

(2014) 04 GUJ CK 0087
In the Gujarat High Court
Case No : Criminal Appeal No. 1283 of 2009

Tribhovan @ Tilo Rayjibhai Bhoi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 28-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 376, 376(Chh), 376(f), 506(2)

Citation : (2014) 04 GUJ CK 0087

Hon'ble Judges : Bhaskar Bhattacharya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Prabhakar Upadyay, Advocate for the Appellant; K.P. Raval, Addl. Public Prosecutor, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—This appeal is at the instance of a convict u/s 376 and 506(2) of the Indian Penal Code and is directed against an order of conviction and sentence dated 15th November 2008 passed by the learned Additional District and Sessions Judge, Anand in Sessions Case No. 69 of 2008 thereby holding the appellant guilty of the offences punishable u/s 376 and 506(2) of the Indian Penal Code and imposing sentence of life imprisonment and a fine of Rs. 200/- for the offence punishable u/s 376 of the Indian Penal Code; in default of payment of fine, the appellant was directed to suffer further imprisonment for one month. So far as the offence punishable u/s 506(2) of the Indian Penal Code was concerned, the appellant was ordered to suffer rigorous imprisonment for one year and a fine of Rs. 100/- with a further stipulation that in default of payment of fine, he should suffer rigorous imprisonment for one month.

2. Being dissatisfied, the convict has come up with the present appeal.

3. The translated version of the charge is quoted below:

On 13th January 2008, during 19-30 to 20-00 hours, at the village Dagjipura, while the daughter of the complainant-Alka [name changed by us], aged 12 years, was coming after delivering milk at dairy, you the accused followed her and caught her in darkness. You the accused had brought her in the compound of Boriyabhai and gagged her mouth with handkerchief, and committed the rape-physical intercourse with her against her will and consent. You the accused has committed the offence punishable u/s. 376(Chh) of the Indian Penal Code.

On the aforesaid date, time and place, while the daughter of the complainant-Alka [name changed by us] aged 12 years, was coming after delivering milk at dairy, you the accused followed her and caught her in darkness. You the accused had brought her in the compound of Boriyabhai and gagged her mouth with handkerchief, and committed the rape-physical intercourse with her against her will and consent. You the accused had threatened her by showing a knife that if she will tell to anyone, you will kill her by inflicting a knife blow when she will come to deliver the milk. You the accused has committed the offence punishable u/s. 506(2) of The Indian Penal Code.

As I have the jurisdiction to proceed with the trial of the aforesaid offences, therefore, I pass the order to conduct the trial against you in this court.

3.1 The appellant denied the charges and claimed to be tried.

3.2 At the trial, the prosecution examined the following 14 witnesses in support of the prosecution case:-

3.3 The prosecution also produced the following pieces of documentary evidence:-

3.4 After conclusion of the evidence, the statement of the accused u/s 313 of the Criminal Procedure Code was recorded wherein the accused denied the allegations made against him. The accused, however, did not adduce any evidence of his own in defence.

3.5 As indicated earlier, the learned Sessions Judge, by the order impugned in this appeal, found the appellant guilty and passed consequent sentence as stated earlier.

4. Mr. Upadhyay, the learned advocate appearing on behalf of the appellant strenuously contended that the learned trial Judge committed gross error in appreciating the evidence on record and in holding the appellant guilty. Mr. Upadhyay contends that according to the prosecution case, the alleged incident occurred on 13th January 2008 whereas the First Information Report was filed only on 17th February 2008, and such fact itself indicates that the allegation was a baseless one. According to Mr. Upadhyay, if we go through the evidence given by the three Doctors examined by the prosecution, it would appear that their versions are totally contradictory and none of the Doctors has confirmed the incident of rape. According to Mr. Upadhyay, the prosecution acted in a malafide way and tried to rely upon the extra-judicial confession of the accused to the

Doctor when the accused was in police custody. Mr. Upadhyay contended that the alleged confession in the history of the case allegedly stated by the accused is inadmissible in evidence. According to Mr. Upadhyay, if we exclude that piece of evidence, no reasonable individual having regard to section 3 of the Evidence Act would consider the evidence adduced by the prosecution to be sufficient to conclude the guilt of the appellant. Mr. Upadhyay, therefore, prays for setting aside the order of conviction.

5. Mr. Raval, the learned Additional Public Prosecutor appearing for the State, has, on the other hand supported the impugned order and has contended that there is no just reason to disbelieve the version of the victim. Even no suggestion has been given to the prosecution witnesses indicating that there was any enmity between the family of the accused and that of the complainant. Mr. Raval further contends that even no direct suggestion has been given to the victim that she was not raped by the accused. In such circumstances, according to Mr. Raval, the findings recorded by the learned Trial Judge was quite justified, and Mr. Raval, therefore, prays for dismissal of the appeal.

6. Before we proceed to enter into the respective submissions of the learned counsel for the parties, we propose to consider the oral evidence adduced by the prosecution witnesses in detail.

7. Bharatbhai [name changed by us], the complainant, is PW. No. 1. In his examination-in-chief he has stated that he has one daughter and two sons. Alkaben [name changed] is his elder daughter and she is 12 years old at present. He has two sons, [whose name he has given in his deposition which we are not stating here] who are aged 7 years 2 years. He was doing farming and he has buffaloes. His daughter goes to deliver its milk in the dairy of his village.

7.1 His daughter had gone to deliver milk in the milk dairy of their village at about 07: 30 pm on the previous day of uttarayana i.e. on 13th January 2008. He had returned to home at 08: 30 pm. There was uttarayana festival on the next day. As his daughter was crying on that day, her mother Manishaben [name changed by us] had asked her as to what happened to her. On asking such, his daughter told that she had bleeding from her private part. Thereafter, as his wife had asked her further and as his wife had seen, she felt that his daughter is in periods. Thereafter, they had taken her in the hospital of Lathiya at Bhalej for the treatment on the next day. Lathiya hospital had given medicines regarding period and though they continued taking treatment at home regularly, the bleeding from her private organ did not stop and the wife of his brother-in-law-Preetiben [name changed by us] had used to look after his daughter but there was no change in her situation. Therefore, as the wife of his brother-in-law-Preetiben [name changed by us] inquired from Alkaben, she told Preetiben [name changed by us] while crying that when she had gone to deliver milk on 13th January 2008 and when she returned after delivering milk, Tribhovan had sat at his door and on seeing her, Tribhovan followed her till the courtyard of Berabhai, where he gagged her with handkerchief and had taken her behind the courtyard. This

witness further stated that according to his daughter, Tribhovan had taken out her clothes and thereafter, he raped her, and after committing rape, Tribhovan had shown her a knife and threatened her that if she would tell anyone, he will kill her by inflicting blows of knife when she will come to deliver milk and therefore, his daughter did not tell to anyone. As his daughter stated such fact to the wife of his brother-in-law-Preetiben [name changed by us], she had told such fact to this witness. Therefore, they had gone Umreth and they had lodged a complaint after going there. The police has written down the fact which he had dictated in the complaint. He has proved the complaint and has identified his signature thereon.

