

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRL.APP(J) 61 of 2017**

Sri Sankar Munda,  
son of Sri Ramu Munda,  
resident of Chandpur, Ward No.4,  
PS: Churaibari,  
Dist: North Tripura

**---- Convict Appellant(s)**

**Versus**

The State of Tripura

**---- Respondent(s)**

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For Appellant (s)	: Mr. D. Debbarma, Adv.
For Respondent(s)	: Mr. S. Ghosh, Addl. PP
Date of hearing	: 13.05.2020
Date of pronouncement	: 30.06.2020
Whether fit for reporting	: YES

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**HON'BLE MR. JUSTICE S. TALAPATRA  
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**Judgment & Order**

***(S. Talapatra, J)***

The appellant was charged under Section 376 (2)(i) of the IPC and also separately under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act in short) for committing rape and penetrative sexual assault on the victim at any

time of 15.05.2016 to 22.05.2016 at his house under Churaibari Police Station.

**[2]** After regular trial that commenced on his denial of the charges, by the judgment dated 20.03.2017 delivered in Special (POCSO) 0000010 of 2016 by the Special Judge (POCSO), North Tripura Dharmanagar, the appellant has been convicted under Section 376(1) of the IPC having observed as follows:

**"Thus, I find that the evidence of the victim that she was raped by accused Sankar Munda is duly corroborated by the father and step mother of the victim to whom the victim disclosed the fact of rape on her by the accused Sankar Munda after the incident and her evidence also corroborated by the medical evidence as her hymen was found torn and the medical officer opined that it was old healed hymen rupture. Since in this case the minority of the victim has not been proved by the prosecution beyond all reasonable doubt the offences under section 4 of the Protection of Children from Sexual Offences Act, 2012 and under section 376(2)(i) of the Indian Penal Code cannot be established by the prosecution as in both of the cases the minority of the victim should be proved first. But from the above evidence on record, I find that prosecution has successfully proved the offence punishable under section 376(1) of the Indian Penal Code against accused Sankar Munda beyond all reasonable and probable shadow of doubt.**

**[Emphasis added]**

**[3]** Pursuant to the said judgment of conviction, the appellant has been sentenced to suffer

rigorous imprisonment for 10 years and pay fine of Rs.10,000/- with default stipulation for committing offence punishable under Section 376(1) of the IPC with further direction that if the fine money is realized that shall be paid to the victim as compensation. Further that the detention as suffered by the appellant during investigation or trial shall be set off under Section 428 of the IPC. The said judgment and order are under challenge in this appeal.

**[4]** The genesis of the prosecution is rooted in the oral complaint (Exbt-4) filed by the victim (PW-13), the name is withheld for protecting the identity of the victim, by revealing that she was raped by the appellant, who happens to be the son of her elder sister from her maternal aunt, inside the house of the appellant in the evening but she could not raise her voice as she was gagged by the appellant. When she had informed the incident to her maternal aunt, she sent her to her father's house. From the subsequent investigation, it appeared that her father Ranjit Ruhi

Das (PW-1) took her to the police station where she made the oral ejahar on 08.07.2017.

**[5]** Based on the said complaint, [ejahar] Churaibari PS case No.2016CRB008 under section 376 IPC and Section 8 of the POCSO was registered and taken up for investigation. On completion of the investigation, a strong *prima facie* case had surfaced against the appellant from the evidentiary materials and as such the final report was filed by sending up the appellant for facing the trial for committing penetrative sexual assault and offence of rape on the minor, below the age of 16 years. As stated earlier, the charge was accordingly framed and the appellant denied the charge claiming innocence and for facing the trial.

**[6]** In order to substantiate the charge, the prosecution adduced as many as 15 witnesses including the victim (PW-13), the four medical officers who were in the process of the examination (PWs-7, 8, 11 and 14). That apart, the victim's father (PW-1) was

examined in the trial. The prosecution had introduced seven documentary evidence including the medical examination report (Exbt-6). It may be noted here that since the state has not challenged the order of acquittal of the appellant from the charges under Section 376(2)(i) of the IPC and Section 4 of the POCSO Act on the ground that the victim's age has not satisfactorily proved by the prosecution, the evidence relating exclusively to that aspect of the matter would not be referred extensively unless it is so required for purpose of appreciating the challenge. After recording the prosecution's evidence, the appellant was examined under Section 313(1)(b) of the CrPC for having his response to the incriminating materials those appeared in the records of evidence. The appellant during that examination had reiterated his plea of innocence by stating that the police has concocted the evidence.

