
(2009) 06 GAU CK 0035
In the Gauhati High Court

Alindra Debbarma and

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 34, 366, 366A, 376

Citation : (2009) CriLJ 3917 : (2010) 1 Crimes 461 : (2010) 2 GLR 155 : (2009) 4 GLT 880

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Musahary, J.—By a common judgment and order dated 17-8-2006 passed by the learned Sessions Judge, West Tripura, Agartala in case No. ST 13(WT)A/2005, the accused namely Sri Dhanu Debbarma, Sri Jitendra Debbarma; Sri Alindra Debbarma and Sri Bimal Debbarma were convicted and sentenced to suffer rigorous imprisonment for five (5) years and to pay fine of Rs. 1,000/-each, and in default of payment of fine to suffer further rigorous imprisonment for three (3) months u/s 366A read with Section 34, I." P.C. while the accused Sri Suraj Debbarama was acquitted of charge u/s 366A, I.P.C. but was convicted and sentenced to suffer rigorous imprisonment for five (5) years and to pay fine of Rs. 1,000/-, in default of payment of fine to suffer further rigorous imprisonment for three (3) months u/s 366 read with Section 34, I.P.C. He was further sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/-, in default of payment of fine to suffer further rigorous imprisonment for six (6) months u/s 376(1), I.P.C. Both the sentences would run concurrently.

2. The aforesaid accused persons have, preferred the above mentioned writ appeals against the conviction and sentence passed by the learned Sessions Judge, West Tripura, Agartala vide impugned judgment and order dated

17-8-2006.

3. The prosecution tells its story like this. On 12-5-2004, the victim girl, Shila (the real name withheld), aged about 16 years, went to Chargharia along with her other relatives to attend a marriage ceremony of her cousin and she was supposed to return home on the following day. But she did not return home till the afternoon of the following day i.e. 13-5-2004. Shri Chitta Ranjan Debbarma, father of Shila, who is an Inspector of Police, posted in the Office of the Superintendent in Dholai District at the relevant time, was informed by his wife Smt. Satya Rani Debbarma over telephone about the same. Smt. Satya Rani Debbarma, mother of Shila, also informed the same to Jirania Police Station over telephone. Shila's father, getting the information, came home in the night of 13-5-2004. In the morning of 14-5-2004 Shila's father, along with the Staff of Jirania Police Station, searched places and recovered her daughter along with accused person from an abandoned hut in the jungle at Village Mohanta Shikari Para and they were brought to Jirania Police Station. On 14-5-2004, after recovery, the victim's mother talked to Shila at Jirania Police Station and on enquiry she told her mother that on 13-5-2004, in the afternoon, she along with her relatives were returning home from Chargharia by an auto-rickshaw and on the way at about 5.45 p.m., near Chargharia School, the accused persons stopped the said auto-rickshaw and forcibly took her in the house of accused Sri Dhanu Debbarma at village Mohanta Shikari Para. In that night accused Suraj Debbarma committed rape on her. After hearing the details of the incident from Shila, her mother Smt. Satya Rani Debbarma lodged a written FIR at Jirania Police Station against the said five accused persons, on the basis of which the crime being Jirania PS Case No. 19/2004 was registered u/s 366/376/34, I.P.C. against them. During investigation, the Investigating Officer of the case visited the place of occurrence, prepared hand sketch map, examined available witnesses and recorded their statements u/s 161, Cr. P.C. After completion of investigation, the Investigating Officer submitted charge-sheet against the accused, persons u/s 366/376/34, I.P.C. The Chief Judicial Magistrate, West, Tripura, Agartala took the cognizance of the, offence and referred the case to the Court of Sessions Judge, West Tripura, Agartala. After receiving the case, the Learned Sessions Judge, West Tripura, Agartala. framed charges against the accused persons u/s 366A/34, I.P.C. Separate charge was framed u/s 366A/376/34, I.P.C. against the accused Suraj Debbarma. The prosecution, in order to bring the charges home against the accused persons, examined as many as 12 witnesses, produced documents and materials in evidence. After closure of the prosecution evidence, accused persons were examined u/s 313, Cr. P. C, in which they totally denied the prosecution's evidence adduced against them. The accused Suraj Debbarma examined one DW in his defence. After the trial, the Learned Trial Court convicted and sentenced the accused appellants as stated earlier.

