

**THE HIGH COURT OF TRIPURA
AGARTALA**

CRL.A (J) 4 OF 2015

Sri Shib Sankar alias Subir Debnath,
S/o Sri Subhash Debnath,
Resident of Village-Induria,
P.O. & P.S. Sonamura,
District-Sepahijala,
Tripura.

.... **Appellant.**

- **Vrs** -

The State of Tripura.

..... **Respondent.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. T.VAIPHEI
HON'BLE MR. JUSTICE S.C. DAS**

For the Appellant : Mr. A.K.Bhowmik, Sr. Advocate.
Mr. R. Dutta, Advocate.
Ms. M.Chowdhury, Advocate.

For the respondent : Mr. A. Ghosh, P.P.

Date of Argument : 21.02.2017

Date of delivery of Judgment & Order : 10.03.2017

Whether fit for reporting : **YES**

JUDGMENT & ORDER

(S. C. Das, J.)

This Criminal Appeal under Section 374 of Cr.P.C. is directed against the judgment and order of conviction and sentence dated 05.12.2014 and 09.12.2014 respectively passed by learned Addl. Sessions Judge, Sonamura, West Tripura, in Case No. Sessions Trial 52 (WT/S) of 2013.

2. We have heard learned Sr. Counsel, Mr. A.K.Bhowmik assisted by learned counsel, Mr. R. Dutta and Ms. M. Chowdhury for the appellant and learned P.P., Mr. A. Ghosh for the respondent.

3. Following charge was framed against the accused:-

“CHARGE

*I Shri R. Pal, Addl. Sessions Judge, Sonamura, West Tripura do hereby charge you namely,
Shri Shib Sankar alias Subir Debnath
as follows-*

That on or about 2nd day of April, 2013 A.D. at about 1930 hours at Induria under Sonamura Police Station you committed rape on Smti. Pritibala Das when she is under sixteen years of age and thereby committed an offence punishable under Section 376(2) (i) of Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by this Court of Sessions on the said charge.

*(R.Pal)
Addl. Sessions Judge
Sonamura, West Tripura.*

The contents of charge is framed and read over and explained to the accused person in Bengali to which he peased not guilty and claimed to be tried.

*(R.Pal)
Addl. Sessions Judge
Sonamura, West Tripura.”*

4. In course of trial, prosecution examined 16(sixteen) witnesses and also proved documents and materials in support of the prosecution case which has been mentioned by the trial Court in the appendix to the judgment. To avoid repetition, the list of witnesses and the documents/materials are not listed again.

5. Prosecution case was that the victim prosecutrix (name kept withheld) and the accused Shib Sankar Debnath alias Subir Debnath were neighbours. The accused used to frequently visit the house of the prosecutrix and made love relation with her. He proposed her to develop physical relation with the assurance of marriage but the prosecutrix refused. On 02.04.2013, in the evening, at about 7-30 p.m. the prosecutrix went to answer nature's call in the nearby toilet and at that time accused caught hold her, gagged her mouth with a napkin and forcefully lifted her to a nearby lonely place and raped her. She was aged 15 years at that time. It was the case of the prosecution that Kanchan Sutradhar (P.W.3) and another Sudhan Debnath who had been working, in the nearby paddy field, while returning home found the accused with victim in compromising position and on seeing them, the accused fled away from the spot and the prosecutrix also left for her house. She reported the incident with tears to her mother and her mother reported it to her father when he returned from market. Her father (P.W.1) Nihar Das reported the incident to father of the accused and his guardians who asked him to remain silent saying that they will amicably settle the matter. Nihar Das, father of the prosecutrix demanded proper justice to which father of the accused assured that they will arrange marriage of the prosecutrix with the accused but while they were not doing anything, Nihar Das reported the incident to the Panchayat Pradhan (P.W.7), Satindra Chandra

Debnath and a meeting of the Panchayat was called but the Panchayat could not resolve the issue and advised the informant Nihar Das to take shelter of law. Thereafter, on 08.05.2013 Nihar Das lodged the FIR in writing before O.C., Sonamura P.S. which was registered as FIR No.50/2013, under Section 376(2)(f) of IPC and after investigation charge-sheet was submitted against the accused and trial was taken up by learned Addl. Sessions Judge on the charge, as reflected hereinbefore.