7.2 This witness has further stated that his daughter was studying in std. V at the time of giving the deposition. She was studying at Primary School, Dagjipura. He had dictated the complaint on 16th February 2008. The accused had threatened his daughter, therefore she did not state such fact to anyone. Therefore, there is the delay of one month in lodging the complaint and as there was bleeding from the private organ of his daughter, the treatment thereof was going on. Therefore, there was the delay. This witness stated that he could identify the clothes worn by his daughter on 13th January, if it was shown. The witness has identified the nicker, the leggings and top worn by his daughter on the date of the incident. He has also identified the accused who was present in the Court. This witness has further stated that the police came after he had lodged the complaint and he had produced the birth certificate of his daughter. He has further stated that his daughter was born at the home at Dagjipura and according to his memory, his daughter was born in the year 1996 but he did not know the date and month. He has proved the birth certificate of the victim issued by Talati-cum-Mantri, Dagjipura, Umreth. This witness has further stated that after lodging the complaint, his daughter was taken to Umreth Hospital and as they refused, they had gone to Bharoda. The laboratory test was conducted there. Thereafter, she was admitted in Karamsad Krishna Hospital, and she was given the treatment there. This witness has stated that he, his daughter and the wife of his brother-in-law were in the hospital when his daughter was given the treatment.

7.3 In the cross-examination of this witness by the learned advocate for the accused, this witness has stated that he had studied up to std. VI in Gujarati medium. He was doing field labour work. His daughter goes to deliver milk in the morning also. There is a distance of about 200 feet between his house and the milk dairy. As there is a curved road, the milk dairy cannot be seen from his house. When he had gone to lodge the complaint in the police station, his daughter and the wife of his brother-in-law were also present with him and he had dictated the complaint. This witness has stated that he had dictated the complaint as per the say of the wife of his brother-in-law.

7.4 This witness was asked a question as to whether he had dictated the complaint as per the say of the wife of his brother-in-law, and this witness

replied that he dictated the complaint as per the say of the wife of his brother-in-law, but, it was dictated after inquiring from his daughter.

7.5 This witness had further stated that he had gone to lodge the complaint to Umreth Police Station at 04: 00 pm. and he had waited for half an hour in the police station. Thereafter, his daughter was taken to the hospital. This witness has stated that he had not gone Umreth Hospital. Therefore, he did not know as to how long they stayed in the hospital. After his daughter was taken to the hospital, he came to Umreth Police Station, and when they returned to the police station, the time was about 7 O'clock. Thereafter, they have not gone to the home. Thereafter, they had gone Bharoda and it might be 08: 00 hrs. at Bharoda. Thereafter, they all had gone to the home. This witness has stated that he had not gone the police station directly, but he had gone to Bharoda and they had reached at Bharoda at 10: 00 am. They were sent to Karamsad Hospital from there. This happened on the next day of lodging the complaint. A yadi was given from Bharoda and they had gone Karamsad Hospital. This witness has thereafter stated that he was called at Bharoda on date 18. He had reached at Karamsad Medical Hospital with a yadi at 11: 00 am. At that time, he was alone. He had taken his daughter at Karamsad and his daughter was not sent back from there, but she was admitted. His daughter was admitted for two days in Karamsad Hospital. He has denied that his daughter has not dictated any fact on the day of incident. This witness has stated that he did not know as to whether there was bleeding from the private organ of his daughter when she returned on 13th. This witness has stated that his daughter has not made such complaint on 13th. His daughter was taken at the hospital of Dr. Lathiya on 16th January, 2008. The medicine was given there after examining. Nothing else was asked. Dr. Lathiya did not tell him to take his daughter to another hospital. As they felt that his daughter was in period, they did not ask anything else to the Doctor. Dr. Lathiya had written down the medicine for one month. As there was no fruitful result from those medicine, they started household medicine. This witness has stated that he was not a doctor. He has denied that they have not followed the medicine prescribed by the doctor and they had started household medicine. This witness has stated that it was not dictated in his complaint that Tribhovan had sat in the door, but it was dictated that he sat in front of the house. There is the distance of about 25-30 feet between his home and Tribhovan's house. If anyone passes nearby my house, one may know about the movement. Tribhovan has never come to his home earlier. He has denied that there is any discord between them and the family of Tribhovan. He has denied that there was marriage at the house any Muslim on 13th in the village. He has denied that his daughter might have gone to the marriage and she might have fallen down and sustained injury while dancing-playing. The police had come to village immediately after he dictated the complaint. Thereafter this witness has stated that the police had come on the next day in his presence, i.e. the police had come on the next day of lodging the complaint. He did not know as to whether the police had recorded the statement of the victim on the day when the complaint was lodged. His

daughter was inquired. He did not know because he was made to sit inside and his daughter was inquired. The police made him to sit outside when Preetiben [name changed by us] was inquired. He knew Gokalbhai Thakor and Shantibhai Dahyabhai Thakor. He has admitted that they are his relatives. He has denied that such incident has not taken place. He has denied that the accused has not committed such act with his daughter as she states.

8. Alkaben [name changed], the victim, is PW. No. 2. She being a minor, the trial Court put certain questions to ascertain her ability to depose, and after ascertaining that the witness was able to give deposition, her deposition was recorded. In her examination-in-chief, she has stated that she was studying in std. V at the primary school, Dagjipura. She has two brothers [whom she has named in the deposition, which we are not mentioning]. They have buffaloes at their house and she used to go to the society of the village to deliver the milk.

8.1 This witness has further stated that she had gone to deliver milk in the milk dairy at 07: 30 pm on the previous day of Uttarayana. While she was returning to the home after delivering milk, Tribhovan was following her. Tribhovan had caught her in front of the outskirt of Berabhai, gagged her mouth with a handkerchief and he had taken out her clothes. She had worn dress on the day of incident. After taking out her clothes, Tribhovan had taken out his clothes and he raped her. According to this witness, by the word "rape" she meant that Tribhovan had sat over her and thereafter, he had shown a knife to her and told her that he would kill her if she would shout. He had sat over her at her urinary part (secret organ) and had committed rape. Thereafter, Tribhovan put the clothes on her and she came to her house. She has identified the nicker, leggings and the top worn by her at the time of incident. The police had taken the aforesaid clothes from her. She did not tell her parents about the rape committed by Tribhovan, as Tribhovan had shown her a knife, she did not tell this fact.

