THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Appeal Jurisdiction)

DATED : 12th June, 2018

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Crl.A. No. 03 of 2017

Appellant : Md. Atiullah,
Aged about 37 years,
Son of Shri Seikh Nasrullah,
R/o Nayabazar, Gyalshing,
P.O & P.S. Gyalshing,
West Sikkim.

versus

Respondent : The State of Sikkim

Appeal under Section 374(2) of the
Code of Criminal Procedure, 1973

Appearance

Mr. K. T. Tamang and Mr. Hem Lall Manger, Advocates for the Appellant.

Mr. Karma Thinlay and Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutors with Mrs. Pollin Rai, Assistant Public Prosecutor for the State-Respondent.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Questioning the legality of the conviction handed out to the Appellant under Sections 341, 354 and 506 of the Indian Penal Code, 1860 (for short "IPC") and the sentence meted out consequently both in Sessions Trial (F.T.) Case No.05 of 2016 by the Learned Judge, Fast Track Court, South and West Sikkim, at Gyalshing, on 29-12-2016, the Appellant is before this Court.

2. The impugned sentence are as follows;

(i) For the offence under Section 354 of the IPC, the convict was sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.20,000/- (Rupees twenty thousand) only;

(ii) For the offence under Section 341 of the IPC, the convict was sentenced to undergo simple imprisonment for a period of one month and to pay a fine of Rs.500/- (Rupees five hundred) only; and

(iii) For the offence under Section 506 of the IPC, he was sentenced to undergo simple imprisonment for a period of 8 months and to pay a fine of Rs.1,000/- (Rupees one thousand) only.

The sentences were ordered to run concurrently and all the sentences of fine bore a default clause of imprisonment.

3. Raising his contentions before this Court, Learned Counsel for the Appellant argued that several infirmities and anomalies arose in the evidence of the Prosecution Witnesses, more particularly, the evidence of the prosecutrix (hereinafter, P.W.1) who in her cross-examination contradicted the contents of the First Information Report (FIR), Exhibit 1, apart from deposing that no offence occurred in the month of May, 2016. Her evidence established that she was not present at Gyalshing, West Sikkim, on 08-05-2016 or on 09-05-2016, thereby disproving the alleged dates of the incident. Admittedly, she did not mention the registration number of any vehicle in her statement before the Gyalshing Police as she did not notice the registration number. Her statement to the

effect that she went till 8th Mile, Gyalshing, in the vehicle of her friend's male companion was also admitted by her to be false and being illiterate she was not in a position to state whether Exhibit 1, the FIR, was scribed as per her narration. P.W.4, the father of P.W.1, had categorically confirmed that P.W.1 did not inform him of any offence being committed on her and the evidence of the Doctor, P.W.8 substantiated by P.W.4 would establish that P.W.1 was hallucinatory with a mild mental disability. Besides she did not raise any hue and cry when she was allegedly taken by the Appellant in his vehicle nor did she attempt to escape although doors of the vehicle were accessible to her. No eye-witnesses to the incident were furnished nor was it proved that P.W.1 was at the Gyalshing Taxi Stand on 08-05-2016 and at Gyalshing Bazar on 09-05-2016. The investigation failed to trace out Renuka, her alleged friend or the vehicle in which P.W.1 travelled to 8th Mile Mandir, Gyalshing, from the Taxi Stand on the night of 09-05-2016. The registration number of the vehicle in which P.W.1 travelled from Gangtok to Gyalshing on 08-05-2016 was not indicated nor was the Appellant named in the FIR, while the signatures appearing on Exhibit 1 purportedly of witnesses have gone unproved. That, these anomalies were afforded scant regard by the Learned Trial Court, on which counts the convict deserves an acquittal. His submissions were fortified with reliance on ***Bhimapa Chandappa Hosamani and Others*** vs. ***State of Karnataka***[1] and ***Radhu*** vs. ***State of Madhya Pradesh***[2].