6. After the closure of the prosecution evidence, the accused was examined under Section 313, Cr.P.C. and in his turn, the accused declined to adduce any defence evidence.

Defence case so far, by way of suggestions, put to the prosecution witnesses was that father of the accused was a wealthy person having huge landed property and rubber plantation etc. and that the domestic animals of the informant's family used to damage the crops in the field of the accused and therefore, there were dispute between the two families. A false case was instituted against the accused out of conspiracy. Those suggestion put by the defence to the prosecution witnesses were denied and there were no evidence in support of those defence plea.

7. At the conclusion of trial, learned Addl. Sessions Judge found the accused guilty of the charge framed against him under Section 376(2)(i) and sentenced him to suffer R.I.

for 10 years and to pay a fine of ₹20,000/- in default of payment to suffer further R.I. for 1 (one) year.

Aggrieved, the convict-appellant preferred the present appeal.

8. The Apex Court time and again has reminded the Courts to remain alive specially while trying a case of rape. We may refer here the observations of the Apex Court about the duty of the Courts while trying the rape cases.

9. In the case of **Kundula bala Subrahmanyam Vrs. State of A.P.**, reported in **(1993) 2 SCC 684**, the Supreme Court has observed that- *The role of courts, under the circumstances assumes greater importance and it is expected that the courts would deal with such cases in a more realistic manner and not allow the criminals to escape on account of procedural technicalities or insignificant lacunae in the evidence as otherwise the criminals would receive encouragement and the victims of crime would be totally discouraged by the crime going unpunished. The courts are expected to be sensitive in cases involving crime against women.*

10. In the case of **Bodhisattwa Gautam Vs. Miss Subhra Chakraborty** reported in **AIR 1996 SC 922**, the Supreme Court had the occasion to observe that ---*Rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a*

woman and pushed her into deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.

11. In a land mark judgment in the case of **State of Punjab Vrs. Gurmit Singh & Ors.** reported in **AIR 1996 SC 1393 : (1996) 2 SCC 384**, the Supreme Court has observed that- *Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader*

probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

12. In the case of **State of Andhra Pradesh v. Gangula Satya Murthy** reported in **AIR 1997 SC 1588**, the Supreme Court has observed that -*While trying an accused on charges of rape, they must deal with such cases with utmost sensitivity. They should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the witnesses, which are not of a fatal nature to throw out allegations of rape. This is all the more important as of late crime against women in general and rape in particular.*

13. The victim of rape is not an accomplice. She is the person injured in the offence. Her evidence is to be appreciated

at par rather more than an injured person of an occurrence of physical assault. If the sole testimony of the victim inspires confidence, the Court is bound to record punishment otherwise, the victim of the crime will be discouraged and the offender will be encouraged.

14. To inspire confidence definitely the court should carefully examine the entire evidence on record and if it is found that the case suffers from basic infirmities or improbabilities which render it unworthy of credence only in such an extreme case the Court should reject the victim's statements and otherwise even in the absence of medical evidence, in a given case, conviction can be recorded relying on the sole testimony of the prosecutrix.

15. Now let us have a glimpse to the evidence on record.

16. The victim prosecutrix has been examined as P.W.2. Obviously in a case of rape she is the star witness. In her deposition she stated that the accused Shib Sankar was her neighbour and he used to frequently visit her house before 02.04.2013 in the absence of her parents and sisters. She was aged 15 years and was reading in Class-VIII at that time. The accused proposed her to have physical relation with him but she denied. He also proposed to marry her. Since the accused was pressurizing her she informed the matter to her parents

and her parents had a talk with the parents of the accused and it was assured by the parents of the accused that the accused will not disturb her. On 02.04.2013 at about 7-30 p.m. she went to answer nature's call to the toilet and at that time, the accused went there, caught hold her, gagged her mouth and thereafter lifted her to adjacent lonely place and forcefully made intercourse with her. At that time two persons were working in the field and when they were returning home, Kanchan Sutradhar, one of them found the accused in compromising position with her and on seeing them, the accused fled away. She also went to her house and reported her mother the incident. When her father came from the market he was reported about the incident and her father reported it to the father of the accused.

17. Above statement of the victim prosecutrix has not been shaken in any manner in the cross-examination. Except denial and suggestion there is nothing in the cross examination to discard the above incriminating statement made by the victim prosecutrix.

