We notice that the victim had deposed that her younger brother had prepared the FIR, she signed it and lodged the FIR. PW-2 (victim's husband) also corroborated this fact. Merely because PW-3 (elder sister of the victim) did not mention about the presence of the younger brother of the victim does not materially affect the prosecution case, more so when the victim when confronted about the absence of the younger brother at

the Ravangla Police Station emphatically denied the suggestion. Further, the defence also failed to suggest to PW-3 (elder sister of the victim) about the absence of the younger brother of the victim at the Ravangla Police Station. In any case, we are of the opinion that this is not a material contradiction which fatally affects the prosecution case.

6 (x). It was also pointed out that although the victim had stated about her disability in her deposition there was no evidence to support it. The victim's disability was not an issue in the criminal prosecution. The prosecution's failure to supplement the victim's statement regarding her disability by other evidence does not fatally affect the prosecution case.

Prosecution evidence

7. At this juncture, we seek to examine the prosecution case and the evidence produced. The prosecution has sought to establish their case through the testimonies of the victim, PW-2 (victim's husband), PW-3 (elder sister of the victim), PW-4 (sister-in-law of the victim), PW-5 (the other sister of the victim), PW-6 (appellant's sister), PW-7 (appellant's mother), PW-8 (appellant's aunt), PW-9 (the Medical Officer) and PW-10 (the Investigating Officer). It is noticed that PW-2, PW-3, PW-4 and PW-5 are related to the victim while PW-6, PW-7 and PW-8 are related to the appellant. Considering the case of the prosecution they are all natural witnesses who the victim had interacted with after the incident. As they are related witnesses, either to the victim or to the appellant, their evidence must, therefore, be viewed with caution.

Victim's deposition

8. As seen, the victim's evidence had played a crucial role in the conviction of the appellant. The victim described the incident in good detail. According to the victim, the incident happened on 13.04.2021, when she was home with her minor sons only. The victim deposed that PW-2 (victim's husband) was away at work at Lingding. The victim identified the appellant as her neighbour. The victim deposed that at around 9:30 p.m., while she was in the courtyard of her house filling water in the drum, someone suddenly caught her from behind, locked her hands in the front and lifted her. Thereafter, the appellant took the victim to the area below their house where they stacked firewood, pushed her against the wall, disrobed her, pulled down his pants and raped her. The victim has described the incident vividly giving the defence a fair chance to gauge its truthfulness and demolish it if it was untrue. The victim deposed that she tried to resist and struggled to free herself but was unable to do so. She also screamed but no one heard her. The victim stated that she had told the appellant that she was on her period but he did not care. This fact has been corroborated by PW-9 (the Medical Officer) who examined her on 18.04.2021 and recorded in her report (Exhibit-7) that the victim at the time was menstruating. The victim also deposed that after raping her, the appellant pushed her and threatened her that if she told anyone about the incident, he would not leave her alone and ran away.

9. The victim further deposed that on the next day she called PW-6 (appellant's sister) and asked her to come to her house

and when she did, the victim told her about the incident. PW-6 (appellant's sister) refused to believe her but suggested that she tell PW-7 (appellant's mother) about it. Thereafter, the victim also informed PW-7 (appellant's mother) about what the appellant had done to her. On hearing this, PW-7 (appellant's mother) pleaded not to tell anyone because she believed there would be bloodshed. She pleaded to the victim to forgive her son and forget about the incident. As per the version of the victim, thereafter, on her return she met two ladies but she did not disclose about the incident to any of them. It was only on 17.04.2021, after reaching her parent's house, she telephoned her two sisters-in-law and told them about it, who advised that she should inform her husband. Thereafter, the victim called up her husband but when she realised that the appellant was also working at the same site where her husband was working, compelled her not to disclose anything to her husband on 17.04.2021, as she feared they would get into a fight. Later she learnt that her husband's elder sister had already informed him and therefore, on 18.04.2021 she called her husband to come to Ravangla Thana where she lodged the FIR.

