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**(2017) 05 MAN CK 0004**  
**In the Manipur High Court**  
**Case No : 1 of 2016**

Shri Soubam Naoba Singh

APPELLANT

Vs

The State of Manipur

RESPONDENT

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**Date of Decision :** 16-05-2017

**Acts Referred:**

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police  
[Indian Penal Code, 1860](#), [Section 376](#) - Punishment for rape

**Citation :** (2017) 05 MAN CK 0004

**Hon'ble Judges :** N. Kotiswar Singh, Kh. Nobin Singh

**Bench :** Division Bench

**Advocate :** L. Seityendra, Y. Ashang

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## Judgement

1. Heard Mr. L. Seityendra, learned counsel for the appellant. Heard also Mr. Y. Ashang, learned P.P. for the State. 2. The present appeal has been preferred against the judgement and order dated 29.12.2015 passed by the Ld. Sessions Judge, Imphal West in Sessions Trial No. 12 of 2012/63/13/27 convicting the appellant under Section 376 of IPC and order dated 31.12.2005 sentencing the appellant to undergo rigorous imprisonment for a period of 10 (ten) years with a fine of Rs. 50,000/- (Rupees fifty thousand only in default of which to undergo imprisonment for a period of 6 (six) months. 3. The appellant was tried for committing the offence under Section 376 IPC after a complaint was filed on 04.08.2005 against him alleging commission of rape by him. 4. Upon conclusion of investigation, charges were framed against the appellant on 14.01.2003 under Section 376 IPC and he was tried and convicted. 5. The prosecution case in brief is that a written complaint was lodged on 4.8.2005 at about 5.20 p.m. before Officer-in-Charge of the Imphal Police Station that the complainant's sister-in-law, namely Yumkham Anarkali Devi aged about 21 years, who was mentally retarded was raped by the appellant in her bedroom at about 9 p.m. on 3.8.2005 of which there were eye witnesses. Though the accused was caught red handed,

he managed to escape from the scene but left behind his apparels. It was stated that the crime could not be immediately reported due to lack of proper legal knowledge and was reported after taking the consent of the relatives of the victims. 6. Out of 21 cited prosecution witnesses, the prosecution produced and examined 10 witnesses and 16 documents/evidences were exhibited. 7. The prosecution charged the appellant that by taking advantage of the mentally retarded condition of the victim girl, raped the girl on the night of 3.8.2005 at around 9 p.m. which was witnessed by P.W. No. 4, Sorokhaibam Sushma Devi. P.W. No. 4 and the victim were relatives and live in the same house but in different rooms. The room where the rape occurred is located adjacent to the kitchen of the P.W. No. 4 which was accessible through two doors, one of which was made of GI sheets located on the western side of the kitchen. On the fateful night when P.W. No. 4 heard some suspicious sound coming from the room of the victim she went to her kitchen and peeped through a hole in the door made of GI Sheets, located in the western side of the kitchen and saw the movement of the body of the appellant repeatedly over the naked body of the victim girl. P.W. No. 4 then reported the matter to her sisters. Thereafter, her sisters and other members of the family went inside the room of the victim girl and dragged out the appellant who was found naked except for a T shirt he was wearing. P.W. No. 3 (S. Sorodhini Devi) also a relative and neighbour of the victim girl corroborated what had been stated by the P.W. No. 4. She was one of the persons who went inside the room soon after the rape was reported by P.W. No.4 and she along others dragged the appellant out of the room. P.W. No.6 (S. Noren Singh), another witness and neighbour also went inside the room to drag out the appellant stated that upon hearing a commotion, he went inside the room of the victim with others and saw the appellant wearing a white shirt without pants and underwear and he was almost naked. He also saw the victim girl inside the room. One pair of trousers, Identity Card of the appellant and Authorisation card issued in the name of the appellant, along with other materials were recovered from the room and seized by the police next day. The victim girl was medically examined by P.W. No.7 (Dr. Thounaojam Meera) on 5.8.2005, who gave the opinion that there was evidence of recent sexual intercourse with the girl. 8. The defence on the other hand had contended that though the principal witnesses, P.W. Nos. 3 and 4 deposed that the victim girl and other family members were mentally not sound, none of the family members were examined, especially the mother of the victim who was stated to be working as a sweeper in the Imphal Municipality Council. Neither any document was produced to show that they were mentally retarded. It was also submitted that there were wide discrepancies in the statements of the witnesses before the Court vis-a-vis statements made under Section 161 Cr.P.C. The defence also doubted the veracity of the statement of the P.W. No. 4 that she saw the incident through a hole in the western door as existence of any such hole was not recorded in the sketch map of the P.O. (place of occurrence) drawn by the I.O. of the case. It was also contended that vital medical evidences/report which would have indicated innocence of the appellant were not produced. It was stated that the forensic report showing that there was