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[1] (2006) 11 SCC 323
[2] (2007) 12 SCC 57

4. Contesting the contentions of Learned Counsel for the Appellant, Learned Additional Public Prosecutor would insist that the evidence of the Prosecution Witnesses have been consistent and although as per the doctor, P.W.8, P.W.1 may be suffering from mild hallucination, nevertheless she made no error in identification of the Appellant when the Test Identification Parade (TI Parade) was conducted. The presence of the Appellant at the place of occurrence as testified by independent witnesses P.W.2 and P.W.3 corroborates the evidence of P.W.1. P.W.2 and P.W.3 have stated that they saw P.W.1 running towards Legship at around 10.30 p.m. that night and after stopping and hearing out P.W.1, found the Appellant sometime shortly thereafter, walking towards Khopa/Legship. No motive has been insinuated against P.W.1 to concoct a false incident against the Appellant, besides, the conduct of the Appellant and his following the vehicle of P.W.2 and P.W.3 after P.W.1 sought help from them and was in their vehicle, would effectively conclude that the incident had indeed occurred. The statement of P.W.1 recorded under Section 164 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."), sheds light on the fact that she narrated the incident to the Magistrate P.W.7, which is corroborated by her evidence before the Court as to how the convict had violated her. The fact of commission of the offence is also strengthened by the evidence of P.W.5, the Doctor who examined P.W.1 at the District Hospital, Gyalshing, on 10-05-2016, on which occasion the Doctor was informed of the same incident by P.W.1. The evidence of P.W.1 has been consistent and has not been demolished by cross-examination, it is, therefore, urged that the Judgment of conviction and Order on

Sentence require no interference. To buttress his submissions, strength was drawn from the ratiocination in ***Vidyadharan*** vs. ***State of Kerala***[3] and ***Tarkeshwar Sahu*** vs. ***State of Bihar***[4].

5. The rival contentions were heard *in extenso* and the evidence and documents scrutinised carefully.

6. To appreciate the points canvassed on behalf of the Appellant the relevant facts are briefly stated. P.W.1 aged about 18 years, resident of Lower Omchung, Gyalshing, West Sikkim, had fled Gangtok where she was working as a domestic help on 08-05-2016 and spent the night at the Gyalshing Taxi Stand. On 09-05-2016, she remained in Gyalshing Bazar, where around 2130 hours, her friend Renuka told her to accompany her till 8th Mile Mandir area, Gyalshing. On reaching there, Renuka desired to proceed on to Rabongla with her male companion, thus, P.W.1 alighted from the vehicle and started walking towards her house at Lower Omchung. At the relevant time, vehicle bearing No.SK 01 J 0701 stopped in front of her and the driver/Appellant started chasing her. As she fell, he grasped her hand, took her inside his vehicle, kissed her, fondled her breasts, touched her private part and threatened to push her off the cliff if she cried out. On the pretext of drinking water, she escaped from the vehicle and after sometime saw a vehicle coming towards her from Legship, upon which she sought help from the two persons in the vehicle duly narrating the incident to them. After driving for a few meters the Appellant was shown

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[3] (2004) 1 SCC 215
[4] (2006) 8 SCC 560

and identified to them by P.W.1. The two persons reprimanded the Appellant who appeared to be drunk and aggressive. To avoid confrontation they went to the Police Station where P.W.1 lodged a Complaint, Exhibit 1 which was reduced in writing by the Police.

7. Pursuant thereto, Gyalshing Police Station (**P.S.**) case was registered under Sections 354A/341/366/506 of the IPC against the Appellant, aged about 37 years and investigation taken up by the Investigating Officer (for short "I.O."). Investigation would reveal that P.W.1 had been in an unsuccessful marriage for almost 8/9 months on which she returned home and then sought employment in March, 2016 as a house maid in Gangtok. On 08-05-2016, she returned home upon which the aforestated incident unfolded. On completion of investigation, Charge-sheet came to be filed against the Appellant under Sections 354D/366/341/506/ 511/376 of the IPC.

8. The Learned Trial Court framed Charge against the Appellant under Sections 376(1)/511, Section 341 and Section 506 of the IPC and proceeded to examine 10 (ten) Prosecution Witnesses furnished before her including the I.O. of the case, appreciation of which led to the impugned Judgment and Order on Sentence.

9. What thus requires consideration by this Court is whether the Learned Trial Court erred in convicting the Appellant and sentencing him to imprisonment, as already detailed hereinabove.