Identification of the appellant

10. According to PW-2 (victim's husband), the appellant was his co-villager with whom he had cordial relationship. In fact, PW-2 (victim's husband) admitted in cross-examination that he and the appellant were friends and the appellant used to visit his house and they would often eat and drink together. PW-4 (sister-in-law of the victim) also identified the appellant as he was from the same village.

According to PW-6 (appellant's sister), the house of the victim and their house were close to each other. PW-7 (appellant's mother) stated that the victim is her neighbour. PW-8 (appellant's aunt) stated that he and the victim were neighbours. The evidence led by the prosecution does establish that the appellant and the victim were neighbours, known to each other and shared close friendship often visiting each other. Victim's identification of the appellant as the perpetrator of the crime cannot be doubted.

Victim's deposition corroborated

11. As per the deposition of the victim, the first person she interacted with after the incident was her elder son. However, he was not examined. Thereafter, according to the victim, the next morning, i.e., 14.04.2021, she contacted PW-6 (appellant's sister) and narrated her story to her and then to PW-7 (appellant's mother). Although, the appellant's sister is referred to by another name in the victim's deposition, PW-6 (appellant's sister) admitted to have received a call from the victim on 14.04.2021. She also deposed that the next day, on 15.04.2021, the victim called her again and asked her to come to her house.

12. P.W-6 (appellant's sister) was, however, declared hostile. Testimony of hostile witness can be considered if corroborated by other evidence. It is settled law that even if a witness is treated as hostile and cross-examined, his/her statement cannot be written off altogether but must be considered with due care and circumspection and that part of the testimony which is creditworthy must be considered and acted upon. PW-6 (appellant's

sister) admitted, when confronted with her statement recorded under section 161 Cr.P.C., that on 14.04.2021 at around 8:30 a.m., the victim had telephonically called her to her house. This part of the testimony which corroborates the statement of the victim that she had contacted PW-6 (appellant's sister) on 14.04.2021 must be considered and acted upon. It isn't strange that PW-6 (appellant's sister) did not support the prosecution case fully as she was in fact the appellant's sister who had been accused of rape.

13. PW-7 (appellant's mother) was also declared hostile and did not support the prosecution case as recorded in her statement under Section 161 Cr.P.C. In spite of the hostility, during her cross-examination, PW-7 (the appellant's mother) admitted that the victim is an honest woman and did not lie. She also admitted that the appellant did not tell her that the victim was match making him with one of her elder sisters. These admission does support the prosecution version.

14. The victim deposed about going to her maternal home on 16.04.2021 and confiding to her two sisters-in-law telephonically on 17.04.2021 from her parent's house. PW-4 was the only sister-in-law examined by the prosecution. She corroborated the victim's statement that the victim had telephonically informed about the incident on 17.04.2021. According to PW-4 (sister-in-law of the victim), she advised the victim to inform her husband. This fact has been corroborated by PW-2 (victim's husband) who deposed that he had received a call on 18.04.2021 asking him to come to Ravangla Thana as she had been raped by the appellant on 13.04.2021.

15. PW-2 (victim's husband) deposed that in the morning of 18.04.2021, he received a call from the victim asking him to come to Ravangla Thana and when he asked her why, she informed him that she had been raped by the appellant on 13.04.2021. He also deposed that at the Police Station he met the victim, her two elder sisters and younger brother, after which she lodged the FIR. At the Police Station, he also asked the victim why she did not report the matter sooner and the victim told him that she had been threatened by the appellant and was scared. The deposition of PW-2 (victim's husband) corroborates the deposition of the victim that she had called him on 18.04.2021 and asked him to come to Ravangla Thana. The victim's testimony, that on 17.04.2021 she had called her husband but when she learnt that the appellant was also with him at Lingding she decided not to inform him that day as she feared that PW-2 (victim's husband) would get into a fight with the appellant, is also corroborated by the admission of PW-2 (victim's husband) that on 16.04.2021, the appellant had gone with him to work at the site at Lingding in the evening and returned on the evening of 17.04.2021. He admitted that while at the site the appellant and he worked together.