no seminal fluids on the exhibits was not produced, nor the forensic report about the vaginal swab taken from the victim girl. The defence, therefore, contended that the case has not been proved beyond reasonable doubt against the appellant. 9. The Ld. Sessions Judge after hearing the parties and considering the material evidences on record came to be conclusion that the charge against the appellant had been proved beyond reasonable doubt and convicted the appellant and sentenced him to undergo 10 years" rigorous imprisonment with fine. 10. The Ld. Sessions Judge concluded as follows: "13. On examining the statements of the PW Nos. 2, 3, 4 and 6 it is evident without any doubt that P.W. No. 4 saw the act of committing rape upon the victim girl by the accused in the room of the victim from a hole of her adjacent kitchen room and then she informed the matter to P.W. No. 3 and then P.W. No. 3 along with her sons rushed to the room of the victim and inside the room of the victim the accused was found almost naked without pant and underwear except one Baniyan and the victim was found sitting in the bed with crying and the accused was dragged out from the room by the sons of P.W. No.3 including P.W. No.6 up to the courtyard and the mother of the accused who has happened at the courtyard covered the nakedness of her son by a cloth. The said statements of the P.W. Nos. 2, 3, 4 and 6 could not be shaken in their cross-examination. Furthermore, the long pant, one pair of Hawai Chappal, I.D. Card and one authorisation card of the accused were also recovered from the room of the victim, thereby strengthen the fact that the accused was present in the room of the victim. 14. The said PW Nos. 2, 3, 4 and 5 are the neighbours of the accused as well as the relatives of the victim. However, they came forward to give their respective evidences even after the sad demise of the victim prior to start the proceeding of this case even though the accused is their neighbour. On the other hand, there is no material to show or suggest that the accused is falsely implicated in the case by the said P.Ws. Situated thus, I come to the conclusion without any hesitation that the said P.W. Nos. 2, 3, 4 and 6 are wholly reliable witnesses and there is no difficulty in placing implicit reliance on their evidences. Furthermore, medico legal examination report of the victim clearly supported by giving opinion that there is evidence of recent sexual intercourse to the victim" 11. As regards, the contention of the defence that the retarded mental condition of the victim has not proved, the Ld. Sessions held as follows: "15. Nevertheless, Id. Counsel for the accused vehemently challenged the evidences of the P.W.s and manner of the investigation of the case by the I.O. of the case. The first point raised by the Id. counsel of the accused is that P.W. Nos. 2, 3 and 4 have stated that the victim girl is a retarded person and her family members consisting of 5 member are also equally mentally retarded person, but there is no document in order to establish their mental status and that the statement of the said victim and her family members were not recorded under section 161 of Cr.P.C. by the I.O. of the case and he did not explain why he did not record the statement of the victim. P.W. No. 2 has stated that the victim is the daughter of her aunt and she is mentally retarded person and she does not fully understand the actual happening due to her state of mind, however, the defence counsel did not even deny the

said statements of P.W. No. 2, P.W. No. 3 has also stated that the victim was mentally retarded girl and equally her mother and brothers are also all retarded persons, but the defence counsel did not take the pain of even denial of the said statement of P.W. No. 3. Therefore, it will be presumed that the defence/accused has admitted the fact that the victim was a retarded person and thus, no document is necessary to prove the mental status of the victim girl." 12. Regarding non examination of the other members of the family, it was held by the Ld. Sessions Judge that since they, except the younger brother of the victim were not present at the time of occurrence of the crime, their non examination in the trial will not cause any infirmity as to vitiate the trial. 13. The Ld. Sessions Judge also did not accept the plea of the defence that merely because the I.O. himself did not draw the sketch map of the P.O. (place of occurrence) there cannot be any illegality, as he had put his signature on the sketch map after knowing the contents of the same. 14. Thus, the Ld. Sessions Judge held that the prosecution has been able to prove the charge against the appellant beyond reasonable doubt and convicted the appellant. 15. Before us, the Id. Counsel appearing for the appellant has contended that the prosecution has not been able to prove the charge against the appellant beyond reasonable doubt and reiterated the pleas taken during the trial referred to above. 16. Before we proceed to examine the contentions of the appellant raised before us, we may refresh ourselves of the law relating to the requirement of proof beyond reasonable doubt and about appreciation of evidence more particularly in a criminal trial. As to the meaning and scope of "proof beyond reasonable doubt", has been considered by the Apex Court in a number of cases. It has been held that there is no straight jacket formula to define this principle nor can it be measured with mathematical exactitude and would depend on the evidences obtaining in individual cases. As to how evidences have to be appreciated in criminal trials, there are various considerations which have to be kept in mind by the Court. 17. In this regard we may profitably refer to the decision in State of Karnataka v. Suvarnamma, (2015) 1 SCC 323 wherein the Hon'ble Supreme Court referring to an array of earlier decisions observed as follows: "10. The court dealing with a criminal trial is to perform the task of ascertaining the truth from the material before it. It has to punish the guilty and protect the innocent. Burden of proof is on the prosecution and the prosecution has to establish its case beyond reasonable doubt. Much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors. In the absence of direct evidence, the circumstantial evidence can be the basis of conviction if the circumstances are of conclusive nature and rule out all reasonable possibilities of the accused being innocent. Once the prosecution probabalises the involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused. Though Article 20(3) of the Constitution incorporates the rule against self-incrimination, the scope and the content of the said rule does not require the court to ignore the conduct of the accused in not correctly disclosing the facts within his knowledge. When the

accused takes a false plea about the facts exclusively known to him, such circumstance is a vital additional circumstance against the accused. 11. It is also well settled that though the investigating agency is expected to be fair and efficient, any lapse on its part cannot per se be a ground to throw out the prosecution case when there is overwhelming evidence to prove the offence. 12. We may refer to the well-known observations from decisions of this Court: 12.1. Shivaji Sahabrao Bobade v. State of Maharashtra (1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : (1974) 1 SCR 489: (SCC p. 801, para 8) "8. Now to the facts. The scene of murder is rural, the witnesses to the case are rustics and so their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumptions about human conduct cannot obviously be applied to those given to the lethargic ways of our villages. When scanning the evidence of the various witnesses we have to inform ourselves that variances on the fringes, discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the veracity of the core of the testimony provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered....." 12.2. Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217 : 1983 SCC (Cri) 728: (SCC pp. 222-23, para 5) "5. ... We do not consider it appropriate or permissible to enter upon a reappraisal or re-appreciation of the evidence in the context of the minor discrepancies painstakingly highlighted by the learned counsel for the appellant. Overmuch importance cannot be attached to minor discrepancies. The reasons are obvious: (1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen. (2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details. (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another. (4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder. (5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person. (6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which takes place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when interrogated later on. (7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by the counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up

details from imagination on the spur of the moment. The subconscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him-perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment."