8.2 This witness has further stated that there was the festival of Uttarayana on the next day. As there was bleeding from her urinary part (private part), she stated to her aunt Preetiben [name changed by us] and her mother Manishaben [name changed by us] that there was bleeding from her urinary part. Thereafter, she was taken to Bhalej hospital and treatment was made. She had stated her aunt that Tribhovan had committed the aforesaid act with her and her aunt had stated the fact to her parents. Her father had lodged the complaint regarding the incident in Umreth Police Station. She had gone there. They had gone to Bharoda hospital from Umreth Police Station and thereafter, they had gone to Karamsad Hospital from Bharoda. She was admitted for three days in Karamsad Hospital. Tribhovan is of her village. Therefore, she knew him. She has also identified the accused who was present in the court. This witness has stated that she was afraid of him, even on the date of giving deposition. The police had inquired her with regard to the complaint lodged by her father. She had stated to the police that Tribhovan had committed the act of rape with her.

8.3 In the cross-examination of this witness by the learned advocate for the

accused, this witness has stated that the milk dairy is situated in the middle of the village. She used to go to deliver milk in the dairy in the morning also. This witness has admitted that when she returns after delivering milk in evening, there is darkness. She has admitted that nothing can be seen in darkness. She has admitted that there are many houses between her home and the dairy. She used to go to deliver milk by herself. She did not go with the force of anyone. When she used to go to deliver milk, none of her friends accompany her and she used to go alone. When Tilla had committed rape with her, there was no bleeding from her private part. She had told her mother in this regard on the next day. She was given only the medicine from Bhalej Hospital. She was not asked to go to another hospital Dr. Lathiya had examined her after taking out the clothes. Dr. Lathiya had written down the tablets after examining her. She had stated to her mother and her aunt the fact in respect of rape committed by Tribhovan. Her father had dictated the complaint as per the say of her mother and her aunt. When her father went to lodge the complaint, this witness, and her aunt had accompanied her father. She did not remember as to what was the time when they went to dictate the complaint. On asking a question as to how long they stayed in the police station and there was the darkness, this witness has replied in the affirmative. This witness has further stated that her aunt had taken her to Umreth Hospital on that day when they went to lodge the complaint. She was taken at Umreth Hospital, but she was not examined there. Thereafter, she, her mother, her aunt and her father had returned to the police station. Thereafter, the police had told to take her to Bharoda. The doctor had examined her at Bharoda. However, on the date of giving deposition, she did not remember as to whether the doctor had prescribed any medicine after examining her at Bharoda. They came home after taking treatment from Bharoda. Thereafter, they had gone to the police station from Bharoda and they had gone Karamsad with the police. They had gone Karamsad Hospital in an evening. She was examined and thereafter she was admitted there. She has not returned to the home directly. The police had inquired her on the same day when her father had dictated the complaint at Umreth. There was no marriage in the village on the previous day of Uttarayana. She has denied that there was any marriage in the village on the previous day of Uttarayana and she had gone there to dance and as she had fallen down there, there was bleeding from her private part on the next day. The witness states that she had not gone anywhere at all. She has denied that as there is some discord with the accused, she was giving false deposition in collusion with her parents to implicate the accused.

9. PW. No. 3, Preetiben [name changed by us], in her examination-in-chief has stated that she has one sister-in-law (Sister of her husband). Her name is Manishaben [name changed by us]. She has one daughter and two sons. Her daughter's name is Alkaben [name changed]. Alkaben entered into 12th year. She used to visit her sister-in-law's house. (Sister of her husband). she was a resident of Khankuva and there is the distance of about two to three kilometers between Khankuva and Dagjipura. She had gone to meet her sister-in-law (Sister

of her husband) at Dagjipura after the last Uttarayana. Her sister-in-law (Sister of her husband) told her such fact that her niece Alka had menstruation from the private part. Thereafter, her sister-in-law stated her in respect of taking treatment of Dr. Lathiya there. Thereafter, she had come thrice to the house of her sister-in-law to inquire about Alkaben. She knew such that the bleeding which was coming from the private part of Alkaben [name changed] did not stop. Therefore, as she asked Alka in this regard, she told while crying that a boy of Dagjipura had committed rape upon her and she stated the name of Tribhovan who committed the rape. The incident had taken place on the previous day of Uttarayana. As she asked Alka, she told that she had gone to deliver milk in the dairy and while she was returning from there, Tribhovan had gagged her mouth with a handkerchief and thereafter, Tribhovan had taken out her clothes and committed rape and thereafter, he made her dress up and he threatened her after taking out a knife and told that if she would tell to anyone, he would kill her. Alkaben had stated such fact and nothing else was stated except it. The father of Alkaben had lodged the complaint with regard the incident. The police had inquired her in this regard. Her statement was recorded. As she frequently visited Dagjipura, she knew the accused and she has identified the accused present in the court. After lodging the complaint, Alka was given the treatment at Bharoda and thereafter, the treatment was given to her at Karamsad Medical Hospital from there. She was admitted there for three days and given the treatment there.

9.1 In her cross-examination by the learned advocate for the accused, she has admitted that she was a resident of Khankuva village. She was uneducated. When they went to lodge the complaint, her brother-in-law and the victim were with her. She has admitted that she had dictated the fact of the complaint. They had reached at Umreth Police Station at about 03: 00 pm. It had taken about one hour for them to dictate the complaint. After dictating the complaint, they had gone Bharoda. They had not gone Umreth Hospital. They had come back to their home from Bharoda because of night fall. Thereafter, they had gone Bharoda at 12: 00 pm. they had gone Karamsad Medical Hospital from there. She had not gone Karamsad Hospital with her but her brother-in-law had taken her.

9.2 This witness has further stated that the victim happens to be her niece. This witness has stated that it is not that after the victim was taken to Karamsad Medical College they have not gone there, but they went at night. She has denied that thereafter, they had brought the victim to the house. The witness states that Alkaben was admitted in the hospital for three days. When she went to the house of her sister-in-law on 15th, she came to know that the victim was in the menstruation. She had not taken the victim to any hospital. Her brother-in-law and sister-in-law have taken her. She has denied that the victim has not stated such fact to her that the accused has committed rape upon her or that she was stating it falsely. The witness states with regard to the distance between the milk dairy and the house of the victim that there might be the distance as

between the bus stand and court, means it may take 10 to 15 minutes by foot. She has admitted that there are many houses on the way. She has admitted that the days are short in the winter season and the darkness takes place early. She has denied that there are no electricity posts in the village. She has stated that she did not know as to whether there was the marriage in the village on the previous day of incident. She has denied that Alkaben [name changed] had gone to dance in the marriage on the previous day of incident and as she had sustained injury therein, she had the bleeding from her private part. She has denied that therefore, they had gone for the treatment of the victim. She has denied that the accused has not committed the alleged act. She has denied that as there was animosity between the accused and her brother-in-law, a false case was filed.

10. PW. No. 4 is Dr. Hemsing Dungarsinh Rathod. In his examination-in-chief he has stated that he holds the degree of M.B.B.S. from Kota, Rajasthan in 2005 and he has been serving as the Medical Officer at Bharoda from the last one year and three months.