18. According to prosecution, P.W.3 is an eye witness. He stated that on 02.04.2013 at about 7/7-30 p.m. he was working in the paddy field and was engaged in watering the field. At that time he noticed accused Shib Sankar Debnath alias Subir Debnath with the victim prosecutrix behind the toilet of P.W.1, Nihar Das and the accused having intercourse

with the girl. Hearing his sound, the accused fled away from the spot and he was naked. The girl also was in naked and after seeing him she wore her dress, left for her house and was crying.

In cross examination of this witness it appears that this incriminating part of the statement was not stated by this witness to the I.O. But in cross examination he stated that he did not narrate the entire episode clearly to the police and voluntarily stated that as the police did not enquire about the episode he could not state them clearly. There was no cross examination of the I.O. on this point. The voluntary statement of the witness that since the police did not enquire about the episode he could not state the entire story, therefore, remained un-rebutted.

This witness appears to be an independent witness of the locality. He is not related with the victim's family. In his cross examination some suggestions were put that he had altercation with the accused regarding payment of price of the electrical goods purchased from the shop of the accused which the witness denied. Suggestions denied is no evidence. There is no other evidence to show that the witness had ill relation with the accused for any reason to implicate him in a criminal offence of rape.

Anyway, let us now see the other item of evidence on record.

19. P.Ws 1 and 5 are the parents of the prosecutrix. They made categorical statement about the incident what the prosecutrix reported to them. It was on the evening of the incident itself the prosecutrix disclosed the occurrence to her mother first and then to her father, after he returned from the market. According to P.W.1, the father, he immediately went to the parents of the accused and the father of the accused assured a settlement and requested him not to report to others. The witness further stated that he demanded justice to which father of the accused told him that he will arrange marriage of the accused with the prosecutrix. Thereafter they were not doing anything rather the accused was concealed by his parents. Thereafter P.W.1 informed the incident to the village Pradhan i.e. P.W.7 and a village meeting was called in which P.W.7, 8 and 9 were present. The evidence of P.Ws 1 and 5 are that they were reported about the incident by the victim immediately after the occurrence and P.W.1 reported it to the father of the accused and thereafter the father of the accused made an assurance of arranging marriage etc. has not been shaken in the cross examination or otherwise.

20. P.W.7 stated that he was reported about the incident by P.W.1 and village meeting was called but in the meeting they failed to arrive at a settlement and advised Nihar Das to take shelter of law.

In cross P.W.7 stated that the accused denied the allegation in the meeting and further stated that except the family members of the informant others did not support the incident.

21. P.Ws 8 and 9 were present in the village meeting and they stated about such a meeting but did not support the prosecution case by saying that the allegation of rape was made. They were declared hostile by the prosecution and their previous statements recorded by I.O. were proved and marked Exbts. 8 and 9 respectively. So, the evidence of P.Ws 8 and 9 is not required to be taken into consideration being hostile witnesses since there are other evidence on record. No specific defence case made out from the mouth of P.Ws 8 and 9, the hostile witnesses, except that they stated that Kanchan Sutradhar was present in the meeting but kept silent. While Kanchan Sutradhar, P.W.3, was cross examined by the defence no such question was put to him as to whether he was present in the meeting or not and whether he stated the fact that he had seen the occurrence and so the statement of the hostile witnesses about the presence or absence of Kanchan Sutradhar in the meeting is of no consequence.

22. Out of the other witnesses, P.W.11 is the medical officer who has examined the victim and submitted report and naturally he did not find any positive sign of rape since the

examination was done on 08.05.2013 i.e. the date of lodging the FIR which was about 37 days after the occurrence.

P.W.10 is the scientific expert who examined the vaginal swab and on examination no spermatozoa was found.

23. P.W.15 is the Doctor who has examined the accused about his sexual potentiality and observed that the accused was capable of having sexual intercourse.

24. Learned Sr. counsel, Mr. Bhowmik assailed the judgment and order of conviction and sentence mainly on the ground that the delay in lodging FIR has not been explained and it was an abnormal delay and therefore, the entire prosecution case should be disbelieved.

25. He has referred the cases of ***Vijayan Vrs. State of Kerala***, reported in **(2008) 14 SCC 763** and ***Vidyadharan Vrs. State of Kerala***, reported in **(2004) 1 SCC 215**.