10. While bearing in mind the arguments of Learned Counsel for the Appellant that anomalies existed in the evidence of P.W.1, I now proceed to meticulously examine P.W.1's evidence. In her evidence-in-chief, she has made no mention of the date of incident, however, on cross-examination she has not denied that she came to Gyalshing on 08-05-2016 and remained therein on 09-05-2016. The only admission she has made is that she did not sleep at Gyalshing Taxi Stand on the date she came to Gyalshing from Gangtok and that this statement is false, but at the same time she has clarified the above by stating that she did not tell the Police that she had slept at the Gyalshing Taxi Stand on 08-05-2016. Her evidence indubitably is to the effect that **"***the incident in this case occurred one month ago***"** which would be in the month of August instead of the month of May, but merely because of this anomaly the Prosecution case cannot be thrown out of the window, that would tantamount to throwing the baby out with the bath water as the narration of the incident of sexual assault has been categorical and consistent. Admittedly, her statement to the effect that she went till 8th Mile, Gyalshing in the vehicle of male companion of her friend Renuka is false, but it is also her case that she was not tutored by the Gyalshing Police to make an oral Complaint, hence indicating that her Complaint in no way falsely implicated the Appellant. That apart, she has also stated that although she has a habit of talking to herself she does not have hallucinatory behaviour and reiterated that was she not making a false complaint against the Appellant. She further asserted that Exhibit 1 is the statement made by her and identified Exhibit 1(a) as her signature. What thus

emerges is that although she was unable to specify the date and month of the incident, the fact that the Appellant came to the place of occurrence, alighted from his vehicle, chased her, put her in his vehicle, kissed her on her cheeks and lips, fondled her breasts, touched her private part has remained undemolished, as also the fact that she escaped from his clutches and fled on the pretext of wanting to drink water and made good her escape when the Appellant was drinking water. What transpired prior to the incident to my mind is irrelevant once the incident in question has been unerringly established, consistent and uncontroverted. Pursuant thereto the Court is to only examine the credibility of the witness and whether she was under a compulsion to concoct a false story. There is no cross-examination conducted to establish that P.W.1 knew the Appellant before the incident or that she carried any angst against him for any past incident or that they had past enmity, their families were inimical or that she had any other motive to falsely implicate the Appellant in the instant matter. In these circumstances, there is no reason for the Court to doubt the testimony of P.W.1.

11. The evidence of P.W.1 with regard to the Appellant being at the place of incident is supported by the evidence of P.W.2 and P.W.3 the driver and occupant of the vehicle that P.W.1 met when she was running towards Legship having escaped from the Appellant. P.W.2 and P.W.3 would testify that around 10/10.30 p.m. on the night that they were returning from Darjeeling on nearing Khopa, Legship-Gyalshing Road, they saw P.W.1 running

towards Legship and when they stopped and enquired as to where she was going, she narrated the incident to them. There are no inconsistencies in the evidence of P.W.2 and P.W.3 with regard to what they have stated in their evidence. They have both also deposed that as they approached Khopa they saw the Appellant upon which P.W.3 enquired from the Appellant as to where he was going, in response, the Appellant pushed a beer bottle on the face of P.W.3. P.W.2 and P.W.3 then proceeded towards Gyalshing while the Appellant closely followed them in his vehicle. P.W.3 stopped his vehicle on the road side while the Appellant, as per both the witnesses, stopped his vehicle as well and refused to proceed although the witnesses told him to. P.W.2 and P.W.3 then went towards Gyalshing Out Post (**O.P.**). Pausing here, it would be relevant to point out that, according to Learned Counsel for the Appellant, as per P.W.2 and P.W.3 they had left P.W.1 at the Gyalshing O.P. That in contradiction the I.O. stated that the statement of P.W.1 was recorded at the Gyalshing P.S. That the I.O. testified that P.W.2 and P.W.3 along with P.W.1 straightway came to the P.S. to lodge a Complaint against the driver of the vehicle bearing No.SK 02 J 0701 and not the O.P. That, a perusal of Exhibit 1 would also indicate that two witnesses being P.W.2 and P.W.3 have signed on Exhibit 1, but no evidence was given by these two witnesses that the contents of Exhibit 1 were recorded in their presence, thus there is a doubt with regard to the very existence of Exhibit 1. It is pertinent to point out that the FIR is required to be signed only by P.W.1 and hence the requirement of the identification of the signatures of P.W.2 and P.W.3 on Exhibit 1 does not arise.