10.1 This witness has further stated that when he was present on his duty on 16th February 2008, the victim of Umreth Police Station C.R. No. I-24/08, u/s. 376(Chh), 506(2) of I.P.C. was brought before him with one police yadi and he had made the endorsement on the yadi in respect of receiving the said yadi. He has proved the said yadi.

10.2 This witness has further stated that first of all, he carried out the physical examination of the victim. As the victim was asked, she dictated the following fact in her history. This patient was brought before him at 05: 30 pm. The lady constable buckle no. 829 brought the victim. The consent of her aunt who was with her was taken with regard to carrying out her physical examination. She stated such history that the accused Tilo @ Tribhovanbhai Ravjibhai Bhoi has committed physical intercourse with her before one day of Uttarayana i.e. on 13th January 2008. On making her external examination, the following facts were observed:-

1. There was no injury on genital part and rest part of body.
2. There was no love bite mark on genital part and rest of body.
3. On making physical examination, no bruises, abrasion on genital part and rest of body.
4. There was no stain of saliva and blood on genital and rest of body.
5. The patient was unmarried. On examining her vagina, vagina permitted one finger, hymen rupture.
6. She was not in menstruation.
7. She had weight-30 Kg, Height-141 cm, pulse-82/minute, vaginal bleeding was continuing.

8. Her brain and Cardiac Respect Respiratory System were normal.

10.3 After performing her physical examination, this witness sent the victim to Gynaec Civil Hospital for internal vaginal injury, pregnancy and blood group and sent her at Medical College, Karamsad to know her age. The following samples of her were taken.

1. Vaginal swab.
2. Blood Sample.
3. Pubic hair.
4. Urine.
5. Saliva.
6. Nails of hand-leg.

10.4 All these were sent to F.S.L. Ahmedabad for examination. This witness has further stated that after carrying out her examination as above, he prepared the certificate to that effect in his handwriting and he has proved the said certificate. This witness was shown a letter written by him to P.S.I. Umreth for the medical examination and age determination of the victim in Karamsad Hospital and he has proved the same.

10.5 This witness has further stated that when he was present on his aforesaid duty on 18th February 2008, the accused Tribho @ Tribhovan Ravjibhai Bhoi, residing Dagjipura, the accused of Umreth Police Station C.R. No. I-24/08, was brought before him with one written yaadi. He put the signature in respect of receiving the said yaadi. He has proved the yadi. The accused was brought with the police constable buckle no. 1305 at 01:30 pm on 19th February 2008. On asking this accused about the history, he accepted that he committed rape on the victim on 10th January 2008. On making the physical examination of this accused, the following fact was found.

1. There was no remarkable mark of any injury on his body.
2. There was no bruises, no abrasion and no love bite mark on his of body.
3. There was no stain of saliva and blood on his body.
4. There was no foreign article of any type on his body.

10.6 After examining this person, he had taken the following samples.

1. Saliva.
2. Semen.
3. Pubic hair.
4. Nails of hand-leg.

5. Urine.

6. Blood sample.

10.7 All these samples were sent to F.S.L., Ahmedabad for examination and he prepared the detailed certificate to that effect in his handwriting, wherein, he had put signature and affixed the seal of his designation. He has proved the said certificate.

10.8 This witness has identified the accused who was present in the court on the date of deposition.

10.9 In the cross-examination of this witness by the learned advocate for the accused, this witness has admitted that the victim was brought before him with the police yaadi. This witness had denied that he had seen the police yadi and he had written down the fact thereof in his certificate. This witness had denied that the victim has not given him any information. This witness had denied that he had written down the facts mentioned in the police yadi word to word in his certificate after seeing police yaadi.

10.10 This witness was asked a question that if intercourse is committed with the victim, it is necessary that bleeding would occur at that time itself, and this witness replied that it does not happen in each case. This witness was also asked if hymen is ruptured, bleeding will occur, and this witness has replied that it does not happen in 100 % case. This witness was further asked that he cannot say as to whether the rape is committed with victim, and this witness has replied that he cannot say that rape is committed, but certainly intercourse is committed with her.

10.11 This witness has admitted that he sent the victim to the Medical Gynaec for the internal injury. The victim was brought before him at 12: 30 pm. This witness has admitted that he had written a yadi to refer her on the same day and the police station was also informed thereof. He had placed only a gauze piece. He had not given any treatment except it.

10.12 A question was put to this witness that if somebody falls down, can hymen be ruptured under such circumstances, this witness has replied that it can take place.

10.13 This witness has admitted that he had also examined the accused and he had also received that police yaadi. This witness had denied that he had written down the history as per the police yadi and he had not carried out his examination. This witness has admitted that the bleeding takes place because of the reaction of the medicine in some cases. This witness has stated that he cannot not state as to whether the bleeding takes place because of ayurvedic medicine. This witness has also stated that he cannot state as to whether the accused has committed intercourse with the victim. The witness willingly states that the accused had stated so.

11. PW. No. 5, Gokalbhai Shabhaibhai has stated in his examination-in-chief that he was called to act as a panch in the Samadivala street in Dagjipura on 16th February 2008. He was called at the place behind the house of Bhailalbhai Mahijibhai Thakor @ Berabhai to remain as a panch. The victim showed the said place. The house is situated in the east of the said place, the house is also situated in the west, the enclosure is situated behind in the south. Shantilal Dahyabhai Thakor was other persons with him as a panch. He has proved the panchnama. The police, having written the panchnama, obtained their signatures. The soil was taken from the said place in their presence, and the said soil was filled in the plastic pouch, and the same was sealed after packing. Before packing, his signatures were obtained in the slip and then sealed. The soil was filled in one bag and then it was sealed. He has identified the muddamal soil. On showing the white slip found therefrom, he has identified the signatures of both the panchas. The panchnama was written as dictated by us, they put their signatures. He has proved the panchnama and the signatures of both panchs. This witness was also shown the sealed pack having muddamal article after cutting the pouch, and this witness has identified the control soil that was seized in the plastic pouch from the place of occurrence, and he has also identified signatures of both the panchas. Writing of the said panchnama started at 4.30 hours and completed at 5.30 hours.

11.1 In his cross-examination, this witness has stated that he has failed in the class 10 in the Gujarati Medium and he is an agriculturist. He used to go to the field in the morning and return in the evening. The witness voluntarily states that he come to have meals in the afternoon. When the panchnama was drawn, the victim and her father came to call. They came to call him to remain present for preparing panchnama at three o'clock in the afternoon. The witness states that the police sat at their house. The police did not come to call. Shantibhai Dahyabhai lived in the next street. It may take 10 minutes to reach his house. After he remained present, Shantibhai was being sent for. When the panchnama was drawn, two police officers were present. This witness stated that he knew the difference between P.S.I. and constable. P.S.I. was not present there. This witness has admitted that the police was writing the panchnama. This witness has admitted that the police, having written the panchnama, obtained their signatures. This witness has denied that the police wrote the panchnama. The witness states that the victim showed the place of occurrence. The witness states that he has not read the panchnama, but the same was read over to him. This witness has denied that the police obtained his signatures in a ready-made panchnama. This witness has denied that after the panchnama was prepared, he only put signatures thereon. This witness has denied that he has not gone to the place of occurrence, and he put signatures by sitting at the house of the victim. This witness has denied that when the panchnama was dictated, the victim or her father were not present at the place of occurrence.

