

GAHC010027142020



2026:GAU-AS:4945

REPORTABLE

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM & ARUNACHAL PRADESH)
PRINCIPAL SEAT

Crl. A. (J) 06/2020

Ramen Tanti

Jorhat, Assam.

----- **Appellant**

– ***VERSUS*** –

The State of Assam

Represented by P.P., Assam.

2. X

D/O-ABC

R/O-Village-Y

P.S.-Pulibor

District-Jorhat Assam

-----**Respondent**

Advocate for the **appellant** :- Ms. B. Sarma, Amicus Curiae

Advocate for the **respondent** :- Mr. P. Borthakur, Addl.P.P

Ms. M.K. Brown, Amicus Curiae for the informant.

BEFORE

HON'BLE MR. JUSTICE PRANJAL DAS

Date of hearing and pronouncement: 02.04.2026

Whether the pronouncement is of the N/A

Operative part of the judgment :

Whether the full judgment has been

Pronounced :Yes

JUDGMENT & ORDER (ORAL)

1. Heard Ms. B. Sarma, learned *Amicus Curiae* appearing for the appellant. Also heard Mr. P. Borthakur, learned Addl. P.P. appearing for the State respondent and Ms. M.K. Brown, learned *Amicus Curiae* appearing for the respondent no.2/informant.

2. The instant criminal appeal has been referred by the convict appellant, namely, **Ramen Tanti** against the judgment and order dated 29.07.2019 passed by the Special Judge, Jorhat, in Special Case No. 65/2018, whereby, he has been convicted under Section 376 IPC and sentenced to undergo rigorous imprisonment for a term of 10 years and to pay a fine of Rs. 5000/- (Rupees Five Thousand) in default of payment of him, imprisonment for 6 months.

3. The prosecution case, which emerged before the learned Trial Court is that on 06.07.2018, the victim herself lodged an FIR alleging that on 4(four) months prior to the date of lodging the FIR, the convict appellant, who was a resident of their line called her to his house on the pretext of washing utensils but he forcefully committed rape on her, taking advantage of the absence of others and that as a result, at the time of lodging the FIR, she was 4(four) months pregnant. She also alleged that

the accused threatened her not to disclose the matter to anyone stating that he would kill her if she did so and out of fear, she did not disclose to anyone. She stated that she was 16 years old at the time lodging of the FIR.

4. On the basis of the aforesaid FIR, Pulibor PS Case No. 197/2018 was registered under Section 376 IPC, read with Section 6 of the POCSO Act 2012.

5. Upon completion of investigation, the charge-sheet was submitted against the accused person under Section 376 IPC, read with Section 6 of the POCSO Act 2012 vide Charge Sheet No. 91/2018 dated 30.07.2018.

6. Thereafter, vide order dated 15.09.2018, the learned Additional Sessions Judge, Jorhat, as the Special Judge POCSO, framed charges against the appellant under Section 376 IPC read with Section 6 of the POCSO Act. The charge being denied led to commencement of the trial, during which the prosecution examined 9(nine) witnesses, including the victim. However, no medical witness was examined. After completion of trial, he was convicted and sentenced as already mentioned and aggrieved by the same, this appeal has been filed.

7. Ms. B. Sarma, learned Amicus Curiae, appearing for the convict appellant submits that the whole relationship, if any, was consensual in nature and that despite the alleged incident, she had not informed about the same to the family members and only when her pregnancy was detected by family members, the matter came to light. It is submitted that there was no threat or fear with regard to the prosecutrix to prevent her from disclosing about the incident. It is submitted that the FIR was lodged

several months after the incident. It is submitted that the evidence on record would not make it a case of rape as alleged and as held by the learned Trial Court erroneously.

8. With regard to the applicability, if any, of Section 114-A Indian Evidence Act (Section 120 BSA), it is submitted that the presumption, even if it comes, is a rebuttable presumption. It is reiterated and submitted by the learned counsel for the appellant that there is no proper corroboration of the testimony of the victim and that she revealed about the incident only upon being asked by her family members, who noticed a changing physical appearance on account of her pregnancy.

9. The learned Addl. P.P. on the other hand supports the impugned judgment and order contending that there is no infirmity in the prosecution evidence and that the prosecutrix has cogently testified about being subjected to sexual intercourse against her will. It is submitted that there was an element of force or coercion with regard to the incident, as a result of which the prosecutrix has successfully explained about not disclosing earlier. The learned Addl. P.P. contends that the appeal is devoid of merits and may be dismissed.