4. For the sake of convenience and for appreciating the evidence the appeal Nos. 77 of 2006, 86 of 2008 and, 99 of 2006 filed by appellant Alindra Dabbarma,

Bimal Debbarma, Dhanu Debbarma and Jitendra Debbarma respectively are taken up first as they have been convicted and sentenced u/s 366A read with Section 34, I.P.C.

5. Heard Mr. B. N. Majumder, learned Counsel for the appellant Sri Alindra Debbarma in Cri. Appeal (J) No. 77 of 2006. Also heard Mr. R. Dutta, learned Counsel for the appellant Sri Bimal Debbarma and Dhanu Debbarma alias Sunny. And also heard Mr. S. Saha, learned Counsel for the appellant Sri Jitendra Debbarma in Criminal Appeal No. 99 of 2006.

6. Mr. B. N. Majumder, learned Counsel appearing for the appellant Sri Alindra Debbarma in Cri. Appeal (J) No. 77 of 2006, submits that a general diary entry No. 351 was recorded on 13-5-2004 at about 11.25 p.m. by the Jirania Police Station on receipt of a telephonic information from the mother of the victim girl and the FIR was received at 22.05 p.m. of 13-5-2004. As per the particulars of FIR recorded in the printed performa of first information report, it transpires that PW 1 Smt. Satya Rani Debbarma, mother of the victim girl informed Jirania police station over telephone about the kidnapping of her daughter after receiving the information from her relatives who returned home without her daughter, Shila. But the copy of the said GD entry of Jirania Police Station was not produced by the prosecution before the Court during trial. What was the information passed on over telephone to the Jirania Police Station is not known or disclosed by the prosecution. It was incumbent upon the prosecution to produce the GD entry inasmuch as the information sent over telephone was, in real sense, the first information. In the said telephonic information, PW1, mother of the victim girl might have sent the true information that her daughter voluntarily eloped with the accused appellant Sri Suraj Debbarma and she did not return till the afternoon of 14-5-2004. The father of the victim girl, being a Police Officer, having come to know about the incident from his wife PW 1, gave a different story of kidnapping his daughter by accused appellant, Suraj Debbarma and others. From the evidence of PW 1, it is found that the PW 3, Sri Chitta Ranjan Debbarma, father of the victim girl scribed the FIR himself after recovery of his daughter and therefore, there was every possibility of making false allegation against the accused persons.

7. According to Mr. B. N. Majumder, learned Counsel for the appellant, there was a love affair between the victim girl and the accused appellant Sri Suraj Debbarma and while attending the marriage ceremony of her cousin, the victim girl met the accused appellant Suraj Debbarma and she voluntarily went away with him and took shelter in the house of Dhanu Debbarma. From the evidence of P.W. 1, it is found that her daughter and the accused Suraj Debbarma were students of the same school and the said accused Suraj Debbarma used to reside in the same locality of her house intervened by 3/4 houses. Once it is proved that Shila and Suraj had been studying in the same school, knowing each other since before, they had developed a relation and she willingly accompanied Suraj, no charge could be framed against the aforesaid accused appellant u/s 366/34,

I.P.C. Mr. Majumder further submits that mere alleged recovery of the victim girl from the house of Dhanu Debbarma along with other co-accused would not be a sufficient ground for framing charge against the aforesaid accused persons unless, it is proved that the victim girl was forcibly kidnapped or taken away by them. The allegation of forcibly kidnapping of the victim girl by the accused persons is an afterthought and the same was made at the instance of the father of the victim girl, who is a Police Officer and who rushed home, organized and led the search operation of a police team to apprehend the accused persons and thus, made an attempt to make out a case of kidnapping, which is not the story initially told by his wife PW 1 to the Jirania Police Station over telephone. The relevant GD entry which was recorded by the police before the FIR was lodged contains the real story and in view of the above, the story of the prosecution and the evidence adduced by it, must be discarded and the conviction and sentence recorded against the accused appellants should be reversed to acquittal.