The evidence of P.W.2 and P.W.3 also reveals that they narrated to the Police whatever P.W.1 had told them and a while later the Police Gyalshing O.P. apprehended the Appellant. Their evidence would sufficiently establish that they remained with P.W.1 not only till the FIR was reduced to writing at 01.00 a.m. on 10-05-2016, but till 02.00 a.m. of the same night, when the Appellant was apprehended as revealed by the Arrest Memo, in the records furnished before the Learned Trial Court. The words "Gyalshing O.P." and "Gyalshing P.S." appear to have been used interchangeably, at the same time, it must be pointed out that despite sufficient opportunity it was not clarified by cross-examination as to whether the words had been used interchangeably or whether "Gyalshing O.P." and "Gyalshing P.S." have been correctly recorded as separate places.

12. Addressing the argument that the Appellant was not named in the FIR, Exhibit 1, common sense prevailing, would lead to the inevitable conclusion that the name of an accused is not necessarily known to the victim unless they were previously acquainted. No such acquaintance of the victim and the Appellant prior to the incident has been referred to in evidence. The following decision of the Hon'ble Supreme Court in ***Ramesh*** vs. ***State through Inspector of Police***[5] in this context would stand the victim in good stead;

> **"22.** It has been held by this Court in *Jitender Kumar* v. *State of Haryana* [(2012) 6 SCC 204 : (2012) 3 SCC (Cri) 67] : (SCC pp. 213-14, paras 16-18)
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> "*16*. As already noticed, the FIR (Ext. P-2) had been registered by ASI Hans Raj, PW 13 on the statement of Ishwar Singh, PW 11. It is

[5] (2014) 9 SCC 392

correct that the name of accused Jitender, son of Sajjan Singh, was not mentioned by PW 11 in the FIR. However, the law is well settled that merely because an accused has not been named in the FIR would not necessarily result in his acquittal. An accused who has not been named in the FIR, but to whom a definite role has been attributed in the commission of the crime and when such role is established by cogent and reliable evidence and the prosecution is also able to prove its case beyond reasonable doubt, such an accused can be punished in accordance with law, if found guilty. Every omission in the FIR may not be so material so as to unexceptionally be fatal to the case of the prosecution. Various factors are required to be examined by the court, including the physical and mental condition of the informant, the normal behaviour of a man of reasonable prudence and possibility of an attempt on the part of the informant to falsely implicate an accused. The court has to examine these aspects with caution. Further, the court is required to examine such challenges in the light of the settled principles while keeping in mind as to whether the name of the accused was brought to light as an afterthought or on the very first possible opportunity.

17. The court shall also examine the role that has been attributed to an accused by the prosecution. The informant might not have named a particular accused in the FIR, but such name might have been revealed at the earliest opportunity by some other witnesses and if the role of such an accused is established, then the balance may not tilt in favour of the accused owing to such omission in the FIR.

18. The court has also to consider the fact that the main purpose of the FIR is to satisfy the police officer as to the commission of a cognizable offence for him to conduct further investigation in accordance with law. The primary object is to set the criminal law into motion and it may not be possible to give every minute detail with unmistakable precision in the FIR. The FIR itself is not the proof of a case, but is a piece of evidence which could be used for corroborating the case of the prosecution. The FIR need not be an encyclopaedia of all the facts and circumstances on which the prosecution relies. It only has to state the basic case. The attending circumstances of each case would further have considerable bearing on application of such principles to a given situation. Reference in this regard can be made to *State of U.P.* v. *Krishna Master* [(2010) 12 SCC 324 : (2011) 1

> SCC (Cri) 381] and *Ranjit Singh* v. *State of M.P.* [(2011) 4 SCC 336 : (2011) 2 SCC (Cri) 227] "
>
> **23.** Therefore, the contention of the appellant that since his name did not appear in the FIR, he is entitled to acquittal, is not maintainable. We accordingly, answer this point in favour of the respondent.**"**

13. An unrelenting assault has been made by the Appellant on the veracity of the FIR, Exhibit 1, nevertheless it would be beneficial also to refer to ***Alagarsamy and Others*** vs. ***State represented by Deputy Superintendent of Police, Madurai***[6], wherein the Hon'ble Supreme Court opined that;