12.3. .... 12.4. *State of Haryana v. Bhagirath* (1999) 5 SCC 96 : 1999 SCC (Cri) 658: (SCC pp. 100-01, paras 8-11) "8. It is nearly impossible in any criminal trial to prove all the elements with a scientific precision. A criminal court could be convinced of the guilt only beyond the range of a reasonable doubt. Of course, the expression "reasonable doubt" is incapable of definition. Modern thinking is in favour of the view that proof beyond a reasonable doubt is the same as proof which affords moral certainty to the Judge. 9. Francis Wharton, a celebrated writer on criminal law in the United States has quoted from judicial pronouncements in his book *Wharton's Criminal Evidence* (at p. 31, Vol. 1 of the 12th Edn.) as follows: "It is difficult to define the phrase "reasonable doubt". However, in all criminal cases a careful explanation of the term ought to be given. A definition often quoted or followed is that given by Chief Justice Shaw in the *Commonwealth v. Webster*, 5 Cush 295 : 59 Mass 295 (1850). He says: "It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that consideration that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge." 10. In the treatise *The Law of Criminal Evidence* authored by H.C. Under-hill it is stated (at p. 34, Vol. 1 of the 5th Edn.) thus: "The doubt to be reasonable must be such a one as an honest, sensible and fair-minded man might, with reason, entertain consistent with a conscientious desire to ascertain the truth. An honestly entertained doubt of guilt is a reasonable doubt. A vague conjecture or an inference of the possibility of the innocence of the accused is not a reasonable doubt. A reasonable doubt is one which arises from a consideration of all the evidence in a fair and reasonable way. There must be a candid consideration of all the evidence and if, after this candid consideration is had by the jurors, there remains in the minds a conviction of the guilt of the accused, then there is no room for a reasonable doubt." 11. ...." 12.5. *Leela Ram v. State of Haryana* (1999) 9 SCC 525 : 2000 SCC (Cri) 222: (SCC pp. 532-33, paras 9-10) "9. Be it noted that the High Court is within its jurisdiction being the first appellate court to reappraise the evidence, but the discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not

render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence. In this context, reference may be made to the decision of this Court in *State of U.P. v. M.K. Anthony* (1985) 1 SCC 505 : 1985 SCC (Cri) 105. In para 10 of the Report, this Court observed: (SCC pp. 514-15) "10. While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hyper- technical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals." 10. In a very recent decision in *Rammi v. State of M.P.* (1999) 8 SCC 649 : 2000 SCC (Cri) 26 this Court observed: (SCC p. 656, para 24) "24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny." This Court further observed: (SCC pp. 656-57, paras 25- 27) "25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness. No doubt Section 155 of the Evidence Act provides scope for impeaching the credit of a witness by proof of an inconsistent former statement. But a reading of the section would indicate that all inconsistent statements are not sufficient to impeach the credit of the witness. The material portion of the section is extracted below: "155. Impeaching credit of witness.-The credit of a witness may be impeached in the following ways by the adverse party, or, with

the consent of the court, by the party who calls him- (1)-(2) \* \* \* (3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;" 26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be "contradicted" would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to "contradict" the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of the Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to "contradict" the witness. 27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide *Tahsildar Singh v. State of U.P.* AIR 1959 SC 1012 : 1959 Cri. LJ 1231)"" 12.6. *State of H.P. v. Lekh Raj* (2000) 1 SCC 247 : 2000 SCC (Cri) 147: (SCC pp. 259-60, para 10) "10. The High Court appears to have adopted a technical approach in disposing of the appeal filed by the respondents. This Court in *State of Punjab v. Jagir Singh* (1974) 3 SCC 277 : 1973 SCC (Cri) 886 held: (SCC pp. 285-86, para 23) "23. A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures." The criminal trial cannot be equated with a mock scene from a stunt film. The legal trial is conducted to ascertain the guilt or innocence of the accused arraigned. In arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The hyper-technicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hyper-technical approach has

to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. Criminal jurisprudence cannot be considered to be a utopian thought but have to be considered as part and parcel of the human civilisation and the realities of life. The courts cannot ignore the erosion in values of life which are a common feature of the present system. Such erosion"s cannot be given a bonus in favour of those who are guilty of polluting society and mankind." 12.7. Gangadhar Behera v. State of Orissa (2002) 8 SCC 381 : 2003 SCC (Cri) 32: (SCC pp. 292- 93, para 15) "15. To the same effect is the decision in State of Punjab v. Jagir Singh (1974) 3 SCC 277 : 1973 SCC (Cri) 886 and Lehna v. State of Haryana (2002) 3 SCC 76 : 2002 SCC (Cri) 526. Stress was laid by the appellant-accused on the non-acceptance of evidence tendered by some witnesses to contend about desirability to throw out the entire prosecution case. In essence prayer is to apply the principle of falsus in uno, falsus in omnibus (false in one thing, false in everything). This plea is clearly untenable. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. It is the duty of the court to separate the grain from the chaff. Where chaff can be separated from the grain, it would be open to the court to convict an accused notwithstanding the fact that evidence has been found to be deficient to prove guilt of other accused persons. Falsity of a particular material witness or material particular would not ruin it from the beginning to end. The maxim falsus in uno, falsus in omnibus has no application in India and the witnesses cannot be branded as liars. The maxim falsus in uno, falsus in omnibus has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a mandatory rule of evidence". (See Nisar Ali v. State of U.P. AIR 1957 SC 366 : 1957 Cri. LJ 550) Merely because some of the accused persons have been acquitted, though evidence against all of them, so far as direct testimony went, was the same does not lead as a necessary corollary that those who have been convicted must also be acquitted. It is always open to a court to differentiate the accused who had been acquitted from those who were convicted. (See Gurcharan Singh v. State of Punjab AIR 1956 SC 460 : 1956 Cri. LJ 827.) The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because a witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The

aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggeration, embroideries or embellishment. (See *Sohrab v. State of M.P. and Ugar Ahir v. State of Bihar* AIR 1965 SC 277 : (1965) 1 Cri. LJ 256.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel v. State of M.P.* AIR 1954 SC 15 : 1954 Cri. LJ 230 and *Balaka Singh v. State of Punjab* (1975) 4 SCC 511 : 1975 SCC (Cri) 601.) As observed by this Court in *State of Rajasthan v. Kalki* (1981) 2 SCC 752 : 1981 SCC (Cri) 593 normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorised. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi v. State of Bihar* (2002) 6 SCC 81 : 2002 SCC (Cri) 1220. Accusations have been clearly established against the appellant-accused in the case at hand. The courts below have categorically indicated the distinguishing features in evidence so far as the acquitted and the convicted accused are concerned." 12.8. ...."