8. Mr. S. Saha, learned Counsel, appearing for the accused, Sri Jitendra Debbarma, in Cri. Appeal No. 99 of 2006, adopts the aforesaid submissions made by the learned Counsel Mr. B. N. Majumder. Mr. S. Saha however, submits that from the evidence of PW 2 (victim girl) it has become clear that the accused Suraj Debbarma was known to her prior to the incident and other accused appellants were not known to her prior to the incident. She identified the aforesaid co-accused for the first time in the police station and then in the Court by face. She did not mention the name of any of the aforesaid four accused appellants before the Court. In this regard Mr. S. Saha has taken me through the evidence of P.W. 2 and pointed out that during cross-examination of the victim girl, she stated that she did not specifically mention the names of Sri Alindra Debbarma, Sri Jitendra Debbarma, Sri Dhanu Debbarma and Sri Bimal Debbarma who were present with accused Suraj at the time of kidnapping her. The evidence of victim girl sufficiently shows that the aforesaid accused appellants were not at all involved in the alleged kidnapping and as such the conviction and sentence as awarded by the learned Trial Court is not at all sustainable in Law and the same is liable to be quashed.

9. Mr. R. Dutta, learned Counsel appearing for the appellants Sri Bimal Debbarma and Sri Dhanu Debbarma alias Sunny in Cri. Appal (J) No. 86 of 2008, submits that he fully endorses the submissions made by the learned Counsel Mr. B. N. Majumder and Mr. S. Saha.

10. Mr. S. Talapatra, learned Senior Counsel; assisted by Mr. S. Debbarma, appearing for the appellant Sri Suraj Debbarma in Cri. Appeal (J) No. 84 of 2006, also endorses the submissions made by the learned Counsel for the other appellants above named.

11. In addition to the aforesaid submissions, he however submits that the FIR was lodged at the instance of the PW 3, after His daughter, victim girl was recovered and in the FIR false allegations of kidnapping and rape were made. The victim girl never stated to her mother that the accused Suraj had any

intention to committing the illicit intercourse punishable u/s 366A of I.P.C. Therefore, there was no case of inducement on the part of the appellant Suraj and others and the essential ingredients of Section 366A were absent and the learned Trial Court committed grave error of law at the initial stage by not considering the material to find but as to Whether the basic ingredients of Section 366A, I.P.C. were prima facie established. The prosecution did not examine the police officials who allegedly recovered the victim girl and other material witnesses and the learned Trial Court failed to consider the submissions made by the defence counsel that non-examination of witnesses who are living adjacent to the place of occurrence and for that matter the prosecutor's story became unbelievable. Furthermore, it is submitted that the conviction and sentence against the appellant Suraj is not sustainable inasmuch as charge was framed against him u/s 366A/376(1), I.P.C. but he was convicted u/s 366/376(1), I.P.C. According to Mr. Talapatra, the allegation of committing rape, by the appellant on the victim girl is unbelievable, taking into consideration that she was above 16 years at the time of alleged occurrence. The evidence of PW 11 Sri Madhab Singha, the Head Master of Jirania Khala Primary School, who deposed that Shila took admission in his school in the year 1994 in class 1. According to the head master, her date of birth has been re-corded as on 4-3-1988. Moreover, the evidence shows that after the alleged kidnapping, she was taken from one house to an-other but she never raised any objection or reported to any villager that she has been forcefully brought without her consent. Furthermore, according to the evidence of the Doctor, PW 8 penetration of penis in her vagina beyond the hymen has not been detected although it was opined that possibility of rape could not be ruled out. This shows that there was no definite opinion of the doctor that the victim girl was raped. According to Mr. S. Talapatra, there might have been sexual intercourse but it was done with the consent of the girl and if it is done with her consent, since she was above 16 years of age the offence u/s 376, I.P.C. would be attracted. The prosecution, according to Mr. S. Talapatra, could not prove that the appellant kidnaped Shila forcefully with illicit intention and thereafter committed rape on her and as such he should be acquitted giving him benefit of doubt.