12. PW. No. 6, Rajeshbhai Somabhai Bhoi, in his examination-in-chief has stated that Umreth Police did not call him on 16th February 2008, but he himself went

to the police station along with other panch Rajnikant Chhotabhai. When he went there, the accused Tribhovan was there, and the head constable was there. No woman was there. Pant, underwear were there, anything other was not there. They were told that, "We are seizing these in your presence. Put your signatures therein." He did not know as to who produced these clothes. It has not occurred that any girl might be present and she might have produced her clothes in his presence.

12.1 This witness was declared hostile, and upon granting permission by the trial Court, he was cross-examined by the learned Additional Public Prosecutor. A question was put to this witness as to what his educational qualification was and this witness replied that he was a new S.S.C. pass out. Another question was put as to whether he knew to write and read Gujarati and he replied in the affirmative. A question was also put to this witness as to whether he knew that one should put signature after reading if they put signature anywhere or not, he has replied that one should put signature after reading. Another question was put to him that though he knew the above fact that one should not put signature without reading, he put signature without reading, and he has replied in the affirmative.

12.2 This witness has denied that when he was present there, the victim was also present, and she produced three clothes (1) underwear (2) Trouser (3) Top (a kind of garment). The head constable showed him these three clothes. He has identified the muddamal clothes, the slips and his signature thereon. He has also identified the signature of other panch Rajnikant. This witness has admitted that the police drew the panchnama of seizure of clothes, and thereafter, the police obtained their signatures in the panchnama. He has identified his signature as well as the signature of the other pancha in the panchnama and he has stated that the panchnama was drawn at the police station in the morning and he did not remember the time.

12.3 In his cross-examination by the learned advocate for the accused, this witness has denied that he did not read the panchnama, and he put signature therein. The witness voluntarily states that the police stated that, "Do you know the witness?" so, they said "yes", and the panchnama is to be drawn in respect of the articles which have been seized, therefore, they put signature therein. This witness has admitted that he did not dictate the fact of the panchnama. This witness has admitted that he had put signatures in the police station. When his signatures were obtained, the Head Constable was present, but the P.S.I. was not present.

13. PW. No. 7, Ashabhai Dhulabhai Bhoi, in his examination-in-chief has stated that the police called him to act as a panch on 18th February 2008. The police called him at the house of Tribhovan to remain in the panch. The pants of Tribhovan was seized there. He did not know as to what colour the pants was. He has stated that he cannot identify it because he has a trouble in the eyes. He has not gone to the police station, and it has not occurred that Tribhovan might be

present there. It has not occurred that Tribhovan might have produced the pants and underwear in the police station in his presence. He has identified his signature in the panchanama.

13.1 This witness was declared a hostile witness and the Court granted permission to the learned Additional Public Prosecutor to cross-examine this witness. In his cross examination, this witness has admitted that the accused belongs to his caste. This witness has denied that he was called in the Umreth Police Station, but not at the house of Tribhovan on 18th February 2007. This witness has denied that the accused Tribhovan Bhoi was present there. It has not occurred that he might have produced purple coloured pants and grey coloured underwear in his presence. This witness has denied that his signature has been obtained by seizing the aforesaid articles, by drawing the panchnama in the Umreth Police Station. This witness has denied that as the accused belongs to his village and his caste, he was giving a false deposition.

13.2 This witness was not cross-examined by the learned advocate for the accused.

14. Prosecution Witness No. 8, Punjabhai Motibhai Bhoi, has, in his examination-in-chief stated that the police called him to act as a panch on 18th February 2008. The police called him at the house of Tribhovan to remain in the panch. The pants of Tribhovan was seized there. He did not know as to what colour the pants was. If he was shown the pant, he could not identify it because he has a trouble in the eyes. He has not gone to the police station, and it has not occurred that Tribhovan might be present there. It has not occurred that Tribhovan might have produced the pants and underwear in the police station in his presence. He has identified his signature in the panchnama.

14.1 This witness was also declared as hostile and the APP was granted permission to cross examine him. In his cross examination, this witness has admitted that the accused belongs to his caste. This witness has denied that he was called in the Umreth Police Station, but not at the house of Tribhovan on 18th February 2007. This witness has denied that the accused Tribhovan Bhoi was present there. It has not occurred that he might have produced purple coloured pants and grey coloured underwear in his presence. This witness has denied that his signature has been obtained by seizing the aforesaid articles, by drawing the panchnama in the Umreth Police Station. This witness has denied that as the accused belongs to his village and his caste, he was giving a false deposition.

15. Prosecution Witness No. 9, Babubhai Khimjibhai Lathiya, is a practising Doctor at Bhalej. In his examination-in-chief he has stated that he possess D.H.M.S. Degree. He has obtained the said degree from the college at Anand in 1982, and he has been practising for the last 25 years.

15.1 This witness has stated that he had been doing medical practice in the name of "Bharat Clinic" in Bhalej village. He has been doing medical practice for

25 years in Bhalej. The victim, resident of Dagjipura came with her guardian on 16th January 2008. The guardian of the victim stated to him that the victim is in period for two days. She dictated the age of the victim as 13 years, therefore, on asking her guardian, the guardian stated that she is in period for two days. Thereafter, on asking the guardian as to whether the victim feels any pain in the stomach, she stated that there is normal pain. On asking as to any injury has been sustained, she replied in negative. Her guardian did not give any fact in the history except these. On asking victim, she stated the fact of pain in the stomach. The victim did not state any other fact to him. Thereafter, the victim was given the treatment in respect of case of proturali, and he immediately discharged her. He has brought case papers in this regard on the date of deposition. He prepared the said case papers in his handwriting and he has proved the same. He gave medicines to the victim for the fifteen days, and they have not come to him for the second time.

15.2 In the cross-examination of this witness by the learned advocate for the accused, this witness has admitted that the police have not recorded his statement, and the police have not made any inquiry from him by coming to his clinic.

15.3 The witness was asked a question if the patient herself takes Ayurvedic medicines except the medicines given by him, would the bleeding occur and this witness has replied that bleeding may not occur. This witness has further stated that he has not conducted any internal examination of the patient.