12.9. *Zahira Habibullah Sheikh (5) v. State of Gujarat* (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8: (SCC pp. 395-97, paras 37 & 40) "37. A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact or relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. The proof of charge which has to be beyond reasonable doubt must depend upon judicial evaluation of the totality of the evidence, oral and circumstantial, and not by an isolated scrutiny. \* \* \* 40. ... Consequences of defective investigation have been elaborated in *Dhanaj Singh v. State of Punjab* (2004) 3 SCC 654 : 2004 SCC (Cri) 851. It was observed as follows: (SCC p. 657, paras 5-7) "5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of*

M.P. (1995) 5 SCC 518 : 1995 SCC (Cri) 977) 6. In *Paras Yadav v. State of Bihar* (1999) 2 SCC 126 : 1999 SCC (Cri) 104 it was held that if the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party. 7. As was observed in *Ram Bihari Yadav v. State of Bihar* (1998) 4 SCC 517 : 1998 SCC (Cri) 1085 if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh* (2003) 2 SCC 518 : 2003 SCC (Cri) 641." 12.10....." 12.11. *State of Rajasthan v. Jaggu Ram* (2008) 12 SCC 51 : (2009) 1 SCC (Cri) 317: (SCC pp. 60-62, paras 27-29) "27. In our considered view, this was a fit case for invoking Section 106 of the Evidence Act, which lays down that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. In *Ram Gulam Chaudhary v. State of Bihar* (2001) 8 SCC 311 : 2001 SCC (Cri) 1546 this Court considered the applicability of Section 106 of the Evidence Act in a case somewhat similar to the present one. This Court noted that the accused after brutally assaulting a boy carried him away and thereafter the boy was not seen alive nor his body was found. The accused, however, offered no explanation as to what they did after they took away the boy. It was held that for the absence of any explanation from the side of the accused about the boy, there was every justification for drawing an inference that they had murdered the boy. It was further observed that even though Section 106 of the Evidence Act may not be intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the section would apply to cases like the present, where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding death. The accused by virtue of their special knowledge must offer an explanation which might lead the court to draw a different inference. 28. In *Trimukh Maroti Kirkan v. State of Maharashtra* (2006) 10 SCC 681 : (2007) 1 SCC (Cri) 80 a two-Judge Bench of which one of us (G.P. Mathur, J.) was a member, considered the applicability of Section 106 of the Evidence Act and observed: (SCC pp. 689-91, paras 13-15) "13. .... 14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* 1944 AC 315 : (1944) 2

All ER 13 (HL) - quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*). The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads: "(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him." 15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation." Similar view has been expressed in *State of Punjab v. Karnail Singh*, *State of Rajasthan v. Kashi Ram* (2006) 12 SCC 254 : (2007) 1 SCC (Cri) 688 and *Raj Kumar Prasad Tamarkar v. State of Bihar* (2007) 10 SCC 433 : (2007) 3 SCC (Cri) 716. 29. We are sure, if the learned Single Judge of the High Court had adverted to Section 106 of the Evidence Act and correctly applied the principles of law, he would not have committed the grave error of acquitting the respondent." 18. About the standard of proof, the Hon'ble Supreme Court in *State of U.P. v. Awdhesh*, (2008) 16 SCC 238 held that, 11. "22. A person has, no doubt, a profound right not to be convicted of an offence which is not established by the evidential standard of proof beyond reasonable doubt. Though this standard is a higher standard, there is, however, no absolute standard. What degree of probability amounts to "proof" is an exercise particular to each case. Referring to the interdependence of evidence and the confirmation of one piece of evidence by another, a learned author says [see "The Mathematics of Proof II": Glanville Williams, *Criminal Law Review*, 1979, by Sweet and Maxwell, p. 340 (342)]: "The simple multiplication rule does not apply if the separate pieces of evidence are dependent. Two events are dependent when they tend to occur together, and the evidence of such events may also be said to be dependent. In a criminal case, different pieces of evidence directed to establishing that the defendant did the prohibited act with the specified state of mind are generally dependent. A junior may feel doubt whether to credit an alleged confession, and doubt whether to infer guilt from the fact that the defendant fled from justice. But since it is generally guilty rather than innocent people who make confessions, and guilty rather than innocent people who run away, the two doubts are not to

be multiplied together. The one piece of evidence may confirm the other." 23. Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt, but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case. 24. The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimisation of trivialities would make a mockery of administration of criminal justice. This position was illuminatingly stated by Venkatachaliah, J. (as His Lordship then was) in *State of U.P. v. Krishna Gopal* (1988) 4 SCC 302 : 1988 SCC (Cri) 928." 19. From the above, we can gather the following guiding principles in appreciating evidence in criminal trials, some of which are relevant to the present appeal : (1) While the prosecution has to establish its case beyond reasonable doubt, much weight cannot be given to minor discrepancies which are bound to occur on account of difference in perception, loss of memory and other invariable factors; (2) Discrepancies found in the ocular account of two witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses; (3) While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth and accordingly scrutinise the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness. It is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. The former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction; (4) Corroboration of evidence with mathematical niceties cannot be expected in criminal cases; (5) To contradict a witness must be to discredit the particular version of the witness. Therefore, unless the former statement has the potency to discredit the present statement, even if the latter is at variance with the former to some extent it would not be helpful to contradict that witness; (6) Once the prosecution demonstrates the probability of involvement of the accused but the accused takes a false plea, such false plea can be taken as an additional circumstance against the accused; (7) Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is *ex facie*