12. I have also heard Mr. B. R. Das Roy, learned Public Prosecutor In-Charge, Tripura. He submits that the charges against accused / appellants have been proved beyond reasonable doubt by adducing sufficient evidence and the conviction and sentence have been or deterred rightly which warrants no interference by this Court. The minor discrepancies, here and there, in the evidence of the PWs, do not render the evidence of eye-witnesses unbelievable. For this purpose he cites the cases reported in *Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another*, and *Ezhil and Others Vs. State of Tamil Nadu*, On the quality of evidence of eye-witness and effect of non-examination of all the witnesses he cites the cases reported in *Sheelam Ramesh and Another Vs. State of A.P.*, *State of U.P. Vs. Anil Singh*, and *Chittar Lal Vs. State of Rajasthan*, On the value of evidence of close relatives and partisan witnesses, reference has

been made to cases reported in Amzad Ali @ Amzad Kha and Others Vs. The State of Assam, , State of Punjab Vs. Karnail Singh, and Harbans Kaur and Another Vs. State of Haryana, He also cites the cases reported in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, and Aslam Mohd. Merchant Vs. Competent Authority and Others, to establish his submission that accused cannot insist for corroborative evidence.

13. For the purpose of disposal of these appeals it is necessary to scan mainly the evidence of the informant PW 1, the victim girl PW 2, father of the victim girl PW 3 and PW 5. There is no dispute as regards the facts that Shila on 12-5-2004 went to Chargharia to attend the marriage ceremony of her cousin and she was accompanied by her relatives and she was returning on 13-5-2004 with Suku Debbarma (PW 5), Sitala Debbarma (PW 4), Hari Mangal Debbarma (PW 6) and Meera Debbarma. All the PWs 4 and 5 and others have corroborated in the evidence that they were returning home after attending marriage ceremony. They started at about 1 p.m. and they reached Chargharia School at about 5.30 p.m. where the auto-rickshaw carrying the accused persons was stopped. These three PWs are the eye-witnesses of the incident of kidnapping as per evidence of PW-4. There were residential houses by the side of the place from where Shila was kidnapped. This, PW 4 stated that they tried to go to the house of a friend to inform the matter, but the miscreants compelled them to go to Mandai. P.W. 5 in her deposition stated that they tried to resist the miscreants but failed to do so. They did not inform the police on way to their house. PW 6 stated that they tried to resist but they were put on fear by the miscreants. He also stated that they tried to go to the house of his son-in-law Suku Debbarma (PW 5) at Chargharia but the accused persons did not allow them to go there and compelled them to return to Mandai.

14. The prosecution examined owner/ driver of the auto-rickshaw, Sri Deepak Majumder as PW 9, who deposed that he was returning to Mandai from Chargharia with passengers and when he crossed Chargharia School some miscreants detained his auto-rickshaw, and as per the direction of the miscreants all the passengers got-down from the vehicle. The miscreants demanded entry into the vehicle but he (PW 9) fled away, leaving his auto-rickshaw near the house where marriage was being solemnized. His auto-rickshaw was seized by police in his presence and he put his signature on the seizure list. From the evidence of PW 9, it is found that the accused persons were successful in leaving the place of occurrence with Shila without his auto-rickshaw. The miscreants/the accused persons did not go in any vehicle from the place of occurrence. The overall evidence of PWs. 4, 5, 6 and 9 is that miscreants/the accused persons were waiting for coming of Shila near Chargharia School beforehand without any vehicle with them. And although, they tried to take the auto-rickshaw of PW 9, they failed to do so and ultimately they had to move or leave the place of occurrence without any vehicle. It means the accused persons after allegedly alighting Shila from the auto-rickshaw by force had to move on foot along with her. As there was residential houses around the place of occurrence and the