16. Prosecution Witness No. 10, Baldevsinh Bhimsinh Parmar, has, in his examination-in-chief stated that he had been performing his duty as a Talati-cum-Mantri at Dagjipura since 18th June 2008. He received a written yadi of P.S.I. for issuing birth certificate in respect of the victim Alkaben [name changed], resident of Dagjipura vide I C.R. No. 24/08 registered u/s. 376, 506(2) of the I.P.C. He put his signature after affixing seal of designation of Talati-cum-Mantri in token of receiving the said written yaadi, and he was shown the carbon copy of written yadi of mark 9/5 wherein his predecessor Talati has affixed seal after putting signature. The signature and seal of his predecessor Talati-cum-Mantri Mr. Kulsinh G. Parmar was therein and he had identified the signature. He was shown the birth certificate of exhibit no. 15. On looking at the same, he stated that the said certificate has been issued by his predecessor Talati Mr. M.R. Malek, and he has identified his signature. He has brought original Birth Register of 1991-92 up to 1996-97 on the date of giving deposition. The entry in respect of the victim dated 11th December 1996 has been made at sr. no. 44 on the page no. 20 of the same, and referring to the said register, her birth date is 11th December 1996. Bhanubhai Maganbhai Thakor, resident of Samadivala street, Dagjipura came to get the said birth registered, and the signature is of the Talati at the relevant time. The signature of Mr. M.R. Malek, Talati-cum-Mantri, Dagjipura is at below of this page which he identified. He produced a true copy of the original register after showing the same.

16.1 In his cross-examination by the learned advocate for the accused, this witness has stated that the name and address of the village is not written on the page of the register. On being asked a question, the witness states that he has affixed a round seal. The name of the village is written in the round seal, but the name of the village is not written by hand. This witness has admitted that he has not made the entry of birth in the register but his predecessor Talati has made the entry.

17. Prosecution Witness No. 11, Sardarsing Kikabhai, is a police witness. In his examination-in-chief he has stated that at the time of giving deposition, he has been performing his duty in the Umreth Police Station for the last two years. He was performing his duty as a P.S.O. in the Umreth Police Station on 16th February 2008. On the said day, the timing of his job was from 8.00 hours in the morning to 20.00 hours in the evening. A written complaint of the complainant Bharatbhai [name changed], resident of Dagjipura was forwarded to him for registration of the offence by Mr. P.K. Diyora of their police station. On the basis of the said complaint, he registered the offence u/s. 376, 506(2) of I.P.C. vide Umreth Police Station I C.R. No. 24/08 at sr. no. 13 on the page no. 31 and 32 of the station diary at 16.00 hours. He put his signature as a P.S.O. underneath, and further investigation was handed over to Mr. P.K. Diyora, P.S.I. and an order was issued. He was shown the order which is the order of further investigation handed over to P.S.I. after registration of the offence by him and he has proved the same.

17.1 This witness has further stated that he brought original station diary on the date of giving deposition. He produced a true copy of the same after showing. The entry in the station diary is in his handwriting and he has made an entry of the said offence at sr. no. 13 on the page no. 31 and 32. He produced a true copy of the same after showing and he has proved the same. This witness has stated that he has not done other procedure except this.

17.2 In his cross-examination by the learned advocate for the accused, this witness has stated that the complaint is not recorded before him. It is recorded before the P.S.I. The written complaint was received by him at 16.00 hours on 16th February 2008. He issued the F.I.R. literatim as per the written complaint and made entry in the station diary. He recorded the written complaint, therefore, nobody was present there. He took about 15 minutes to write the complaint. He handed over the investigation to P.S.I. within 20 minutes after registering the complaint. After registering the complaint, he immediately handed over the further investigation to P.S.I. He has not done any other procedure. This witness has stated that when a written complaint is received, the presence of the complainant is not required.

18. Prosecution Witness No. 12, Dr. Rakhi Apurvabhai Patel has stated in her examination-in-chief that at the time of giving the deposition, she has been performing her duty as an Assistant Professor-Gynaecology in the Karamsad Medical College for the last two years. She has obtained the degree of M.D.

(Gynecology) from Vadodara Medical College in 2006. She was present on her aforesaid duty on 18th February 2008. Kusumben Huda was also performing duty as a Gynecologist with her. She was familiar with her signatures and handwriting as she was working with her. She has seen her writing many times, her handwriting is fine looking and she was aware of her signature. The victim, Alkaben [name changed], resident of Dagjipura of the case registered vide Umreth Police Station I C.R. No. 24/08 u/s. 376, 506(2) of the I.P.C. was brought in their hospital along with the written yadi for her physical examination. Dr. Kusumben Huda put signature in token of receiving the said yadi and accepted the same. The said yadi was accepted at 4.50 hours on 18th February 2008. She has made endorsement in that regard on the written yaadi. She brought original written yadi today and she has proved the same.

18.1 This witness has further stated that the victim, resident of Dagjipura was examined vide M.N.C. Case No. 299 of their hospital in this case. She was examined by Dr. Kusumben Huda. She was shown the original medical certificate and on looking at the same, she stated that the victim gave history therein that the said harassment was meted out to her in the evening on 13th January 2008. As per the said certificate, her height was 140 cms and weight 25 kgs. She had changed clothes. She came to them for the treatment on bleeding being started from the vagina, the Medical Officer examined her at Bharoda for the first time. He collected all the samples. When the victim was brought to us, they examined her in the C.C. On being examined, they came to know that she had injury of the size 1.5 x 2 cm on the left side genital organ. The other injury was on the vulva. The hymen was broken. The injury was not found any other place on the genital organs. The examination was possible with one finger. The uterus and the face of uterus were normal. As per their opinion, the first examination of the victim was made by Medical Officer of Bharoda. Therefore, it is difficult to give opinion. Their findings are as stated above. Kusum Huda gave the Medical Certificate to that effect. She was shown the original Medical Certificate and she has proved the handwriting of Dr. Kusum Huda, her signature and the seal of the designation are therein.

18.2 In her cross-examination, by the learned advocate for the accused, this witness has admitted that she herself has not made any examination of the victim. This witness has admitted that the handwriting is different in the medical certificate. She could not state as to how old was the injury described in the certificate. However, no suggestion was given to this witness that the extent of the injury indicated in the report was falsely stated. Similarly, no suggestion was given either to this witness or the victim that the injury shown in the report was self-inflicted or that she was raped by any other person.