**[7]** Mr. D. Debbarma, learned counsel appearing for the appellant has submitted that there is

no evidence of penetration and as such there is no evidence of rape within the meaning of section 375 of the IPC. According to him, the statement that the victim has made in the trial, is quite deviant from the complaint that she lodged. The victim's statement therefore should not be given any value at all. The medical examination report (Exbt-6) is vague when it recorded about the old rapture of hymen, by observing as under:

**"D. Vagina & Cervix (Any Bleeding/tear/discharge /oedema/tenderness) Normal, vaginal orifices admits 2 (two) fingers. No tenderness, tear, or bleeding present."**

**[8]** Mr. Debbarma, learned counsel has categorically stated that from the records it appears that the incident took place any day between 16.05.2016 and 22.05.2016 and the victim had immediately informed of the occurrence to her maternal aunt with whom she was residing at that point of time. Her maternal aunt without reporting the occurrence to the police, sent the victim to her father with whom she had not met for long as her father

(PW-1) by contracting second marriage after death of the mother of the victim, was living with his second wife namely, Minati Ruhi Das (PW-2) and the victim was not cared at all by PW-1. There is no explanation when the victim came to the residence of PW-1, why he had taken such a long time for reporting the occurrence to the police. Mr. Debbarma, learned counsel has submitted that such long delay is fatal for prosecution case as it strikes at the root of the truthfulness of the account as laid in the complaint.

**[9]** In this regard, Mr. Debbarma, learned counsel has placed his reliance on a decision of the Jharkand High Court in **Chinta Sinku vs. State of Jharkhand** reported in **2008 Cri LJ 2192** where the Jharkhand High Court had observed as follows:

**"Strangely enough, although the prosecutrix claims to have informed about the occurrence on 11.09.2001 to her sister-in-law and also to her brother-in-law and both of them affirm that they were informed by the prosecutrix about the occurrence, neither the prosecutrix nor her sister-in-law or her brother-in-law chose to report the incident to the Police or even to the village head, namely, PW-7 or any person of the village. The prosecutrix has tried to explain that she waited for the return of her**

husband and when he returned after 7-8 days, she informed him about the occurrence and thereafter went to the police to lodge her complaint. Significantly, the husband does not accompany her to the Police Station. Furthermore, in her *Fardbeyan*, she has claimed that after waiting when her husband, did not return home within the expected period, she proceeded to the Police Station along with her brother-in-law and lodged the complaint. The explanation for the delay does not appear to be convincing and satisfactory. The delay in lodging the F.I.R and the conduct of the prosecutrix herself creates a reasonable doubt regarding the veracity of her statements. The benefit of doubt should certainly go to the appellant.

[Emphasis added]

**[10]** Another decision from the same High Court in **Matisan Bhumij and Ors. vs. State of Bihar** reported in **2010 Cri LJ 1197** has been relied upon by the counsel for the appellant, for purpose of referring the following passage, in particular:

**"The object of insisting upon prompt lodging of the first information report is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons used if any. Any delayed version will be prone to introduction of a coloured version or exaggerated story."**

**[11]** The reliance has been placed by the counsel for the appellant on **Rajoo & Ors vs. State of**



**M.P.** reported in **AIR 2009 SC 858** where the apex court had occasion to observe on how to appreciate the evidence of the victim of rape and in that course it has been observed *inter alia* as under:

**"This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined."**

**[Emphasis added]**

**[12]** Mr. Debbarma, learned counsel has further contended that the medical evidence cannot always be used as a touchstone for testing the veracity of the ocular evidence. In a given case, when there is a conflict between ocular evidence and the medical evidence, the court may ignore the medical evidence if it finds the ocular evidence trustworthy, safe and reliable. What need to be pointed out is that when there is a conflict between the medical evidence and

eye witness's account of the occurrence. The primacy may be given to the ocular evidence. The medical evidence cannot be rejected, unless it is either proved that the medical evidence on record is incorrect and untrue or it is proved that the eye witness's account of the occurrence is true. In support of that statement, reference has been made to **Chagir Mia and Ors Vs. State of Tripura** reported in **(2008) 2 GLR 370**. Mr. Debbarma learned counsel has quite emphatically submitted that the prosecution has failed to prove the charge inasmuch as the case has been visited by cooked-up version. Moreover, there is no reliable evidence of penetration in the records of evidence.