26. Learned Public Prosecutor has submitted that delay in lodging FIR in a case of rape is natural. Here delay has been properly explained. There is no reason for an unmarried girl to make a false allegation against the accused. In a case of rape it is natural that the victim and her family will be slow in moving to the police and thereby to make it public which will shutter the life of the unmarried young girl.

He has referred the cases of **Vishnu @ Undrya Vrs. State of Maharashtra**, reported in **2005 AIR(SCW) 6149**; **Dildar Singh Vrs. State of Punjab**, reported in **2006 AIR(SCW) 4247** and **Mukesh Vrs. State of Chhattisgarh**, reported in **2014 AIOL 2128**.

27. Law has not fixed any time for lodging FIR. Therefore, a delayed FIR is not illegal. A prompt and immediate lodging of the FIR is no doubt ideal as that would give the prosecution advantage to proceed with the investigation without any time lapse and also it expels the opportunity of any possible concoction of a false version. Therefore, a quick and prompt FIR is considered as prima facie assurance of a correct information about an offence. Delay in lodging FIR results in embellishment which may be a creature of an afterthought.

28. The Supreme Court in the case of **Ramdass & Ors. v. State of Maharashtra** reported in **(2007) 2 SCC 170** has observed that—*In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in*

taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report.

It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them.

29. In the case of **State of Himachal Pradesh v. Gian Chand** reported in **(2001) 6 SCC 71 : 2001 AIR SCW 1903** the Supreme Court has held that--*Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay*

cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

30. The Supreme Court in the case of ***Sahebrao and Anr. v. State of Maharashtra*** reported in ***AIR 2006 SC 2002*** has observed that- *The settled principal of law is that delay in filing FIR by itself cannot be a ground to doubt the prosecution case and discard it. The delay in lodging the FIR could put the court on its guard to search if any plausible explanation has been offered and if offered whether it is satisfactory.*

31. In the case at hand, the incident occurred on 02.04.2013 at about 7-30 p.m. FIR was lodged 08.05.2013 i.e. after 37 days. In the FIR, the informant stated that the delay caused because he was waiting for a social justice. In the evidence of P.Ws 1, 2 and 5 it appears that the parents of the prosecutrix reported the parents of the accused and there were some talks as alleged that the parents of the accused proposed to arrange marriage of the accused with the prosecutrix but when it did not occur it was reported to P.W.7, the village Pradhan and a village meeting was held. It appears that within 8(eight) days of the occurrence, the village meeting was held. Learned Sr. counsel, Mr. Bhowmik argued that after 8(eight) days why the informant was silent that has not been

explained. There is no clear and positive evidence as to why delay was caused even after the village meeting was held.

32. This is a case of rape. A young unmarried girl, aged 15 years allegedly was raped and she reported the incident to her parents immediately after the occurrence. It is an admitted position, since it is brought on record by way of cross-examination, that the father of the accused is a wealthy person in the locality and the accused is also a businessman. On the other hand, the father of the prosecutrix is a daily labourer. It transpires in the cross-examination of the P.W.1. The signature of P.W.1 in the FIR as well as in his deposition clearly reveals that the informant could hardly sign his name. Naturally the informant being a very poor man and a day labourer being a father of an unmarried young girl was hesitant to go to the police station and, therefore, in our considered opinion, this delay cannot be considered as fatal for the prosecution.

33. The Supreme Court in the case of ***State of Maharashtra Vrs. Chandra Prakash Kewal Chand Jain***, reported in **AIR 1990 SC 658** has observed that the Court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. A woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight.

The court must, therefore, evaluate her evidence in the above background.

34. The Supreme Court in the case of ***Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat*** reported in ***AIR 1983 SC 753*** has held that- *A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had even occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If he is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated.*

35. In the case of ***Jito Vrs. State of Himachal Pradesh***, reported in ***1990, Cr.L.J.1434***, the Supreme Court has observed that delay in filing FIR should be considered in

the background that the family of the victim will be hesitant since the girl's future and honour of the family is involved.