16. The victim was subjected to an extensive cross-examination by the defence. What is apparent in the answer to the cross-examination is her honesty. She admitted that the appellant was her neighbour and they often used to visit each other's houses. She also admitted, without any hesitation, that the appellant used to call her 'Maachi' (sister-in-law) and they used to sometimes tease

each other. She admitted that the appellant and PW-2 (victim's husband) were good friends and the appellant used to visit her house often and eat and drink with him. She honestly admittedly that they had neighbours on both sides of her house and the house of P.B. (name withheld) was near the spot where she collected water in the drum and if one screamed, it could be heard by her neighbours. She denied the suggestion that she had lodged the FIR out of fear of her husband and on the insistence of her siblings and relatives. The defence did not cross-examine the victim on the detailed testimony of how the appellant had raped her on 13.04.2021 but simply alleged that she had lodged a false case out of personal grudges against the appellant which the victim denied. The victim has withstood the cross-examination by the defence and her testimony stood the test of truthfulness.

17. The victim proved the FIR and also identified her statement to the Magistrate under section 164 Cr.P.C. as her statement (Exhibit-3). The defence made no attempt to deny the contents of the statement under section 164 Cr.P.C. The learned Trial Judge has found that the deposition of the victim is also corroborated by her statement under section 164 Cr.P.C. We notice that the victim has been consistent about the details of the act of rape by the appellant from the lodging of the FIR to the recording of her statement under section 164 Cr.P.C. by the learned Magistrate and also in her deposition in Court. We also find that there are no material contradiction in the victim's deposition which would render it untruthful.

18. In **Santosh Prasad** (supra), the appellant was accused of rape by the victim in the preceding night. The victim alleged that after raping her he had run away, after which she had raised an alarm and the neighbours had come including her relatives to whom she had disclosed about the incident. After their arrival, she had lodged the first information report at the police station. The wearing apparels of the victim was seized and sent to FSL. Medical report of the victim was also collected and thereafter, charge-sheet was filed. Eight witnesses including the victim were examined. Three of them did not support the case of the prosecution. The accused was thereafter tried and found guilty of the offences of sections 376(1) and 450 of the IPC. The Supreme Court found that the accused was convicted solely upon the deposition of the victim and neither any independent witness nor the medical evidence supported the prosecution case. Evidence of a land dispute between the parties had been brought on record which was admitted even by the victim that there was enmity with the accused. The medical evidence did not suggest any evidence which would reflect any physical or pathological evidence of rape although it was opined that possibility of rape could not be ruled out. The FSL report was inconclusive leaving the sole testimony of the prosecutrix as the only evidence. The Supreme Court examined the evidence of the victim and noted that there were material contradictions in her deposition and the version of the alleged incident given by her was not believable. The Supreme Court held that the evidence of the victim in such cases should be reliable and trustworthy. The Supreme Court examined its previous judgment which had opined that it cannot be lost sight of

that rape causes the greatest distress and humiliation to the victim but at the same time false allegation of rape can cause equal distress, humiliation and damage to the accused as well and therefore the accused must also be protected against possibility of false implication. It opined that it must be borne in mind that the broad principal is that an injured witness who was present at that time when the incident happened and that ordinarily such a witness would not lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

19. In ***Phool Singh vs. State of M.P.***², which was relied upon and referred to in the impugned judgment, the Supreme Court had occasion to examine the law regarding conviction of accused on the sole testimony of the prosecutrix. It was argued by the accused therein that medical evidence did not support the case of the prosecutrix and there were no other independent witnesses to support the case of the prosecutrix. It was also argued that there was delay in lodging the FIR which was lodged after three days. The Supreme Court did not agree with his submissions made on behalf of the accused and held that the victim had fully supported the case of the prosecution; she had been consistent right from the very beginning; nothing has been specifically pointed out why the sole testimony of the prosecutrix could not be believed; even after thorough cross-examination, she had stood by what she had stated and therefore, there was no reason to doubt the credibility and