**[13]** From the other side, Mr. S. Ghosh, learned Addl. PP appearing for the state has in order to repel the submission of Mr. Debbarma, the counsel for the appellant has submitted that the medical examination report which is based on a delayed examination of the victim even though has recorded that there was no injury mark over the external genital parts viz, lebia

majora, lebia minora, forchette, vulva and perineum, but hymen was found torn which had heeled up hyminal rapture. In the said report (Exbt-C), the following finding after the examination has been noted:

**Findings of Examination**

- 1. Hymen ruptured which was old healed rupture.**
- 2. Vaginal orifice admits 2(Two) fingers.**
- 3. Both breasts and external genital organs found to be normal.**
- 4. No External injury present over body.**

**[14]** Mr. Ghosh, learned Addl. PP has submitted that if the medical examination report (Exbt-C) is read with the version of the victim, PW-13 no conflicting feature would surface. PW-13 has clearly stated that the occurrence took place seven months prior to the date of her deposition in the trial in one evening at about 7 pm in the house of the appellant. She has categorically stated as follows:

**"At that time the wife of Sankar was also absent in that house. He made me undressed. Thereafter, he touched my vagina through his pennis and penetrated. Then I felt pain and I did not allow him to commit penetration fully. While committing this thing he put pressure on my mouth so that I could not raise alarm. On the**

**following morning I narrated the incident to my aunt Bulbuli. I did not inform that incident to the wife of Sankar. Then 'Mashi' told me that she would not keep me and I should go to my father's house. Thereafter, 'Mashi' took me to my father's house. Thereafter, my father took me to Churaibari P.S. There, I narrated the incident to a female police personnel who recorded my statement."**

**[15]** Mr. Ghosh, learned Addl. PP has further submitted that there is no cross examination over the part of the statement by the defence to confront veracity.

**[16]** That apart, the victim was in a vulnerable situation being abandoned by the close relatives and her father's (PW-1) response was not quick which is expected or warranted in such circumstances but for that justice to a victim of rape cannot be denied. The element of delay may be considered in order to ascertain the veracity of the statement but not to discard it. Mr. Ghosh, learned Addl. PP has submitted that if the victim's statement inspire confidence of the court that must be relied upon without seeking further corroboration. To buttress his submission, Mr. Ghosh,

learned Addl. PP has relied upon a decision of the apex court in **State of Punjab Vs. Gurmit Singh and Others** reported in **(1996) 2 SCC 384** where the apex court has laid down the law in no uncertain terms:

**"21. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive**

**while dealing with cases involving sexual molestations."**

For appreciating the submission made by the learned counsel appearing for the parties, it would be apposite for us to re-evaluate the evidence in a meaningful manner.

**[17]** PW-1, Ranjit Ruhi Das, father of the victim has stated that the victim was brought to his house from the house of her maternal aunt namely, Bulbuli. According to him, Bulbuli is a distant relation and she was not full blood sister of his first wife. He found the victim depressed and in a state of fear. She did not disclose anything to him. The victim was found vomiting with headache. On insistence, she had disclosed to his wife (not the mother of the victim) that the son of Bulbuli, Sankar Munda "cohabitated with her" committing sexual intercourse. At that time, the victim (the name withheld) was 14 years of age. PW-1 has stated that he cannot give the actual date of birth or the year of birth of the victim. The victim after

her disclosure lodged the complaint to the police. In the cross examination, PW-1 has stated that he cannot produce the certificate of birth of the victim.

**[18]** PW-2, Minati Ruhi Das is the wife of PW-1. She has stated in the trial that after death of PW-1, she married PW-1. According to her, victim went to the house of Bulbuli for 5-6 days. After return, she found the victim in a state of depression and her physical condition showed that she was not well. She was suffering from headache and vomiting. On her insistence, the victim reported to her that Sankar, the appellant, "committed bad things with her". Then she guessed that she intended to say that "Sankar committed sexual intercourse with her". The matter was informed to village Matabbar. PW-1 has also stated the same way. On their advice, the victim lodged the complaint to the police orally and the female police officer recorded her statement. Out of fear she was hesitating to disclose the fact to them. After the case was registered, they had approached

Bulbuli (the maternal aunt) to arrange the marriage with the appellant but they did not accede. PW-2 has categorically stated that she did not have any personal knowledge about the occurrence.

**[19]** PW-3, Shri Laldin Feli was a staff nurse at Kadamtala CHC on 08.07.2016. She was the seizure witness of samples of saliva, blood, low and high vaginal swab and she put her signature on the seizure list (Exbt-1). She has also asserted that she collected the samples on the direction of the concerned medical officer and marked those samples. Samples of saliva, blood, low vaginal swab and high vaginal swab were marked by her as A, B, C and D respectively.