36. In the case of **Karnel Singh v. State of M.P.** reported in **1995 Cri. L.J. 4173**, the Supreme Court has held that *delay in lodging complaints in such cases in India does not raise inference that the complaint was false. Reluctance to go to police is because of society's attitude towards such women, victims.*

37. In the case of **Gurmit Singh (supra)**, the Supreme Court has observed that- *A girl in a tradition bound non-permissive society as in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, she being conscious of the danger of being ostracized by the society or being looked down upon by the society. On the facts of the case it was held that her informing her mother only on return to the parental house and no one else at the examination centre prior thereto, was in accord with the natural human conduct of female.*

38. In the case of **Vijayan (supra)**, referred by learned Sr. counsel, Mr. Bhowmik, the accused cannot get any benefit since the fact is quite different. In that case, the FIR was lodged after about 7 months and during those 7 months she did not disclose the fact to anybody else even not to her parents and when she was carrying pregnancy of 7 months

she lodged the FIR alleging that she was raped by the accused. The fact of the case at hand is quite different and so the ratio of that decision cannot be applied.

39. The case of **Vidyadharan (supra)**, referred by learned Sr. counsel, Mr. Bhowmik rather supporting the case at hand. In Para 8 of the judgment, the Court observed thus:-

“8. We shall first deal with the plea about false implication. It is seen that though there were some delay in lodging the FIR, it is but natural in a traditional bound society to avoid embarrassment which is inevitable when reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. In the instant case the delay has been properly explained. Further, PW-2 is an independent witness and a neighbour of both the accused appellant and PW-1. There is no reason as to why he would falsely implicate the appellant. A charge under Section 354 is one which is very easy to make and is very difficult to rebut. It is not that on account of enmity false implications are made. It would however be unusual in a conservative society that a woman would be used as a pawn to wreak vengeance. When a plea is taken of false implication, Courts have a duty to make deeper scrutiny of the evidence and decide acceptability or otherwise of the accusations. In the instant case, both the trial Court and the High Court have done that. There is no scope for taking a different view.”

40. In the case of ***Dildar Singh(supra)***, referred by learned P.P., the Apex Court observed that the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. In the normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident.

41. In the case of ***Mukesh (supra)***, in Para 21 of the judgment the Supreme Court has observed thus:-

“21. Further, the delay in lodging the FIR has been well explained by the prosecution and thus, it cannot be considered a ground for acquittal of the accused. It is clear from the facts and circumstances of the case that the prosecutrix, being a married lady, could not have lodged the FIR on her own, especially in case of Indian circumstances. As stated in the facts on record, her husband was not in the village and returned on the following evening of the incident. Further, the incidence had occurred late in the night and there was no elder person of the family present to go to the Police Station and lodge the complaint regarding the incident. Hence, it is natural for her to wait for her husband to return. This fact is verified by the statements of PW-11 and PW-2. Further, the distance of the police station from the place of residence is shown to be 20 k.m. Thus, the conduct of the prosecutrix and the witnesses was natural and logical and the accused cannot get the benefit of delay in the filing of complaint. In this regard reliance has been placed on the decision of this Court in the case of Sri Narayan Saha v. State of Tripura (2004) 7 SCC 775, which states as under:-

“5. We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR is really of no

consequence, if the reason is explained. In the instant case, the evidence of PW 3, the victim and that of her husband, PW 4, clearly shows that there was initial reluctance to report the matter to the police by PW 4. He, in fact, had taken his wife to task for the incident and had slapped her. In *Karnel Singh v. State of M.P.* it was observed that a woman who was a victim of sexual violence, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of a culprit. Therefore, the rule of prudence that her evidence must be corroborated in material particulars, has no application. At the most, the Court may look for some evidence which lends assurance.

XXX XXX XXX

10. There was no reason as to why a woman, more particularly a married woman, would falsely implicate the two accused persons. Minor discrepancies in the testimony of PWs 3 and 4 were sought to be highlighted. Taking into account the fact that the evidence was recorded in Court after about seven years of the occurrence, these have been rightly held to be of no consequence by both the Trial Court and the High Court." (emphasis supplied)

Further, in the case of *State of Rajasthan v. N.K.* (2000) 5 SCC 30, the accused, this Court has held as under:-