² (2022) 2 SCC 74

trustworthiness of the prosecutrix. The Supreme Court also held that the submission on behalf of the accused as there were no independent witnesses, conviction based on sole testimony of the prosecutrix cannot be sustained, had no substance. While doing so the Supreme Court examined its previous judgments rendered in ***Ganesan vs. State***³; ***Vijay vs. State of M.P.***⁴; ***State of Maharashtra vs. Chandraprakash Kewalchand Jain***⁵; ***State of U.P. vs. Pappu***⁶; ***State of Punjab vs. Gurmit Singh***⁷; ***State of Orissa vs. Thakara Besra***⁸; ***State of H.P. vs. Raghubir Singh***⁹; ***Krishna Kumar Malik vs. State of Haryana***¹⁰; ***Rai Sandeep vs. State (NCT of Delhi)***¹¹, ***State (NCT of Delhi) vs. Pankaj Chaudhary***¹² and ***Sham Singh vs. State of Haryana***¹³. The Supreme Court, thereafter, concluded:

“**11.** Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.”

[Emphasis supplied]

20. While rejecting the submissions on behalf of the accused that there was no external or internal injuries found on the body of the prosecutrix and therefore it may be a case of consent, the Supreme Court in ***Phool Singh*** (supra) opined that no such question was asked, even remotely to the prosecutrix in her cross-

³ (2020) 10 SCC 573

⁴ (2010) 8 SCC 191

⁵ (1990) 1 SCC 550

⁶ (2005) 3 SCC 594

⁷ (1996) 2 SCC 384

⁸ (2002) 9 SCC 86

⁹ (1993) 2 SCC 622

¹⁰ (2011) 7 SCC 130

¹¹ (2012) 8 SCC 21

¹² (2019) 11 SCC 575

¹³ (2018) 18 SCC 34

examination. We find that in the present case the victim was not even suggested that the act was a consensual one.

21. It may be relevant to extract the opinion of the Supreme Court rendered in ***Chandraprakash Kewalchand Jain*** (supra) for better clarity of how a solitary statement of a victim is to be considered as we notice that the question frequently falls for consideration before our courts.

"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."

22. We are, therefore, of the opinion that the sole testimony of the victim inspires confidence and does not suffer from any basic infirmity. The probability factor also does not render it unworthy of credence. We are 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 to avenge, as was alleged by the defence, the rejection of the match of one of her sisters with

the appellant. We are equally aware of the great responsibility cast upon us in examining the evidence relating to the offence of rape charged upon the appellant. We have examined the broader probabilities of the case and not got swayed by minor contradictions which are not of a fatal nature. Although, the testimony of the victim in the facts of the case is reliable and trustworthy requiring no further corroboration, we find that the victim had in fact, on the next day of the incident, approached PW-6 (appellant's sister) and thereafter PW-2 (victim's husband), PW-3 (elder sister of the victim), PW-4 (sister-in-law of the victim) and PW-5 (the other sister of the victim) who were natural witnesses, who the victim would have approached in the situation that she was in. The testimonies of PW-2 (victim's husband), PW-3 (elder sister of the victim), PW-4 (sister-in-law of the victim) and PW-5 (the other sister of the victim), are found reliable and trustworthy. Mere lack of injuries on the victim's body who was examined after five days of the incident, would not be fatal to the prosecution case when the victim's testimony is found reliable.

23. The ingredients of rape as defined in section 375 and made punishable under section 376(1) IPC have been satisfied. The ingredients of criminal intimidation under section 506 IPC have also been sufficiently made out. However, in view of section 220(5) Cr.P.C., section 71 of the IPC, it is clear that the act of criminal intimidation was committed in the course of the same transaction as the act of rape and therefore, the appellant cannot be punished under section 506 IPC.

24. We find that the learned Trial Judge has sentenced the appellant to the minimum sentence prescribed under section 376(1) IPC for commission of rape. We, therefore, uphold the impugned judgment and sentence rendered by the learned Trial Judge under section 376(1). We, however, set aside the sentence under section 506 IPC. Compensation as awarded is also upheld.

25. The impugned sentence is modified to the above extent. Appeal stands disposed of accordingly. Lower Court records be transmitted forthwith.

(Bhaskar Raj Pradhan)
Judge

(Meenakshi Madan Rai)
Judge

Approved for reporting : **Yes/No**
Internet : **Yes/No**

(bp)