**[20]** PW-4, Sukhendu Paul was posted as GDA Staff of Kadamtala CHC on 08.07.2016. He is another seizure witness to the samples of saliva and blood (marked as Exbt- E and F) collected by the medical officer namely Dr. Soumali Nath. Those samples are collected in connection with Churabari PS case



2016CRB008. On the seizure list (Exbt-2), PW-4 has identified his signature.

**[21]** PW-5, Pradip Singha is a shopkeeper from the place where the appellant resides. According to him, the house of the appellant is visible from his shop. But he did not see anybody visiting the appellant's residence, not even his relatives. PW-5 has categorical stated that the appellant is married person and he has two children. Even his wife did not see anyone visiting the house of the appellant.

**[22]** PW-6- Pinki Singha, wife of PW-5 has been declared hostile in the trial as she did not support her statement recorded by the police during the investigation. She was cross-examined by the prosecution but she denied to make such statement before the police.

**[23]** PW-7, Dr. Biswajit Paul, was posted as surgeon on 12.07.2016 in the same hospital. He had examined the victim to ascertain her age. On the basis of eruption of teeth, he inferred that the age of the

victim would be below 14 years and above 12 years.

He identified his report (Exbt-4) in the trial.

**[24]** PW-8, Dr. Saptam Bhattacharjee had examined the victim by conducting Ultra Sonography on 01.08.2016 and he found that the victim was not carrying pregnancy as no gestationa sac of fetus was found. The report of the Ultra Sonography (Exbt-5) was introduced by him in the evidence.

**[25]** PW-9 Prantajoti Das is a witness of seizure of saliva and blood sample of the appellant and he has identified his signature on the seizure list (Exbt-2) in the trial. He has stated that the concerned medical officer collected the sample as requisitioned by the investigating officer.

**[26]** PW-10 Dipak Ch. Nath was a laboratory technician at Dharmangar District Hospital. He had carried out the pregnancy test by analyzing urine. The result was negative.

**[27]** PW-11, Dr Soumali Nath, was posted at Kadamtalla CHC on 09.07.2016. She carried out the

potency test of the appellant. After such examination, she opined that there was no injury in the genital of the appellant and his penis was normal. He was capable performing sexual intercourse and she had identified her report (Exbt-3) as introduced by PW-11.

**[28]** PW-12, Nandita Chakraborty, was a Woman Head Constable at Churaibari Police Station on 08.07.2016. She wrote the complaint as per the statement of the victim and forwarded the said complaint (Exbt-1) to the Officer-in-Charge, Churabari Police Station. PW-12 has also stated that she had taken the victim to Kadamtala CHC for medical examination. She has identified her signature on the complaint.

**[29]** PW-13 is the victim. She was tested to ascertain her capacity to understand the responsibility, in respect of duty of telling the truth. She has categorically stated in the trial that after death of her mother, her father (PW-1) did not take care of her. She has stated that she even did not know her father.

She was staying with her grandmother. She went to the house of one of the aunts namely Bulbuli at Sanicharra. There, she stayed for four days. The appellant is the son of Bulbuli. Bulbuli is the cousin of her mother. The appellant had taken her to look after his small female child and the occurrence had taken place at 7 pm in the house of the appellant. Thereafter she has stated that the appellant touched her vagina through his penis and penetrated (the statement with details has been reproduced before). She denied the suggestion that she has stated falsely in the trial.

**[30]** PW-14, Dr Subrata Paul was posted at Kadamtalla CHC on 08.07.2016. He had examined the victim being produced by the police. During such examination, due samples were taken from the victim. During the time of examination, the victim narrated to PW-14 as follows:

**"....she used to live at her maternal aunt's home. In one evening the accused person namely Sankar Kurmi committed forceful sexual intercourse on her by pressing her mouth and after that she was not subjected to menstrual course and she was having complain of some abdominal pain and**

**vomiting. According to her, the incident took two months earlier.**

It has been stated further by PW-14 in the trial as under:

**On examination of her I didn't find any mark of injury on her body. Regarding her private parts, I found that her Labia Majora was normal, no swelling marks and no injury was present. Labia Minora was also normal and there was no injury mark. Regarding her fourchette, I mentioned that it was normal. No tear or bleeding was found in vulva. I found it normal. In perineum I mentioned that it was normal. Her hymen was found torn and I mentioned that it was old healed hymen rupture. After two months of the incident there was no justification of collection of sample of vaginal swab and urine sample of the victim.**

His report (Exbt-6) was submitted on 09.06.2016 to the Police.