10. Ms. M.K. Brown, learned Amicus Curiae appearing for the informant, supports the contentions of the prosecution and further, submits that the testimony of the prosecutrix can perhaps be relied upon, as rightly done so by the learned trial Court. It is submitted that she has stated about being threatened and that explains her non-disclosure initially. It is submitted that the delay in lodging the FIR was in the context of the pregnancy and therefore, well explained. It is further submitted that no evidence has been led from the side of the accused during the trial to

show any consensual act.

11. I have perused the appeal memo; the impugned judgment and order; the evidence on record and other relevant materials. I have considered the submissions of the learned counsel of the respective sides.

12. As stated at the outset, no Medical Officer has been examined during the trial, though it is revealed that she was sent for medical examination from the I/O. Though PW-9 Md. Samsuddin, the Investigating Officer of the case, has stated about sending the victim for medical examination, but no medical report was exhibited during the trial nor any Medical Officer was examined during the trial.

13. In a prosecution like the instant one, pertaining to such kind of offences - the medical evidence though in the nature of opinion evidence - can play a vital corroborative role in helping the court to find the truth.

14. However in the instant case, as mentioned above, neither the trial Court nor this appellant Court has the benefit of any such medical evidence.

15. Though the appellant as accused was also charged under section 6 of the POCSO Act, but on the basis of the birth certificate, the trial Court found her to be a major and therefore, the conviction has been under Section 376 IPC, pertaining to commission of rape upon an adult.

16. In her testimony as PW-1, the prosecutrix has proved her birth certificate as material Exhibit-1 and mentioned her date of birth as 19.11.1998. The FIR was lodged, as mentioned earlier, on 06.07.2018 and at that time she was stated to have been 4(four) months pregnant. So, going by that, the alleged incident perhaps took place around 4 months

prior to the date of lodging the FIR and going by her date of birth as 19.11.1998, she would accordingly be around 20 years at the time of the incident.

17. In any case, her determination of majority as recorded by the trial Court is not disputed and the prosecution fairly submits that she was a major at the time of the incident.

18. PW-9, the I/O has stated about forwarding the victim during investigation for recording her statement before Magistrate. However, though the said statement is available, but it was not exhibited during the trial.

19. In her testimony as PW-1, the prosecutrix has stated that she knows the appellant, who was her neighbour and on the day of the incident, about 1 year prior to the date of deposition while she was at home, he came to her house and invited her to come and stay in his house as he was going to an Namghar and his wife would be at home. Accordingly, she went to his house where she was made to sleep on a bed outside and appellant's wife was sleeping on a bed inside. She further testified that at night, the appellant gagged her and committed rape upon her and on the next morning, although she came home, he showed her a knife and prevented her from telling anyone about the incident. That, in this way, whenever his wife was not at home, he forcibly pulled her from her house and committed rape upon her in his house once in a week and if she prevented, he rebuked and slapped her. She further testified that subsequently, when she missed her menstrual periods for four months, she told her sister-in-law about the incident and lodged the ejarah with the police station. She stated that at the time of her deposition, she was

eight months pregnant.

20. In cross-examination, she stated that the ejahar was written as per her version. She denied not having stated before police that the accused used to forcibly take her to his house every week and committed rape upon her. She reiterated in cross-examination that the house of the appellant was located adjacent to her house. She admitted that she has not mentioned in the FIR regarding the delay in lodging the same. She also stated that the appellant's wife and children were at home. She denied the suggestion that the appellant did not forcefully commit rape upon her, as a result of which, she became pregnant. Since the statement under section 164 Cr.P.C has not been exhibited, I am not inclined to rely upon it much; but nevertheless, the prosecutrix in that statement has stated on similar lines. She also stated about threatening and committing rape upon her in similar manner on several days. She stated that when no one was present in their house, he would come and rape her and whenever, no one was present in his house, he would hold her hands, take her to his house and commit rape upon her. She stated that out of fear, she did not disclose the matter to anyone.

21. Before proceeding further, it may be noted herein that it is a well-settled proposition of law that conviction in a case of sexual offence can be based upon the sole testimony of the victim/prosecutrix, provided her testimony is found to be reliable and trustworthy. In this regard, a reference may be made to the decision in the case of ***State of Punjab v. Gurmit Singh (1996) 2 SCC 384*** and relevant para-8 reproduced herein below:-

“.....*The testimony of the victim in such cases is vital and unless*

there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be over-looked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.....”