trustworthy on grounds which are fanciful or in the nature of conjectures. While appreciating evidence, the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society must be kept in mind. (8) To constitute reasonable doubt, it must be free from overemotional response. A reasonable doubt is not an imaginary, trivial or merely a possible doubt but a fair doubt based upon reason and common sense. (9) The principle of "falsus in uno, falsus in omnibus" (false in one thing, false in everything) has no application in India as it is merely a rule of caution. Even if a major portion of the evidence is found to be deficient, in case residue is sufficient to prove guilt of an accused, notwithstanding acquittal of a number of other co-accused persons, his conviction can be maintained. (10) Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (11) As provided under Section 106 of the Evidence Act when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. (12) In case of a defective investigation the court has to be circumspect in evaluating the evidence. But it could not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective. 20. Having recapitulated the relevant principles of law thus, we will proceed to examine the submissions raised by the appellant in this appeal in the light of these principles. 21. Ld. Counsel for the appellant submits that though it was the case of the prosecution that the victim girl was mentally retarded as also mentioned in the FIR, the victim was not examined by the I.O. of the case even during the investigation and her statement not recorded under Section 161 of the Cr.P.C. He further contends that even though the victim girl was examined by an Associate Professor and Head of the Department of the Department of Psychology, Regional Institute of Medical Sciences, Imphal of her mental condition, the said Psychological Report though listed in the Charge Sheet was not produced and proved nor the Psychologist who examined the victim girl had testified. Thus the assertion of the prosecution that the victim girl was mentally retarded cannot be said to have been proved. 22. The Ld. Counsel relying on the decision of the Gauhati High Court in *State of Mizoram v. Lalzarliana*, 2006 Cri. L.J. 3504 contended that a duty was cast on the trial Court to examine such witnesses as regards the mental condition of the victim as empowered under Section 311 of the Cr.P.C. as the victim had died before the trial commenced. However, since no relevant witnesses were examined on this aspect by the Court, the trial was flawed. 23. In view of the above contentions raised by the appellant, one of the issues to be considered by this Court is whether non examination of any particular witness or the Psychologist or non production of the Psychology Report on the mental condition of the victim has vitiated the trial or not? 24. It is in evidence and not disputed by the appellant that the victim girl died sometime in

September, 2012 before completion of investigation and filing of charge sheet. This fact had been brought on record during cross examination of PW No. 2, Sorokhaibam Shanti Devi who was related to her. The deceased victim was the daughter of the aunt of PW No. 2. PW No. 2 also was her neighbour. PW No. 2 testified in her examination in chief that the victim was mentally retarded and that she did not understand the actual happenings due to her state of mind. This factual assertion went unchallenged in her cross examination, thus not disputed by the appellant. PW No. 3 who is also related to the victim and a neighbour stated in her deposition in the examination in chief that the victim who had then expired was mentally retarded. Her statement of the mental condition of the victim was also not questioned by the appellant during the cross examination. PW No. 4, also another relative and neighbour of the victim testified that the victim was mentally retarded, which statement also remained un-rebutted during the cross examination. Thus, as many as 4 witnesses testified that the victim girl was mentally retarded. These witnesses were not only relatives but who were staying in close quarters with the victim and as such they would have knowledge of the mental and physical condition of the girl and their evidence cannot be said to be untrustworthy, more so when their statement on this aspect had remained unchallenged by the defence during the trial. The appellant never raised any doubt or questioned the veracity of this claim by the witnesses during cross examination of these witnesses. The remaining testimonies of these witnesses on other aspects also have been not shaken and have been found to be reliable by this Court also as will be further discussed. 25. Therefore, in view of the credible and unshaken testimonies of the reliable witnesses, who are also relatives and neighbours of the victim girl to the effect that the victim girl was mentally retarded, we would hold that non examination of any particular expert witness or other family members of the victims or any medical report about the mental condition of the victim cannot render such a fact to have been not proved. 26. It has been also contended on behalf of the appellant that though the vaginal swab of the girl was taken and sent for forensic examination, the forensic report was never produced and proved by the prosecution. According to the appellant the prosecution has not proved the existence of any seminal fluid which would have shown any rape. Ld. Counsel for the appellant submits that it is clearly mentioned in the charge sheet that during investigation, the expert opinion in respect of the seized exhibits was received and the expert in his examination report dated 28th July, 2006 had opined that "Any seminal stain could not be found on the exhibits". The said document was listed at Sl. No. 10 of the list of documents mentioned in the charge sheet. However, the prosecution neither produced nor proved such a report which was favourable to the appellant. Accordingly, the Ld. Counsel for the appellant submits that it cannot be said that the prosecution has proved the charge against the appellant beyond reasonable doubt and as such the appellant is entitled to get benefit of doubt. 27. Though at first flush the submission of the appellant seems convincing, on closure examination it will be seen that in view of credible evidences otherwise available that the victim had been raped, as will be discussed hereinafter, non production

and proof of such forensic/medical report cannot be fatal to the prosecution case. Such forensic/medical report would at best be merely corroborating evidence. Absence of corroborating evidence, in the face of credible and direct evidence will not necessarily weaken the prosecution case. Only when the evidences cannot stand on their own without corroborating evidences, that such corroborating evidences have to be looked for. Likewise, if the principal evidences without corroborating evidences can stand on their own, corroborating evidences are mere addenda, absence of which will not materially affect the evidentiary value of the principal evidences. The evidence and testimony of PW No. 4 who had witnessed rape of the girl by the appellant had remained unshaken. Since PW No. 4 was the sole witness to the act of rape committed by the appellant, whose testimony was not shaken during the cross examination and which had been corroborated by other witnesses in all other aspects, it may be apposite to the reproduce the relevant portions of the testimony of PW No. 4 as follows: "I know the accused, S. Naoba Singh, who is now present before the Ld. Court, as he is a friend of my husband. Accused Naoba Singh is also my neighbour. My husband and the accused are close friends as well as neighbours and the family of my husband and that of victim Anarkali's family are also close relatives and residing in a same house in different rooms. The rooms of Anarkali and that of our kitchen are adjacent by partition of wall. We occupied the rooms after Smt. Gambhini left as she shifted to Iroishemba. In the said kitchen, there are two doors, which are located, one on the Northern side of the room and another on the Western side of the room (Kitchen). On that particular door, there is one small opening at the upper right corner. During the stay of Smt. Gambhini Devi, the said door was closed by G.I. Sheets. From that opening, I could see clearly the bedroom of victim Anarkali Devi. There were three beds, being kept in the room of Victim Anarkali Devi and on the Southern side bed, the victim usually sleeps with his mother. Anarkali's brothers use the other beds. On 3/8/2005, I was watching T.V. Programme in the room of one of my sisters. After some time, I went inside the kitchen to check whether the door was properly locked or not and found that the door which is located on the northern side was locked properly. While I was in the kitchen, I heard a voice of victim Anarkali's in her bedroom. However, I could not make any heels about the said voice as usually Anarkali and her brothers were found quarrelling frequently. All the family members of victim Anarkali are mentally retarded. After some time, the mother of accused Naoba Singh came and asked to my sister, Shanti Devi in my presence as to whether her son Naoba came and my sister answered that the accused did not come. After that, the mother of accused Naoba left the house and I also went inside my bedroom. Then, I checked the movement of mosquitoes inside the net. After some time, I came down from the bed and cleaned up the area where the leaves were scattered by my son. At that relevant time, I heard a suspected and peculiar sound from the victim Anarkali as if she was muffled with some object. Being fully suspecting, I straight away went to my kitchen and peeped through the opening in the Door, lying on the Western side of our kitchen. The room of the victim Anarkali was lit with an electric bulb so I