19. PW. No. 13, Dr. Viralben Vikrambhai Patel, in her examination-in-chief has stated that she had been performing her duty as a Radiologist in the Karamsad Hospital for the last two years. She has done her M.D. in 2006. Yogesh Kumar was performing as an Asst. Professor in their department. She was familiar with

his signature and handwriting as he was working with her. Dr. Kusum Huda referred Alkaben [name changed] of the M.L.C. Case No. 299 for determination of her age in the department of their hospital. Dr. Yogesh Kumar of their department gave the certificate in respect of the age. She was shown the age certificate and on looking at the same, she stated that three x-rays of the said patient were taken-(1) Both wrists with elbow AP (2) X-ray both elbow lateral (3) X-ray pelvis with both hips. As per all the information above, the age of the patient can be considered to be 12 to 14 years plus minus 6 months. Dr. Yogesh Kumar gave the certificate to that effect. He has put signature underneath. She has identified the said signature. She has also proved the X-Rays, the report of said three x-rays. Her dental x-ray was also taken which he has brought with her on the date of giving deposition. As Mr. M.N. Patel, the learned government pleader asked for permission to open the said sealed cover before the said court, the permission was granted to open the sealed cover. On the sealed cover being opened, x-rays-2 nos. small are found therefrom which have been numbered. "M.L.C. Case No. 299 dated 20/02/08" has been written on both x-rays. She has brought the report given by the doctor in respect of the teeth on the date of deposition. The said certificate has been issued by Dr. Siddhu. As per the said report of x-ray, looking to her teeth, the age of 11 to 12 years has been mentioned in it. The said report is in the handwriting of Dr. Siddhu. His signature is put there below. As he was working with them, this witness has stated that she was aware of his signature and handwriting.

19.1 In her cross-examination by the learned advocate for the accused, this witness has admitted that she herself has not taken x-rays of the victim. This witness has admitted that she herself has not done ossification test.

20. PW. No. 14, Pramod Kumar Kanjibhai Diyora, in his examination-in-chief has stated that at the time of giving deposition, he was performing his duties at Umreth Police Station as a P.S.I. On the last 16th February 2008, Bharatbhai [name changed], residing at the village Dagjipura had come to police-station and dictated the complaint before him that her daughter named Alkaben [name changed], aged 12 years, had been raped forcibly, by Tribhovan alias Tilo Rayjibhai Bhoi, Residing at-Dagjipura, of his village itself on 13th January 2008 in the evening, against her will, by taking her in the compound of Baheriyabhai, and threatening to kill her. As the complaint had been given before him, after writing down the complaint and after sending it to the P.S.O., Umreth for registration, he had taken over the charge of investigation. The panchnama of the place of the incident shown by the victim had been drawn in presence of two panchas during the course of investigation. The victim had been sent for medical examination. The clothes worn by her at the time of the incident had been seized before the panchas for the purpose of investigation. Samples of soil had been seized from the place of the incident by drawing a panchnama. The statements of the concerned witnesses had been recorded as regards the incident. For the evidence of the age of the victim, a certificate from talati-cum-mantri of Dagjipura and Primary School were obtained, and the same had been attached

with the case papers. As sufficient evidence was found to arrest the accused Tribhovan alias Tilo in the case of this offence as per norms, he was arrested. During the course of investigation, the medical examination of the accused had been got conducted. Drawing the panchnama of the physical condition of the accused, clothes had been seized before the panchas for the purpose of investigation. Clothes of muddamal had been sent to F.S.L. for the purpose of investigation. As there was adequate evidence against the accused, after obtaining the medical certificate of the accused/the victim, on 11th April 2008, a charge-sheet had been filed. This witness has identified the accused whom he had arrested.

20.1 This witness was shown the original written complaint. The said complaint had been written as dictated by the complainant Bharatbhai [name changed] and thereafter, the complainant had put signature before him. He has put his signature as "before me" as P.S.I., Umreth, and he has identified the same.

20.2 This witness was shown the panchnama of the place of the offence. The said panchnama had been written as dictated by the panchas and panchas had signed before him. He has put his signature as "before me" as P.S.I., Umreth, and he has identified the same.

20.3 This witness was also shown the panchnama of the production of the clothes of the victim. The said panchnama had been written as dictated by the panchama and the clothes of the victim-shorts of purple colour, a trouser of purple colour and a top (upper garment) of purple colour had been seized as per the detail of panchnama. Panchas had signed before him. he had signed as P.S.I. Umreth, it is the same.

20.4 This witness was also shown the panchnama of the physical condition of the accused. The accused had produced a pants and an underwear, the pants was of purple colour and the underwear was of gray colour which were produced. The same had been seized as per the detail of panchnama. Panchas had signed before him, he had signed as P.S.I., Umreth. He was shown the office-copy of the yadi, written for obtaining birth-certificate from talati-mantri Dagjipura. He has identified his signature. He was shown the discharge-card of Shrikrishna Hospital. He has proved that it is the same that he had received in the case of investigation. He was also shown the muddamal despatch-note, of the muddamal sent to F.S.L. and he has proved the same. He has also proved the original receipt of F.S.L., letter and Serological Report, the order made to the P.S.O., Umreth for registering the offence after lodging the complaint, and the report made by him to the J.M.F.C., Umreth to add the Section-376(f) of I.P.C. in this case.

20.5 This witness has also proved the papers of the Medical Officer Shri Kusumben Huda, and Yogeshkumar who did the medical examination of the victim and ossification-test to determine the age, who left Karamsad Hospital and went to live in their State, Haryana. For the service of summons in this regard,

the police-constable of his police-station Maheshbhai Ramjibhai buckle no.-556 had been sent to serve. However, as both the aforesaid doctors had gone abroad at America to reside and were not able to come back in near-future, the statement of the father of Kusumben Huda-Harishinh Santramsinh Hunda has been recorded. The documents to that effect are proved by him.

20.6 This witness was also shown the clothes of the victim wherein there are shorts, trouser, top ("paheeran"). The muddamal article no.-4 is the soil seized in a bag of cloth from the place of the offence. Muddamal article no.-5 is control-soil. Muddamal article nos.-6 is the pants produced by the accused and in the muddamal article no.-7 there is underwear. He has proved these articles.

20.7 In the cross-examination by the learned advocate for the accused, this witness has stated that he had received the complaint on 16th January 2008 at around 3-00 hours. The complaint had been written in his presence. After the complaint was written, the offence had been registered at four o'clock by P.S.O. He had taken the complaint of the offence and the fact of the investigation having been done by himself is also true. This witness has admitted that before the medical examination of the victim had been got conducted, the Section-376 of I.P.C. had been applied. The victim, her father and aunt had come to him for registering the complaint. This witness has denied that the complaint had been dictated by her aunt. After taking charge of investigation, he had gone to the place of the incident after about fifteen to twenty minutes. He did not remember as to by which road he had gone to Dagjipura for investigation. He did not know that there is railway-line adjacent to the village Dagjipura. He did not readily remember as to what is situated first after leaving the road, while entering this village. The milk dairy is situated near Samadi Street. He did not have any idea as to whether milk dairy comes immediately after entering into the gate of the village or not. He did not know as to whose houses are there around the dairy. On asking the question as to whether the statements of the people living in the area around the milk dairy have been recorded, the witness stated that the statements of the witnesses residing around Samadi Street have been recorded. He has not investigated as to who is the chairman and secretary of the milk dairy. Their statements have not been recorded. He did not have any idea as to whose house is there adjacent to the house of the accused. He did not have an idea as to how many houses are situated at the place where the accused resides. This witness has denied that the house of the complainant is in farm. He did not know that in the present case, both the panchas of the place of the incident are relatives/family-member of the complainant. The fact of the statement of the victim having been taken after four days of the complaint is true, since, during the aforesaid time, the victim had been admitted in Krishna Hospital for further treatment from Bharoda P.H.C. The statement of the principal of the school has not been recorded. It is true, however, he had obtained certificate of birth of the victim from him. The fact of not having recorded the statement of Dr. Lathiya by him is true. This witness has admitted that he has not taken the statement of talati/mantri but certificate has been obtained. The fact of not having recorded