22. In any criminal trial, corroboration imparts much needed strength to the process of finding the truth and case of rape is no exception to that. In fact, these offences by their very nature do not have many eyewitnesses, but if some corroboration is available, including from medical evidence, it can be very helpful to the process of determining the guilt of the accused or otherwise.

23. With regard to the principle about basing a conviction in such cases only on the testimony of the victim, it has also been held that such

witness should be of a sterling nature, whose testimony can be relied upon, without corroboration as mentioned earlier. A sterling witness is a witness whose testimony is consistent, cogent, not suffering from contradictions and not suffering from any improbabilities.

24. In this regard, the narration of the Hon'ble Supreme Court in the case of ***Rai Sandeep Nikhil Rai Sandeep @ Deepu vs. State of NCT of Delhi (2012)*** may be reproduced herein below:-

“15. In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a ‘sterling witness’ whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the

said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

25. At the cost of repetition, it may be mentioned herein that in this case, the Court does not have the benefit of any medical evidence. No DNA examination has also been conducted to ascertain the paternity of the child stated to have been subsequently born to the girl as revealed in the evidence. Therefore, the testimony of the prosecutrix as PW-1 has to be critically scrutinized and appreciated to determine as to whether it passes the test of a sterling witness and if not, what is the corroboration with regard to her testimony. The testimony of the prosecutrix and also her narration in her statement before Magistrate (though not exhibited) have already been mentioned above. The prosecutrix has stated about the commission of rape upon her and of the appellant threatening her. However, both in her statement before Magistrate as well as in her testimony during the trial, she has made the following statement - *whenever his wife was not at home, the accused forcibly pulled me from my house and committed rape on me in his house once in a week.*

26. Similarly, in her statement before Magistrate, she has stated on that whenever no one was present in her house, the appellant would come and rape her and whenever, no one was present in his house, he would take her to his house and commit rape upon her. Though the prosecutrix stated about threat but nevertheless, as she was approximately 20 years or more at the time of the aforesaid incidents, such repeated acts of sexual assault upon her by the appellant in his house as well as in her house repeatedly

from week to week - without her reporting the same to her family members or law-enforcing authorities - appears somewhat unconvincing to the mind of this Court.

27. In this context, during examination of the appellant under Section 313 Cr.P.C, with regard to question No. 4 and 21, which were questions of general nature, he has admitted about physical relationship with the Prosecutrix, including in situations where his wife was absent from the house. However, he has stated that such relationship was consensual.

28. PW-2 is the brother of the Prosecutrix and he has testified that when he saw changes in the abdomen of his sister, he asked her about it, whereupon, his younger sister told that she was four months pregnant and that the appellant was responsible for the same. The matter was informed to the Secretary of the Garden and other people came in the gathering in which the prosecutrix stated that she was made pregnant by the appellant. However, upon him being asked, he denied the same. Thereafter, the case was lodged.

29. From his cross-examination, it is revealed that his knowledge is based on what he learned from his sister and that his sister did not tell him directly that the appellant had made her pregnant.

30. PW-3 is the sister-in-law of the prosecutrix and she has also stated that when she saw certain physical changes in her abdomen, she asked her whereupon she was told by the prosecutrix about her missing periods and about the appellant being responsible for the same. PW-3 has also stated about taking the matter to the Secretary of the Garden and subsequent lodging of the case. She reiterated in cross-examination that

the prosecutrix told her that the appellant was responsible for her pregnancy.

31. Thus, it emerges from the testimony of PW-2 and PW-3 that PW-1/prosecutrix on her own did not report about the incident to them and only upon their asking her regarding her physical changes, she disclosed about the pregnancy and the appellant being responsible for it.

32. Therefore, on this point, I find force in the contention of the learned counsel for the appellant that the incident emerged only when the prosecutrix was asked by her family members about her pregnancy.

33. PW-4 Binode Bakshi has testified about coming to know about the pregnancy of the prosecutrix from her and that she told him that it was as a result of physical relationship established by the accused. One aspect which has emerged from the testimony of PW-4 is his statement that the prosecutrix had requested him to settle the matter and accordingly, he organized a meeting and when accused was asked about it, he denied the same.

34. The father of the adducing evidence as PW-5 has stated about coming to know from her when she became four months pregnant that the appellant established forcefully established physical relationship with her and resulting in her pregnancy. It has emerged from the testimony of PW-5, upon being told by the prosecutrix that when the appellant went to Namghar at night, he would take the girl to keep his wife company and during that time, he had physical relationship with the victim girl. He denied that a false case has been lodged and the appellant was not responsible for the same.