could see everything clearly. Suddenly, I saw a fully naked person lying on the body of victim Anarkali Devi and was moving his body up and down repeatedly. On seeing the scene, I was keen to see the face of the said person and peeped on the opening of the said door. Thereafter, I came to know that the said person was none other than the said accused Naoba. Thereafter, I came out from my kitchen and I met the younger brother of Anarkali, Gugu coming out from a room and I told him to ascertain who was inside their room. At that relevant time, one Hawai Chappal was found lying near the door of my sister, Sorodhoni, (P.W. No. 3) and on seeing that, Gugu said that the person inside their room might be Naoba. I was told that the accused Naoba was in the room of my said sister earlier. At that relevant time, I also informed to my other sisters about the presence of Naoba and about the scene I saw through the hole in the door and then my sisters and other members of the family went inside the room of Anarkali and thereafter dragged out Naoba. At that time, I saw Naoba being naked except for a T-shirt. Since, I have a breast-feeding child, I entered in my room and then I do not know any later happenings. On the next day, i.e., 4/8/2005, some police personnel came to our house and investigated into the case. During the course of investigation, my statement as well as the statement of other family members were also recorded by the said police personnel. The said police personnel also seized some articles in our presence and the said seized articles are :- 1. One Phanek, Chocolate in colour having some stains; 2. One Long pant, Black in colour, having some stains; 3. One pair of Hawai Chappal; 4. One I.D. Card of S. Naoba Singh; 5. One Authorisation Card issued in the name of accused S. Naoba Singh; The said police personnel also prepared a seizure memo for the said seized articles and I put my signatures on the said seizure memo. I can identify the said seizure memo if shown to me. Ext. P-4 is the said seizure memo. Ext. P-4/2 is my signature." (emphasis added) 28. PW No. 4 proved the seizure of the aforesaid articles during the trial. 29. Thus from the aforesaid testimony of PW No. 4, what can be culled out may be stated as follows: 1. Her (PW No.4) kitchen was located adjacent to the room of the victim girl, the place of occurrence, which was connected by two doors, one on the western side made of GI sheet was having a hole on the right corner. 2. She heard certain suspicious and peculiar sound from the room of the victim girl with muffled voice. 3. When she peeped through a hole of the door separating her kitchen from the room of the girl, she saw the appellant who was half naked moving up and down over the body of the girl. 4. She soon informed her sisters and others of what she saw, who then went inside and found the appellant and girl in semi naked condition and dragged the appellant out in that semi naked condition with only a T shirt on his body. 5. Identity Card and Authorisation Card belonging to the appellant and some other articles were later recovered from the place of occurrence. 30. The aforesaid evidence of PW No.4 could not be shaken during the cross examination. Apart from mere suggestions of denials, the testimony of PW No.4 on these crucial evidences had remained unshaken. The defence had tried to bring out certain contradictions or discrepancies in the testimony of PW No.4 by referring to her statement made under Section 161

Cr.P.C. However, apart from minor variations, no substantial difference had been made out. It is also to be remembered that the incident happened in 2005 and the witnesses, including P.W. No.4 were being examined in 2013, almost after about 8 years of the incident. As one's memory would tend to lapse in minor details after such a long period of time, this Court does not consider such minor discrepancies to be fatal, as there are no substantial variations in the crucial parts of the testimony. Neither are there fundamental differences or discrepancies in the testimony of P.W. No 4 with those of other witnesses. 31. What the Hon'ble Supreme Court had observed in the case of State of U.P. v. Noorie (Smt.), (1996) 9 SCC 104 may be noted, as reproduced herein below : "7. ....While assessing and evaluating the evidence of eyewitness the Court must adhere to two principles, namely, whether in the circumstances of the case it was possible for the eyewitness to be present at the scene and whether there is anything inherently improbable or unreliable. Credibility of the witness is to be decided by referring to his evidence and finding out how he has faced in cross examination and what impression is created by his evidence taken in other context of the case and not by entering into the realm of conjecture and speculation....." 32. PW No.4 was the immediate neighbour and relative of the victim girl and her (PW No.4) bedroom was separated from the room of the victim girl where the incident occurred only by her kitchen which was accessible through the doors as mentioned above. The incident occurred at around 9 p.m. when normally residents would be in their respective rooms or in their houses. PW No. 4 heard the sound of the victim girl when PW No. 4 went to her kitchen which was just adjacent to the room of the victim girl. After some time, when PW No. 4 was in her bedroom she again heard suspicious and muffled sound of the victim girl and thereafter, she went to see what was happening in the room of the victim girl through the hole in the door. Thus, the presence of PW No. 4 near the place of occurrence to witness the scene cannot be said to be improbable or untrustworthy. Soon after PW No. 4 saw the incident, she went out and informed her sisters and others who then went to the room of the victim girl where the appellant was found in a semi-naked condition inside the room. Evidence of PW No. 4 was not shaken in the cross examination. Therefore, there is nothing to doubt the credibility of the PW No. 4 even by judging her testimony in the light of the observation made by the Hon'ble Supreme Court in the aforesaid case of Noorie (supra). 33. The evidence of PW No.4 about her reporting soon thereafter to others of what she saw inside the room of the girl, and finding of the appellant and the girl inside the room in semi naked condition had been fully corroborated by other witnesses, viz. PW Nos. 2, 3 and 6 whose testimonies have also not been shaken. 34. The following crucial facts can be said to have been established in course of the trial: 1. That both the appellant and girl were found inside the room in semi naked conditions. 2. That the appellant had been dragged out from the room in a semi naked condition. 3. That the identity card of the appellant and authorisation card issued in his favour by the Railways authorities had been recovered from the room of the girl. 4. That the medical examination conducted on the body of the victim girl