marriage was being solemnized nearby the place of occurrence, it was quite natural to attract the attention of the people around, there being a forceful kidnapping and resistance put up by the victim girl. It is also quite natural that the other inmates who accompanied Shila in the auto-rickshaw, as soon as the auto-rickshaw was stopped and the victim girl was alighted forcefully for purpose of kidnapping, might have made hue and cry or alerted the people around to resist or prevent the accused persons. There would have been a commotion at the place of occurrence if the accused persons really tried to take away the victim girl forcefully without her consent. How is it possible that the accused persons, without consent of the victim girl, could proceed on foot through the place inhabited by people all the way? There is no evidence of the aforesaid PWs. 4, 5 and 6, that they really wanted to recover Shila from the custody of the accused persons. They could have asked the auto-rickshaw driver to help them out in chasing the culprits. Such attempt was not made by them, although it was possible on their part to do so. Even without the help of the auto-rickshaw they could have taken the help of some local people present around the place to chase and apprehend the culprits with Shila. The time of alleged occurrence is also to be marked. It was at 5.30 p.m. and it was not yet dark. There is no dispute to the fact that the accused persons were not carrying any weapon, not to speak of any deadly weapon, with them at the time of alleged kidnapping. If the accused persons were not carrying any Weapon, the aforesaid PWs. 4, 5 and 6 could have resisted the accused persons and it would have attracted the people present near or around the place of occurrence. The evidence of the PWs. 4, 5 and 6, are found to be most unreliable and unworthy of being a foundation for conviction of the accused appellants Sri Alindra Debbarma, Sri Jitendra Debbarma, Sri Dhanu Debbarma and Sri Bimal Debbarma u/s 366A/34, I.P.C. and accused appellant Sri Suraj Debbarma u/s 366/34, I.P.C.

15. There is an old saying that men may tell lie but not the circumstances. The aforesaid PWs. 4, 5 and 6, although claimed to have told the truth in the evidence, there would be no taker to accept their story of kidnapping Shila by the accused persons. The circumstances narrated above are enough to disbelieve their story. The aforesaid circumstances have proved that Shila voluntarily went away with the accused Suraj and his party. Likewise, the aforesaid witnesses who accompanied Shila to the place of occurrence in auto-rickshaw allowed to go her with them.

16. The evidence of eye witnesses PWs 4, 5 and 6 aforesaid does not, in any manner show that Shila was induced by the accused persons to go with them from the place of occurrence or to do any act with intention that she may be knowing that it was likely that she would be forced and seduced to illicit intercourse with accused appellants Suraj Debbarma, to attract offence u/s 366A IPC. Such inducement or ill-intent, being absent in the present case and the prosecution has not been able to prove such inducement or ill-intent within the meaning of Section 366A IPC, the accused appellants namely Sri. Alindra Debbarma, Sri Jitendra Debbarma, Sri Dhanu Debbarma and Sri Bimal Debbarma

could not be convicted under the aforesaid Sections. In this regard I may refer to Iqbal Vs. State of Kerala, wherein it is held that as far as Section 366A is concerned, since the essential ingredient that the intercourse must be with a person other than the accused has not been established. Section 366A IPC has no application.. In the light of this decision of the Apex Court, the conviction of the aforesaid accused appellants namely Sri Alindra Debbarma, Sri Jitendra Debbarma, Sri Dhanu Debbarma and Sri Bimal Debbarma u/s 366A is not sustainable under the law and as such the conviction and sentence inflicted upon them vide judgment and order dated 17-8-2006 by the learned Trial Court in Case No. ST/ 13 (WT/A)/2005 are liable, to be set aside and accordingly the same are set aside, hereby. They are acquitted of the charge u/s 366A/34 IPC and are thus directed to be set at liberty forthwith if their further detention is not required in connection with any other case.