**[31]** PW-15, Ubaydur Rahman a Sub-Inspector of Police of Churaibari Police Station was entrusted with the investigation of Churaibari PS case 2016/CRB/008. He has stated in the trial that he had arranged the medical examination of the victim. He recorded the statement of the witnesses. He had also arranged for recording of the statement of the victim under Section 164(5) of the CrPC. He made a brief statement how he had carried out the investigation.

He has categorically stated that as per the report of the dental surgeon, the victim was 14 years of age at the time of occurrence. He has stated in the trial that the medical officer did not say that old hyminal rupture was due to intercourse but the medical officer reserved his opinion pending availability of the report from the State Forensic Science Laboratory (SFSL). He had submitted the charge sheet against the appellant under Section 366(2)(i) and Section 4 of the POCSO Act.

**[32]** We have scrutinized the medical examination reports of the victim and the appellant. It appears from the report [Exbt-6] that the victim narrated to the examining doctor that how she had been raped (forceful sexual intercourse). At that time, her mouth was pressed by the appellant. She had narrated the fact to her step mother. The finding of the medical examination has already been reproduced but no final opinion has been framed after availability of SFSL's report. The report from the SFSL has not

been placed in the record nor any forensic expert who carried out such examination was examined in the trial. Thus, the status of the medical report remained inconclusive in the eye of law. However, during the process of the investigation, the medical officer, PW-7, had observed that her hymen was torn but the hymeneal rupture was old.

**[33]** In this regard it is to be noted that the medical examination of the victim had taken place on 08.07.2016 and according to the prosecution the occurrence took place between 16.05.2016 and 22.05.2016 i.e. almost after one and half months. Thus it can safely be inferred the observation made in the said medical examination report (Exbt-6) is not abnormal. It is difficult to infer commission of the rape of the victim from the said medical examination report (Exbt-6). The said report therefore has to be read with the testimony of the victim.

**[34]** It is well settled law in a case of sexual assault corroboration cannot be sought as an essential

requirement. In this regard, the following passage from **Dinesh alias Buddha vs. State of Rajasthan** reported in **(2006) 3 SCC 771** be reproduced hereunder:

"In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar v. The State of Rajasthan* AIR 1952 SC 54 were:

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge..."

[Emphasis added]

[35]

The issue whether based on the sole testimony of the victim of rape a conviction can be



returned is no more *res integra* or in other words the principle in this regard is no more in the penumbra. In **Gurmit Singh** (supra), the apex court has succinctly enunciated the law by stating that if evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice.

**[36]** The young victim (PW-13) in the present case was allowed to be cross-examined by the defence but the defence did not even confront her on any material part of her testimony in the trial or on how the sexual assault occurred. The victim had placed the narrative. She has unwaveringly stated that seven months before the day of recording the statement in the trial, at about 7 pm at the house of the appellant

when the appellant's wife was away, the appellant made her "undressed". Thereafter he had touched her vagina by his penis and penetrated. She felt pain and did not allow to commit penetration fully. This part was also not confronted and as such the evidence of penetration is proved and hence we have no difficulty to bring the offence within the definition as provided under Section 375 of the IPC.

**[37]** Now the question that whether after such unopposed testimony, we would require further corroboration? In our considered view that if this testimony is read with the subsequent occurrences such as sending her to her father's house by Bulbuli (the maternal aunt and the mother of the appellant) who was not examined by the prosecution for obvious reason that she might not testify fairly against her son (the appellant). This cannot be treated as withholding of the material witness and thus, no adverse inference can be drawn against the prosecution. It is really a saga of tormented girl who suffered manifold

depravity. Even she had no relation of worth with her father (PW-1). In such circumstances, we can perceive how difficult it was for her to reach the police seeking justice. Thus, according to us, the delay that occurred cannot be stated to be fatal for the prosecution case. As we have already noted that the appellant has been acquitted from the charge under Section 4 of the POCSO Act and from the charge under Section 376(2)(i) of the IPC as according to the trial judge, the 'minority' of the victim could not be established by the prosecution to the hilt. There is no challenge against such finding by the state. In such circumstances, we are not inclined to embark on scrutiny of those findings.

**[38]** It may be categorically noted that the medical examination report (Exbt-6) comes no way in conflict with the testimony of the victim and as such we find no difficulty in placing our reliance on the testimony of the victim.

Having observed thus, we affirm the conviction of the appellant for committing offence punishable under Section 376 (1) of the IPC and in consequence thereof, the appeal stands dismissed. The appellant shall serve out the remaining period of sentence as awarded by the special judge.

Send down the LCRs forthwith.

**JUDGE**

**JUDGE**