> **"39.** After all, the FIR is not a be-all and end-all of the matter, though it is undoubtedly, a very important document. In most of the cases, the FIR provides corroboration to the evidence of the maker thereof. It provides a direction to the investigating officer and the necessary clues about the crime and the perpetrator thereof. True it is that a concocted FIR, wherein some innocent persons are deliberately introduced as the accused persons, raises a reasonable doubt about the prosecution story, however, a vigilant, competent and searching investigation can despoil all the doubts of the court and on the basis of the evidence led before the court, the court can weigh the inconsistencies in the FIR and the direct evidence led by the prosecution. It is not a universal rule that once FIR is found to be with discrepancies, the whole prosecution case, as a rule, has to be thrown. Such can never be the law.
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> **40.** In the decision relied upon by Shri Altaf Ahmed, learned Senior Counsel for the appellants in Sevi v. State of T.N. [1981 Supp SCC 43 : 1981 SCC (Cri) 679] , it is clear that the Court had thrown the prosecution case not merely because the FIR was doubtful, but as the Court found that the prosecution case and the evidence of the eyewitnesses, even otherwise, were liable to be rejected, as they were the partisan witnesses. The Court took into account the dramatic pattern of the evidence of the witnesses and, therefore, threw the prosecution case because of the non-availability of the FIR book.**"**

[6] (2010) 12 SCC 427

Besides in the instant matter, it has to be appreciated that consequent to the lodging of Exhibit 1, the Appellant was arrested, thereby proving his identification.

14. What emerges from the evidence of P.W.2 and P.W.3 is that the Appellant was at the place where P.W.1 alleged that he had chased her, put her into his vehicle and outraged her modesty. Outraging modesty has lucidly been explained in ***Raju Pandurang Mahale*** vs. ***State of Maharashtra and Another***[7] wherein it was detailed as follows;

> "**12.** What constitutes an outrage to female modesty is nowhere defined. The essence of a woman's modesty is her sex. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive. Modesty in this section is an attribute associated with female human beings as a class. It is a virtue which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object. As indicated above, the word "modesty" is not defined in IPC. The *Shorter Oxford Dictionary* (3rd Edn.) defines the word "modesty" in relation to a woman as follows:
>
> > "Decorous in manner and conduct; not forward or lewd; Shamefast; Scrupulously chaste."

15. The penalty for such outrage finds place in Section 354 of the IPC which is extracted below for convenience;

> **"354. Assault or criminal force to woman with intent to outrage her modesty**.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**"**

[7] (2004) 4 SCC 371

The evidence on record and discussions hereinabove indeed reveals the fact of such an outrage.

16. Absence of injuries do not falsify the offence or incident and merely because the Doctor P.W.8 and P.W.4 the father of P.W.1 testified that P.W.1 is hallucinatory, sans proof, no credence can be lent to this aspect, incidents of such behaviour not being established. If it is to be assumed that she falsely implicated the Appellant how she sought help from two male strangers coming in the vehicle and made no allegation against them needs to be ruminated over. In other words, it is evident that the incident did occur and hence the existence of Exhibit 1. At the same time, it is pertinent to notice that cross-examination has not demolished the fact of the presence of the Appellant at the place of occurrence or what he was doing therein at that time of the night. Although, reliance was placed by the Appellant on ***Bhimapa Chandappa Hosamani*** (*supra*) wherein the Appellants who were found guilty of the offence under Section 302 of the IPC were acquitted by the Hon'ble Supreme Court on appeal on the grounds of non-reliability of the prosecution witness, who was the mother of the deceased, the instant case can be differentiated from that matter as the P.W.1 herself is the victim of the offence and there is no reason to disbelieve her version. In this context, it is worthwhile noticing that in ***State of U.P.*** vs. ***Pappu alias Yunus and Another***[8] the Supreme Court held that—

> **"12.** It is well settled that a prosecutrix complaining of having been a victim of the offence of

[8] (2005) 3 SCC 594

> rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do.**"**

As the Appellants' evidence has been consistent there is no requirement for corroborative evidence. Moreover the evidence of P.W.2 and P.W.3 substantiates the evidence of P.W.1 as per the discussions which have ensued hereinabove.

17. The evidence of P.W.5, the Gynaecologist posted at District Hospital Gyalshing, reveals that she medically examined the victim on 10-05-2016 at around 01.37 a.m. while the evidence of P.W.6 would show that the accused was examined by her at 03.00 a.m. on 10-05-2016 where it emerged that the Appellant had consumed alcohol but was not intoxicated. Had the incident not occurred there would be no reason for the police to forward the victim and the Appellant for medical examination at that unearthly hour.