"14. It is true that the incident dated 1-10-1993 was reported to the police on 5-10-1993. The prosecutrix was a married woman. Her muklana ceremony had not taken place. Muklana ceremony is a rural custom prevalent in Rajasthan, whereunder the bride is left with the parents after marriage having been performed and is taken away by the husband and/or the in-laws to live with them only after a lapse of time. The origin of the custom owes its existence to performance of child-marriages which are widely prevalent there. The muklana was yet to take place. The prosecutrix was a virgin prior to the commission of the crime and this fact finds support from the medical evidence. The parents of such a prosecutrix would obviously be chary to such an incident gaining publicity because it would have serious implications for the reputation of the family and also on the married life of the victim. The husband and the in-laws having become aware of the incident may even refuse to carry the girl to reside with them. The incident if publicised may have been an end to the marriage of the prosecutrix. Added to this is the communal tinge which was sought to be given by the community of the accused. PW 10, the father of the prosecutrix, the prosecutrix, PW 2 and other witnesses

have stated that while they were about to move to the police station they were prevented from doing so by the community fellows of the accused who persuaded them not to lodge a report with the police and instead to have the matter settled by convening a panchayat of the village people. After all the family of the victim had to live in the village in spite of the incident having taken place. The explanation is not an afterthought. An indication thereof is to be found in the FIR itself where the complainant has stated — “the delay in lodging the report is due to village panchayat, insult and social disrepute”. Nothing has been brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered.

15. We may however state that a mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution.

In State of Rajasthan v. Narayan this Court observed: (SCC p. 623, para 6)

“True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police....”

16. In State of Punjab v. Gurmeet Singh this Court has held: (SCC p. 394, para 8)

“The Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. ”

17. So are the observations made by this Court in Karnel Singh v. State of M.P. repelling the defence contention based on delay in lodging the FIR. In the present case, in our opinion the delay in lodging the FIR has been satisfactorily explained.” (emphasis supplied)”

42. In case of delay in lodging FIR, the Court will definitely look for some plausible explanation about the cause of delay. There is evidence on record that immediately after the occurrence it was reported to the parents of the accused and thereafter the Panchayat meeting was held. Though there is no clear evidence as to why delay was caused even after the Panchayat meeting but from the conduct, social strata and economic condition of the informant an inference may be drawn that the family of the victim was scared of approaching the police considering the future of the girl and so delay in lodging the FIR in the case at hand cannot shutter the total prosecution case.

43. The next argument advanced by learned Sr. counsel, Mr. Bhowmik was that P.W.3 cannot be believed since the incriminating part of the statement was first time statement before the Court.

44. We have already discussed hereinbefore the evidence of P.W.3. The material part of the statement was not stated to I.O. He is the eye witness of the occurrence. He was examined by the I.O. on the date of lodging FIR itself. In his statement he stated that he was not asked by the I.O. in details and, therefore, he did not state the entire episode what he has seen. That part of the statement was not confronted to I.O. So, his evidence cannot be discarded simply saying that it

was first time statement. Since he is corroborated by the evidence of the victim prosecutrix and even the victim prosecutrix stated his name in her statement recorded under Section 164 of Cr.P.C. which is marked as Exbt.4, we find nothing to disbelieve this witness only on the ground that it was first time statement. In the statement of the victim recorded under Section 164 of Cr.P.C. by P.W.12, the Judicial Magistrate the victim made clear statement that Kanchan Sutradhar (P.W.3) had seen the occurrence and there was another Sudhan Debnath also who had seen the occurrence but Sudhan Debnath has not been examined as prosecution witness. Therefore, in our considered opinion, the evidence of the P.W.3 cannot be totally disbelieved in the given facts and circumstances of the case.

45. The next argument advanced by learned Sr. Counsel, Mr. Bhowmik was that Exhibit-6, the school certificate cannot be believed since the admission register was not proved.

46. P.W.6 was the Teacher-in-Charge of the School in which the prosecutrix was a student and he proved the School Certificate with his signature. He was cross examined by the defence simply saying that the age mentioned in the Certificate has no basis. The evidence of P.W.6 about the age of the prosecutrix has not been shaken. Referring to Section 65 of

the Evidence Act, learned Sr. counsel, Mr. Bhowmik submitted that the prosecution case cannot stand in respect of age of the victim based on that document alone.

He relied on the cases of ***Alamelu & Anr. Vrs. State (represented by Inspector of Police)***, reported in ***(2011) 2 SCC 385*** and ***Sambhu Chakraborty Vrs. State of Tripura***, reported in ***(2013) 1 TLR 535***.