17. It is also to be noted that charge u/s 366A IPC was also framed against the accused appellant Suraj Debbarma. The learned Trial Court acquitted him of the charge u/s 366A IPC and hence it is not required to make any discussion whether he should be punished u/s 366A IPC, No charge u/s 366 was framed against this accused appellant Sri Suraj Debbarma but interestingly, if not surprisingly, the learned Trial Court has convicted him, u/s 366/34 IPC. It is necessary to examine the requirement for attracting the offence u/s 366 IPC. For this purpose, Section 366 IPC is quoted below:

Section 366. Kidnapping, abducting or inducing woman to compel her marriage, etc.-Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid.

18. The prosecution has not made any allegation against the appellant Suraj that he kidnapped or abducted Shila with intent to compel or knowing that she would be compelled to marry any person against her will or that she has been forced or seduced to illicit intercourse, or knowing it to be likely that she would be forced or seduced to illicit intercourse. All along the prosecution's story is that the appellant along with other accused persons kidnapped Shila and he himself committed rape on her. Once the Trial Court had acquitted this appellant Suraj on charge u/s 366A IPC, one can very well come to a conclusion that he did not force or compel the victim girl Shila if the evidence on record that Shila and Suraj were studying in the same school, Suraj was living near the house of Shila and he has been frequenting her house, is to be considered. It can be presumed

that the appellant himself intended to marry her or at least he loved her. If it is so, he would not have preferred to compel her to marry with other person or forced or seduced her to illicit intercourse. The story of the prosecution is that appellant Suraj committed rape on her. Whether Suraj committed rape on Shila as alleged is altogether a different aspect and a different offence, which would be dealt with later on. But the evidence on record, as discussed above is enough to come to a conclusion that the offence u/s 366A against the appellant Suraj is not at all attracted. As held in Tarkeshwar Sahu Vs. State of Bihar (Now Jharkhand), the essential ingredients of offence punishable u/s 366 IPC is that when a person forcibly takes away a minor girl with the intention as specified in that section, then the offence is clearly made out. In the present case the victim girl is above 16 years of age and she was not a minor. That apart, she was not at all forcibly taken away, rather voluntarily accompanied the appellant Suraj.

19. This being the position, I am not in a position to agree with the finding and conclusion of the learned Trial Court and conviction of the appellant Suraj u/s 366 IPC. The conviction and sentence u/s 366/34 IPC as handed down on the appellant Sri Suraj Debbarma is, therefore, liable to be set aside, which I do accordingly.

20. Conviction and sentence of accused appellant Suraj Debbarma u/s 376(1) IPC is left to be discussed now. Enough has been discussed on the basis of evidence on record that Shila was a consenting party since, after being alighted from the auto-rickshaw at Chargharia School, she proceeded to the house of the accused Dhanu Debbaram and moved from one house to another with the aforesaid accused appellant. While she was moved with him from one place to another she might have been seen; and quite naturally by the villagers, and, there were ample opportunities for her to tell at least some people whom she met or tell them about the kidnapping and her apprehension of being raped against her will by the appellant Suraj. Even after the alleged rape she did not bother to disclose the same to anybody until she was allegedly recovered by police team headed by PW 3, her father who is also a police officer as discussed earlier. The FIR was scribed by PW 3 himself and the same was filed through his wife. The manner in which Shila was recovered and the Ejahar was lodged, amply demonstrates a chance of presenting concocted story of forcible kidnapping and rape and similarly tutoring Shila and other eye-witnesses PWs. 4, 5 and 6 to depose something which is not true, nor even near to the truth.

21. A look at the Medical Report and the evidence of the Medical Officer (PW 8) would be necessary to examine and come to a conclusion whether the story of rape could be accepted as true. The relevant portion of the medical report is quoted hereunder:

Injury- No injury present over any parts of the body including breast, vulva inner aspects of thighs

Per vaginal examination:

Hymen- Intact

Vaginal canal - narrow

OS- Nulliparus

Uterus- normal in size, antverted

Vaginal orifice- admits one finger with discomfort.

Opinion - is kept pending till the vaginal swab analysis report is received.

Subsequent Opinion - There is no evidence of penetration of penis beyond hymen of vagina however the possibility of rape in this case cannot be ruled out.