the statement of Bachubhai Chhotubhai Patel is true. The fact of not having recorded the statement of Bhailalbhai Mahijibhai Thakor is true. This witness has denied that the place of offence in this case has not been visited. This witness has denied that panchnamas had been drawn sitting in police-station and that he had not gone to the place of investigation. This witness has denied that despite not having sufficient evidence, a false charge-sheet has been made against the accused.

21. After hearing the learned counsel for the parties and after going through the aforesaid materials on record, we find that it has been well established from the medical evidence on record that the victim was, at the relevant point of time, aged between 12 and 14 years. Therefore, in the case before us, "consent" of the victim is immaterial for the purpose of deciding the guilt of the accused. Even no such defence of "consent" is taken on behalf of the accused.

22. We have gone through the evidence given by the Doctors before whom the victim was examined. It appears from their deposition as well as the report produced by those persons that as the incident occurred more than one month before her examination, there was no mark of recent injury. However, her hymen was broken. It also appears from the evidence on record that the victim initially did not disclose the fact of rape to her mother or to her aunt but only complained of bleeding. These two ladies were under the impression that she was under menstruation for the first time but subsequently, as bleeding persisted, first a Homeo Doctor, viz. PW. No. 9 Dr. Lathiya gave her medicines. The said Doctor, however, has admitted that he did not examine her internally. However, as the bleeding having continued, the real fact was disclosed by the victim to her aunt and mother, as a result, there was delay in making complaint before the police and consequent medical examination under the supervision of the police. Even at that point of time, slight injury of the size of 1.5 x 2 cms. on the left side of the private part of the victim was observed. The other injury was on the vulva. Once we find from the medical evidence that she was aged slightly more than 12 years and not only her hymen had been broken but other injuries were also found, there is no cogent reason to disbelieve the version of rape alleged by the victim, when even her menstruation cycle had not yet started.

23. In the case before us, although the prosecution relied upon the extra-judicial confession made by the accused before the Doctor who treated him when he was presented before the Doctor for his examination, we are, however, convinced that such extra-judicial confession recorded by the Doctor while the appellant was in police custody is not admissible in evidence. Thus, we have decided not to take into consideration that part of the evidence adduced by the prosecution regarding confession of the appellant.

24. The next question is, whether the allegation against the accused has been established from the evidence on record. There is no eyewitness of the incident. According to the victim, while she was returning to the home after delivering milk, the accused caught hold of her in front of the outskirt of Berabhai, gagged

her mouth with a handkerchief, and raped her on the point of a knife. According to the victim, she was further threatened by the accused that if she would disclose the fact to any other person, she would be killed. The version of the victim is that for the above reason, she was afraid of disclosing the fact of rape to her mother.

25. In the cross-examination of the victim by the learned counsel appearing on behalf of the accused, nothing is elicited from which we can disbelieve the version of rape alleged by her. The only suggestion that was given to her was that there was a marriage in the village on the previous day of Uttarayan, she had gone there to dance, and has fallen down as a result, she sustained injury on her private part which caused bleeding in her private part on the next day, which the victim has denied. Thereafter, only a vague suggestion was given that as there was discord with the accused, she was giving a false deposition in collusion with her parents to implicate the accused. The fact that the accused, at the point of a knife, threatened her not to disclose has not been disputed by putting any suggestion to her. Similarly, there is no specific suggestion either to the victim or to her aunt or to her father indicating what the alleged dispute or discord was between the accused and the family of the victim. In such circumstances, we agree with the learned Sessions Judge that there was no cause of a presumption that the victim has unnecessarily made false allegation against the accused. The statement made in her examination-in-chief that at about 7.30 p.m. on the day previous to the date of Uttarayan, while she was coming back to home after delivering milk, the accused followed her, caught her, gagged her mouth with a handkerchief, and taken out her clothes remained undisputed. In her examination-in-chief, she has also explained what she meant by "rape". It appears that in the cross-examination, simply a suggestion has been given that she was telling a lie. It is not even the suggestion of the accused that he did not live in the locality or that he had no occasion to drag her to the place of occurrence or that there was no rape.

26. From the above materials on record, we do not find any reason to arrive at a different conclusion that the one arrived at by the learned Sessions Judge that it was the accused who committed the rape. Even in the statement of the accused u/s 313 of the Code of Criminal Procedure, the accused has simply stated that a false case has been filed against him and he did not know anything regarding the incident.

27. We, therefore, find that there is no just reason for not believing the testimony of the victim in the facts of the present case.

28. Mr. Upadhyay, the learned advocate appearing on behalf of the appellant, however, strenuously contended that the delay in lodging the FIR is fatal for the prosecution in this case. We have already pointed that this is a case where a 12 years old girl was returning home alone in the evening after delivering milk, was dragged at the point of a knife and was raped, and thereafter the accused further threatened her not to disclose the fact to anybody. We also cannot lose sight of

the fact that in the village area, when such an incident of rape occurs and the victim is a girl of 12 years, guardians would hesitate to make a complaint. In the case before us, the fact that the victim was injured has been well established from the medical evidence of the Doctors, and in the absence of any evidence indicating animosity of the family of the victim towards the accused or his family, we hold that the version of the victim was correct. We have already pointed out that no suggestions were given to the victim in cross-examination that she was not dragged by the accused or that she was not threatened, and by giving only a one line suggestion that the victim was telling a lie, the burden discharged by the prosecution has not been dislodged.

29. Lastly, Mr. Upadhyay submitted that the accused being a young man aged 20 years, the sentence for life imprisonment should be reduced.

30. After taking into consideration the fact that a young girl aged 12 years has been raped taking advantage of darkness in the night at the point of a knife, we find that such a desperate person should be dealt with severely, and the learned Sessions Judge has rightly passed the order of sentence of life imprisonment.

31. We have already pointed out that while confirming the ultimate conclusions arrived at by the learned Sessions Judge, we have excluded from our consideration the alleged extra-judicial confession made by the accused before the Doctor who recorded such statement in the history of the case when the accused was sent for medical examination.

32. We, thus, find no reason to interfere with the just order of conviction and sentence recorded by the learned Sessions Judge. The appeal is devoid of any merit and is consequently dismissed.