35. PW-6, Bikash Ram Das has also testified about the victim telling him that appellant had committed rape upon her after gagging her. He also stated that when he came to know about the incident from the victim, he was five months pregnant.

36. PW-7, Jyoti Tanti is a relative of the prosecutrix and she has also testified that when the prosecutrix became pregnant, she was asked whereupon, she replied that the appellant was responsible for the pregnancy. It has also emerged from her testimony that later the victim gave birth to a baby boy and she is still unmarried. One important aspect which has emerged from the testimony of PW-7 is that the appellant is the cousin of the victim (son of her paternal aunt).

37. Similarly, PW-8 has also learned from his uncle's daughter that the victim became pregnant by the accused. He admitted that he did not talk with the victim.

38. Thus, it has emerged from the testimony of these witnesses that despite being allegedly subjected to rape repeatedly spanning days and weeks, the prosecutrix did not report about the incident to any of her family members or to the police. It has emerged from the testimony of PW-2, 3, 4, 5, 6 and PW-8, which includes her father, that when she developed a pregnancy and upon being asked about it, the incident was revealed.

39. PW-9, as the Investigating Officer, has stated about receiving the FIR at Pulibor P.S. on 06.07.2018, which was exhibited as Exhibit-2 and his signature thereon as Exhibit 2(1). He has stated about the steps of investigation. Exhibited the sketch map as Exhibit 3 and his signature as

Exhibit 3(1).

40. Though PW-1 prosecutrix denied not having stated before the police that the accused used to take her home forcibly every week and commit rape upon her but the Investigating Officer PW-9 has confirmed in his cross-examination that she did not state on these lines and that she only stated that the appellant had committed rape upon her. This aspect of the matter would be an omission in the nature of contradiction.

41. The testimony of the other witnesses mainly reveals that their knowledge regarding the incident was on the basis of what they heard from the prosecutrix or from her close relative. As already stated, they came to know about the incident only upon a few months pregnancy of the prosecutrix.

42. In the context of the same and in the absence of any medical evidence - therefore, the testimony of the prosecutrix would be the determining factor. As mentioned above, the other witnesses have merely deposed about what they have come to know about the incident from the prosecutrix or others.

43. In this context, upon critically appreciating the testimony of the prosecutrix, I find the following infirmities therein:- (i) that her testimony about being repeatedly subjected to rape in her house as well as in the house of the accused spanning days and weeks, but not reporting about the same to either family members or police or any social organization. This conduct is especially surprising as the prosecutrix was not a minor girl of very tender years, incapable of understanding properly what was happening to her as alleged.

(ii) That apart, despite the appellant allegedly committing rape upon her repeatedly, spanning days and weeks, the prosecutrix did not report about the same to family or law enforcing authority or social organization - for months till she developed a few months pregnancy and began to be asked about her physical changes by her family members.

44. On account of these infirmities in the testimony of the prosecutrix, in my considered opinion, she would not pass the test of a sterling witness, the attributes of which have been discussed above and also laid down in para-15 in *Rai Sandeep Nikhil Rai Sandeep @ Deepu (supra)*.

45. In view of the infirmities in the testimony of the prosecutrix and the prosecutrix not passing the test of a sterling witness, the statement of the appellant in his examination under Section 313 Cr.P.C, that relationship had happened but it was consensual, probabalizes an alternative hypothesis supporting the innocence of the appellant, as the victim was not a minor.

46. It is well settled that when two views emerge from the prosecution evidence, benefit of doubt has to be given to the accused. Upon perusing and appreciating the entire prosecution evidence and in the backdrop of the above discussion - I come to the considered finding that during the trial, it has not been proved beyond reasonable doubt by the standard of a criminal trial - that sexual intercourse committed by the appellant upon the prosecutrix, if any, was without her consent and against her will so as to satisfy the definition of rape under Section 375 IPC.

47. Consequently, giving the benefit of doubt, the appeal is **allowed** and the impugned judgment and order dated 29.07.2019 passed by the

Special Judge, Jorhat, in Special Case No. 65/2018 is hereby **set aside**. The appellant shall be set at liberty forthwith, unless wanted in any other case.

48. The Court records its sincere appreciation of the services of the learned amicus for the appellant as well as the learned Amicus Curiae appearing for the informant side for their services and they shall be entitled to their usual fees.

49. The criminal appeal stands **allowed** and **disposed** of.

JUDGE

Comparing Assistant