22. In his oral evidence, Dr. Ranjit Kumar Das (PW8) who medically examined the victim girl testified as follows:

On Examination, I did not find any mark of violence on her vagina. On examination, it revealed to me that penetration of penis in her vagina beyond the hymen though has not been detected, but possibility of rape cannot be ruled out. After examination, I submitted my report in prescribed form. This is my report on examination marked as Ex-hibit-6. This is my signature. On identification marked as Exhibit 6/1.

Penetration beyond hymen means, that the penis did not go beyond the hymen, but penetration upto the hymen may have caused for which in my opinion, I have stated that rape on the victim girl cannot be ruled out.

23. How come that a girl not habituated in sexual intercourse, who has been forcibly raped without her consent, could be found without any injury over any part of her body including breast, vulva and inner aspect of the thighs. The evidence of victim girl is that she resisted the accused Suraj and if it is so there must be some injury as a sign of ravishment by force. Even her hymen is found intact without any evidence of penetration of penis and the hymen of the vagina. The absence of mark of injury on the person of the victim girl is a clear indication, if not a proof, that Shila was very much a consenting party to the sexual intercourse, and it so happened while she was spending a night with accused Suraj. The Apex Court in *Kuldeep K. Mahato Vs. State of Bihar*, while dealing with a case of kidnapping and rape, held that there were sufficient opportunity to run away from the house but also could have taken help of the neighbours, the prosecutrix did not do so. No injury is found on the person of the prosecutrix including her private parts as per medical evidence, so the conviction of accused u/s 376 IPC cannot be sustained.

24. It is an established Law that conviction can be ordered u/s 376 IPC solely on the basis of evidence of prosecutrix without any corroboration and even without being supported by medical evidence. But the Apex Court in a number of cases has held that the evidence of prosecutrix must be cogent and trustworthy. It is further held that the evidence of the prosecutrix must be truthful and there exist

no circumstances which cast as a shadow of doubt over her veracity and appear to be a witness of sterling quality on whose sole testimony conviction could be sustained. I may refer to Ramdas and Others Vs. State of Maharashtra, wherein the Apex Court acquitted the appellant on benefit of doubt after finding that the prosecutrix tried to conceal facts from the Court and she was found to be untruthful. Further the Apex Court in Vimal Suresh Kamble Vs. Chaluverapinake Apal S.P. and Another, held that conviction can be made on the sole testimony of the prosecutrix if her testimony inspires confidence and appears to be natural and truthful.

25. Here, in this case, the evidence of prosecutrix is found to be tainted, being rendered under the influence of her policeman father who has been monitoring the case right from leading the police search team for recovery of the prosecutrix, scribed the FIR to adducing evidence by the prosecution before the Trial Court. The evidence of the prosecutrix being coached is found to be far from cogent and trustworthy, not to speak Of being so sterling and inspiring confidence of the Court for recording conviction on the basis of her evidence about the alleged rape. There is no support from the medical evidence inasmuch as the Doctor did not find any mark of injury in any part of the body of the prosecutrix which leads any reasonable man to a conclusion that she was a willing and consenting party to the sexual intercourse that might have taken place between the prosecutrix, and the appellant Suraj Debbarma.

26. I have, therefore, no hesitation to hold and disagree with the finding and conclusion arrived at by the learned Trial Court on this aspect. I would, unhesiatingly hold that no charge u/s 376(1) IPC could be brought home by the prosecution and the appellant Sri Suraj Debbarma is to be acquitted of the charge of rape u/s 376(1) IPC and accordingly, I quash the conviction and sentence levied on the appellant Suraj Debbarma u/s 376(1)/34 IPC, by the learned Trial Court in common Judgment and Order dated 17-8-2006 passed by the learned Sessions Judge, West Tripura, Agartala in case No. ST13(WT)A/2005, along with the accused Sri Dhanu Debbarma, Sri Jitendra Debbarma, Sri Alindra Debbarma and Sri Bimal Debbarma. It is hereby directed that accused appellant Suraj Debbarma be set at liberty forthwith if his further detention is no longer required in connection with any other case.

27. This appeals stand allowed.

28. LCR be transmitted back.