18. A careful scrutiny of the responses of the Appellant in his Section 313 Cr.P.C. statement, to the questions put to him by the Court, reveal inconsistencies as follows:

> **"***Q. No.5. PW-1 has further deposed that she also gave her statement in the Court at Tikjuk and proved Exhibit-4. She says on the same day, the said madam*

> *conducted a Test Identification Parade and proved Exhibit 5 as the same document where she had signed in the Court.*
> *What have you to say?*
>
> *Ans: It is true she recognised me in the T.I. Parade.*
>
> ……..
>
> *Q. No.18, P.W.7 has further deposed that the victim was then called to identify you from amongst the line up of 12 people sharing similar physical traits. She says, the victim identified you positively on all three rounds of the identification despite the fact that you were made to change your position in each round and interchange your shirt and sweater with the other persons in the line up. She has proved Exhibit-10 as the memorandum of TIP.*
> *What have you to say?*
>
> *Ans: I do not remember.***"**

The contradictions extracted above raise doubts as to the veracity and the truthfulness of his answers. At the same time, I hasten to clarify that this Court is conscious of the legal position that the Appellant cannot be convicted merely on the basis that he failed to make out his innocence in his statement under Section 313 of the Cr.P.C. as has been held in ***Nagaraj*** vs. ***State represented by Inspector of Police, Salem Town, Tamil Nadu***[9] where it has been specifically held that;

> **"15.** In the context of this aspect of the law it has been held by this Court in *Parsuram Pandey* v. *State of Bihar* [(2004) 13 SCC 189 : 2005 SCC (Cri) 113] that Section 313 CrPC is imperative to enable an accused to explain away any incriminating circumstances proved by the prosecution. It is intended to benefit the accused, its corollary being to benefit the court in reaching its final conclusion; its intention is not

[9] (2015) 4 SCC 739

> to nail the accused, but to comply with the most salutary and fundamental principle of natural justice i.e. audi alteram partem, ……. Having made this clarification, refusal to answer any question put to the accused by the court in relation to any evidence that may have been presented against him by the prosecution or the accused giving an evasive or unsatisfactory answer, would not justify the court to return a finding of guilt on this score. Even if it is assumed that his statements do not inspire acceptance, it must not be lost sight of that the burden is cast on the prosecution to prove its case beyond reasonable doubt. Once this burden is met, the statements under Section 313 assume significance to the extent that the accused may cast some incredulity on the prosecution version. It is not the other way around; in our legal system the accused is not required to establish his innocence. ……."
>
> **[emphasis supplied]**

19. The evidence of P.W.7, the Magistrate who conducted the TI Parade would indicate that P.W.1 had identified the Appellant three times from amongst 12 (twelve) other persons sharing similar features as that of the Appellant. No arguments have been advanced on this count by Learned Counsel for the Appellant contesting this aspect of the evidence of P.W.7. The question of P.W.1 telling her father of the incident does not arise as the evidence on record reflects P.W.1 had not met P.W.4 till then and it was the Police who went to the home of P.W.4 and told him of the incident.

20. That having been said, the Medical Report Exhibit 7 of P.W.1 would indicate that there were no visible external injuries on P.W.1 and her hymen was intact, no bleeding, discharge or redness was seen on her genital. This would establish that although the acts of the Appellant emphatically amounted to outraging P.W.1's modesty, but no offence under Sections 376/511 of the IPC is established.

21. Thus, in view of the entirety of the discussions, the evidence on record and while carefully analysing and appreciating it, I am of the considered opinion that the impugned Judgment and Order on Sentence of the Learned Trial Court warrants no interference.

22. Appeal fails and is accordingly dismissed.

23. The Appellant shall surrender today before the Learned Judge, Fast Track Court, South and West Sikkim, at Gyalshing, to undergo the sentence imposed on him by the impugned Order on Sentence, duly setting off the period of imprisonment if undergone by him during investigation and as an under-trial prisoner.

24. No order as to costs.

25. Copy of this Judgment along with Records be sent forthwith to the Learned Trial Court.

Sd/-
(Meenakshi Madan Rai)
Judge
12-06-2018

Approved for reporting : **Yes**

Internet : **Yes**

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