contemporaneously indicated sign of recent sexual intercourse. 35. The appellant had given no explanation at all about the recovery of the aforesaid items from the room of the girl. Being the owner of the identity card and authorisation card which was not disputed by the appellant, it was incumbent upon the appellant to explain how these items were recovered from the room of the girl, which the appellant did not in course of the trial. It is to be noted that when the appellant was asked by the Court while examining him under Section 313 of the Cr.P.C. about the recovery of ID Card bearing No. 576 in his name issued by the Asstt. Commercial Manager, Railways Department and one Authorisation Card in his name bearing Card No. 1495 issued by the Commercial Manager, Railways Department, along with other articles like a pair of trousers, phanek, a pair of chappals, he replied that he does not have any idea. If the appellant has no idea of how his personal belongings like Identity Card and Authorisation Card which normally one carries on his body were recovered from another location where he does not stay, he owed a duty to explain the presence of these items in the room of the girl. Some kind of explanation was forthcoming from him about the recovery of these items from the place of occurrence which he failed to do when he was given the opportunity to do so. Thus, recovery of these personal items from the place of occurrence conclusively proves that the appellant was in the room of the victim. In that event, he had also some explanation to give as to what he was doing in the room, that too in a semi naked condition with a girl who was in similar condition. By maintaining silence on a crucial aspect of the narration of the prosecution which only he can satisfactorily explain, he implicitly acquiesced to the prosecution case based on the witness accounts and other evidences. In such a situation, he cannot claim that there is reasonable doubt on the prosecution case. This Court, therefore, would hold that it has been conclusively proved that the appellant was in the room of the girl in a semi naked condition at the relevant time. 36. The question which would naturally arise is, what the appellant was doing inside the room of the girl in a semi naked condition when the girl was also found in similar condition? He failed to explain his position by maintaining silence. He, however, had made a faint attempt to explain his position by suggesting in course of the cross examination of P.W. No.4 that some of the persons including PW No. 4 by taking advantage of his intoxicated condition had put him in the room of the girl and forcibly took out his trousers so that he could be accused of raping the girl. The defence while cross examining PW 4 had made the suggestion which she denied as follows: "I deny the suggestion that taking advantage of his intoxication, I, in collusion with Sorodhoni, Shanti and some others put him in the room of the alleged victim Anarkali and forcibly removed his pant so that the accused could be charged of rape against the said Anarkali" (emphasis added) By this suggestion coming from the defence/appellant himself, he was admitting that he was in an intoxicated condition and was present in the room of the girl at the relevant time. Incidentally, the P.W. No. 6 also during his cross examination stated that the appellant was in an intoxication condition with alcohol. However, the appellant never made any serious attempt to prove his case of blackmailing by adducing

evidences. It was a half hearted attempt to evade the blame. However, we are not holding the view that because of his inability to explain himself, the charge against him is proved. The finding of guilt by the trial court was not because of this weak defence but on the basis of direct and corroborative evidences as already discussed above. We thus do not find any reason to disagree with the finding by the trial court. The fact of commission of rape of the girl by the appellant had been established by trustworthy testimony of the PW No.4, the direct witness of the crime whose testimony had not been shaken and which has been corroborated by other witnesses and evidences in material aspects. 37. It may also be noted that the girl was taken for a medical examination on 5.8.2008 within two days of the incident who was examined by PW No.7, Dr. Thounaojam Meera who had testified in the trial that in her opinion there was evidence of recent sexual intercourse with the victim and she (PW No.7) proved the medical report prepared by her after examining the girl. Thus, this contemporaneous medical report and testimony of the doctor who performed the medical examination corroborates the evidence of P.W. No. 4 that the girl was raped by the appellant. 38. The appellant would also urge that the fact that the forensic report was not produced in respect of the seized materials which included the pants, phanek (female clothing) showing that there was no seminal stain in those and also the fact that the result of the vaginal swab had not been produced in course of the trial would throw a doubt on the prosecution case. In this regard it is to be remembered that for the purpose of establishing rape, presence of semen is not absolutely necessary, as mere penetration is sufficient to establish rape. Existence or proof of ejaculation by the male, which would result in deposit of semen on the body or clothing, is not sine qua non for establishing commission of rape as mere penetration is sufficient to constitute rape. The medical opinion on the clothing or the vaginal swab even if returned as negative would not have made much difference. When other credible and reliable evidences are available to prove the charge of rape, absence of such evidences which are in the nature of corroborating evidences would not be fatal to the prosecution case. 39. It had been held by the Hon''ble Supreme Court in State of M.P. v. Dayal Sahu, (2005) 8 SCC 122 that in certain situation non-production of a medical report would not be of much consequence if the other evidence on record is believable. It has been held in the aforesaid case that, 12. In the case of Ranjit Hazarika v. State of Assam (1998) 8 SCC 635 : 1998 SCC (Cri) 1725 it was pointed out in para 5 at SCC p. 637 as under: "5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her

statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

13. .... 14. ....Non-examination of doctor and non-production of doctor's report would not be fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence....." Though the victim girl could not be examined, as she had already expired before the trial commenced, there was credible and trustworthy evidence of the direct witness by PW No. 4. 40. It is also to be noted that though the appellant had contended that the fact that investigating officer of the case had not produced the medical/forensic reports as well as the psychological report, would cast a doubt on the prosecution case, this issue was never raised by the appellant. This shortcoming was never raised by the appellant when the investigating officer was examined as the same could have been explained only by the investigating officer. Thus, in absence of questioning of the I.O. during his examination in course of the trial about these shortcomings, the appellant cannot take advantage by any such lapse on the part of the I.O. and no adverse inference can be drawn against the prosecution because of non examination/production of the aforesaid reports as also observed in *Vijay v. State of M.P.*, (2010) 8 SCC 191. In *Vijay* (supra) the Hon'ble Supreme Court observed as follows : "35. Undoubtedly, Asha @ Gopi, the prosecutrix had stated in her deposition that she was sent for a radiological test to Jabalpur and she could not explain as to why the report of the radiological test could not be produced before the trial court. In fact, the circumstances under which the report of the radiological test could not be produced before the trial court, would have been explained only by the investigating officer. Unfortunately, there is nothing on record to show that the defence had put any such question to the IO during his examination before the trial court. In our opinion, the IO was the only competent person to throw light on the issue of the non-production of the report of the radiological test and in the facts and circumstances of this case, no adverse inference can be drawn against the prosecution in this issue. More so, the prosecution had no control over the prosecuting agency. Same remains the position for not holding the test identification parade in this case." (emphasis added) 41. The appellant has laid much stress in trying to demonstrate that the prosecution case has not been proved beyond reasonable doubt. Referring to the evidence of P.W. No. 4, where she stated that she had seen the incident of the appellant committing rape on the girl through a hole on the door located on the western part of the kitchen of the P.W. No. 4, learned counsel for the appellant

has submitted that existence of a hole on the door has not been recorded in the sketch map of the place of occurrence. He submits that in the sketch map, the location of the room and the doors has been shown but the presence of the hole through which the P.W. No. 4 saw the incident has not been shown, thus, casting a serious doubt on the testimony of the P.W. No. 4 that she saw the incident by peeping through a hole on the door. 42. Learned counsel for the appellant further submits that the I.O. who was examined as P.W. No. 9 also admitted that the rough sketch map was not prepared by him in his handwriting and that he cannot say who prepared the same. Thus, learned counsel for the appellant has stressed upon this statement of the I.O. which would clearly indicate that there was no proper investigation and since the presence of the hole which is a very crucial part of the evidence of the P.W. No. 4 has not been reflected in the sketch map, the presence of the hole cannot be said to have been established and hence, her testimony could not be believed. 43. We are not able to accept this contention of the appellant. Though the I.O. during the cross examination stated that the rough sketch map was not prepared by him, he also clarified that he had signed it after knowing the contents. Thus, he was aware of the said sketch map even if he himself did not prepare the same. Secondly, it is to be noted that the victim evidently belongs to a poor family as she was the daughter of a sweeper. Though it has not been given in any evidence that the room in which the girl was staying was not a pucca building without proper door, it is seen from the evidence of P.W. No. 4 that the said door was made of GI sheet which clearly indicates that it was not a pucca or proper door in the normal sense of the term but some kind of a kuccha door, and as such, the existence of hole in a door made of GI sheets cannot be said to be an impossibility. Therefore, merely because the existence of the hole on the door made of GI sheet was not indicated in the sketch map, existence of it cannot be ruled out and it cannot be said to be a fatal defect. In fact, when asked, P.W. No. 4 in her cross examination had reiterated that she knew about the hole in the upper right corner of the door which was made of GI sheet, which evidence has not been shaken during the cross examination. It may be also mentioned that during the cross examination of the I.O. of the case who had visited the place of occurrence and described the existence of two doors in the room of the victim in the sketch map, nothing was enquired of or questioned about the non existence of the hole on the western door made of GI sheets. Therefore, this Court would hold that such discrepancy/shortcoming in not recording of the existence of the hole on the door in the sketch map cannot be said to be of such a fundamental flaw so as to cast any doubt on the evidence of P.W. No. 4. 44. Mr. L. Seityendra, learned counsel for the appellant has tried to suggest that taking advantage of the intoxicated condition of the appellant, the victim's family and others had tried to blackmail the appellant into giving huge ransoms by labelling false charges against him and when the appellant refused to agree to their ransom, this false charge of rape had been foisted against him, which will also explain the delay in filing the FIR and the meeting held in the night of the incident by the locality people and filing of FIR only on the next day. However, this Court cannot entertain such a plea

taken by the appellant at this stage without there being any supporting evidence. The mere suggestion put to PW No.4 during the cross examination as referred to above cannot establish this plea without any further evidences. 45. Learned counsel for the appellant has submitted that the prosecution has not examined any of those persons who had allegedly dragged the appellant out of the room of the victim girl, except the P.W. No. 4, though their names have been cited amongst the list of witnesses in the charge sheet. This Court is of the view that failure to examine all the witnesses mentioned in the charge sheet cannot weaken the case of the prosecution if there are sufficient witnesses/evidences otherwise to prove the charge against the accused. Learned counsel also contended that none of the immediate relatives including the mother of the victim girl had been examined in the trial. We are of the view that as they were not present at the relevant time of the incident, their non examination will not affect the prosecution case, neither it will help the appellant. 46. In this case, we may also examine as to what would constitute reasonable doubt on the prosecution case which would entitle the appellant to the benefit of doubt. The appellant has not been able to demonstrate that any of the crucial facts disclosed in course of the trial, which taken together established the charge of rape, is doubtful, in the sense that there was realistically not possible and that these were mere fanciful or imaginary doubts. The fact that the girl was mentally retarded was proved. The fact that the appellant was found in the room of the girl along with the girl in semi naked condition had been proved. The fact that appellant was dragged out from the room of the girl in a semi naked condition had been proved. The fact that the appellant's identity card, authentication card were recovered from the room of the girl had been proved. The fact that the medical examination by an approved medical doctor contemporaneously who gave the opinion that there was evidence of recent sexual intercourse in the body of the girl had been proved. These crucial facts, in juxtaposition with the ocular evidence of PW No.4, which had remained unshaken, and corroborated by other witnesses in the light of the law as discussed above, prove the commission of rape by the appellant of the victim girl beyond reasonable doubt. The appellant had miserably failed to demonstrate that any of these crucial facts was doubtful, so as to entitle him to get the benefit of doubt. 47. Therefore, the Court for the reasons discussed above, would hold that the charge of rape against the appellant has been proved beyond reasonable doubt and we see no reason to interfere with the judgment dated 29.12.2015 of the Ld. Sessions Judge, Imphal West rendered in Sessions Trial Case No. 12 of 2012/63/13/27 of 2015 and order of sentence dated 31.12.2015 and accordingly dismiss the appeal, as devoid of merit. .