47. The case of ***Alamelu (supra)*** is clearly distinguishable to that of the fact of the present case. There was no other supporting evidence in respect of the certificate which was exhibited.

48. In the case at hand, the informant in the FIR itself stated that the prosecutrix was aged 15 years. In the evidence of P.Ws 1, 2 and 5 i.e. the prosecutrix and her parents, clear statement was made by those witnesses that she was aged 15 years. The School Certificate shows that her date of birth was 10.06.1998 which means she was below 16 years. The oral evidence of the parents and the prosecutrix was even not denied. So, the ratio of the decision in the case of ***Alamelu (supra)*** cannot be applied in the present case.

49. We cannot agree with the observation made in Para 22 of the ***Sambhu Chakraborty(supra)*** since it is contrary to the statute. Section 375(sixthly) prescribes that intercourse with a woman below 16 years of age with or without consent is

rape. While statute has fixed a particular age, in our considered opinion, Court has to hold that the victim had no consent in the sexual intercourse if she was below 16 years of age and no contrary inference can be drawn making the provision otiose.

50. Learned P.P. has referred the case of **Vishnu @ Undrya (supra)** wherein the Apex Court has held that the evidence of the father and mother is the best evidence about the age of the child. Here in the present case both P.Ws 1 and 5 being the father and mother made clear statement that the victim was aged 15 years at the time of occurrence and that statement has even not denied in the cross-examination. So, we find it difficult to accept the argument of learned Sr. counsel, Mr. Bhowmik and hence, we are not at all convinced on this ground that the age of the victim was not proved.

51. The next argument advanced by learned Sr. counsel, Mr. Bhowmik was that the medical evidence did not support the case of the prosecution.

52. The medical examination was done on 08.05.2013 i.e. after 37 days of the occurrence. We cannot expect that after 37 days of the occurrence, the evidence of rape will be available on physical examination of the victim. On that ground while the other evidence is cogent and worthy enough,

we are of considered opinion that no adverse inference can be drawn about the authenticity of the prosecution case.

53. Regarding sexual capability of the accused, the evidence of P.W.15 makes it clear that the accused was capable of having sexual intercourse. So, the statement of the victim cannot be disbelieved on the ground that no positive evidence of rape was found by the medical officer on her physical examination.

54. Learned Sr. counsel, Mr. Bhowmik also argued that there might be love affairs between the accused and the victim and since the accused refused to marry the victim, it might happen that the FIR was lodged.

55. Exhibit M.O.1, M.O.2 and M.O.3 were seized by I.O. on production by the informant and according to the prosecution those were love letters written by the accused to the prosecutrix. In the FIR also it was mentioned that the accused made love relationship with the prosecutrix. The accused and the prosecutrix are close neighbours. In her statement, the prosecutrix clearly stated that the accused proposed to make physical relation but she refused and the accused made assurance of marriage but she denied. That part of the statement of the prosecutrix remains un-rebutted. So, even if there was any relation of love between the prosecutrix and the accused, she being a minor girl below 16

years, the physical relation with her amounts to rape since her consent was no consent even if for argument sake it is accepted that she had made consent.

56. Since the evidence of the victim prosecutrix inspires confidence and it is corroborated by other items of evidence, we find no reason at all to interfere in the finding of guilt of the accused and the sentence imposed by learned Addl. Sessions Judge.

57. Learned trial Judge directed the State Govt. to give compensation to the victim prosecutrix of an amount of ₹50,000/- and that direction has been given under Section 357A of Cr.P.C. Section 357A of Cr.P.C. reads as follows:-

“357A.Victim compensation scheme.-(1)

Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit."

58. Learned trial Judge was not supposed to direct the State Govt. to pay a fixed sum of ₹50,000/- but as prescribed under the provision he was supposed to refer it according to the procedure. So, that part of the observation of the learned Addl. Sessions Judge is interfered and set aside.

59. We direct that the trial Judge shall refer the matter to the District Legal Services Authority for taking up the matter according to the procedure prescribed by law.

60. In view of the discussions made above, the appeal fails and stands dismissed.

61. Send back the L.C. records along with a copy of this judgment.

JUDGE

CHIEF JUSTICE