

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A (J) NO.50 OF 2016

Shri Dharani Sarkar,
S/o. Late Gopal Sarkar,
A resident of Shyama Prasad Colony,
P.S. Srinagar, Bishalgarh, West Tripura District
(Now Sepahijala)

**----- Convict-Appellant
Versus**

The State of Tripura.

----- Respondent

For the Appellant(s)	: Mr. S.M. Chakraborty, Sr. Advocate. Mr. A. Bhattacharjee, Advocate.
For the Respondent(s)	: Mr. S. Debnath, Addl. P.P.
Date of hearing	: 15.01.2021.
Data of delivery of Judgment & Order	: 31/03/2021.
Whether fit for reporting	: NO.

**HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE ARINDAM LODH**

J U D G M E N T & O R D E R

Arindam Lodh.J

The convict, being aggrieved by the judgment and order of conviction and sentence dated 27.07.2016 passed in case No. S.T.(24) of 2012 whereby and whereunder he was convicted under Section 376(2)(e) of IPC and sentenced to suffer R.I. for 10

years and to pay a fine of Rs.5,000/- with default stipulation, has preferred the instant appeal.

2. Briefly stated, the prosecution case was set in motion on the basis of a complaint lodged by a victim of a rape stating *inter alia* that on 09.11.2010, while she was pregnant and taking advantage of the absence of her husband in the house, her father-in-law entered into the room for watching T.V. She was sleeping, all on a sudden, she felt someone had touched her body and embraced her. She woke up and found her father-in-law and as she tried to resist him, he gagged her mouth with hand. Therefore, she failed to do anything as he was more strong having a stout body. Her father-in-law then committed rape upon her and threatened her not to divulge the matter to anyone else he would kill her. On that day, when her husband returned home in the evening, he was not interested to listen to the incident from her. Her mother-in-law herself informed her son about the incident and said that her father-in-law walked out of his homestead to somewhere. Then without asking her anything, her husband went out in search of her father-in-law, and thereafter, she intimated the matter to her aunt-in-law over phone. The incident was further informed to her elder sister. When the inmates of her parental house asked her husband about the incident, he preferred to keep away from raising any allegation

against his father. When her 'Didi' (elder sister), 'Jamaibabu'/brother-in-law (husband of her sister), maternal uncle and her mother went to her inlaw's house to bring her, then, her in-laws did not allow her to go and withheld them. After two days, on 12.11.2010, the inmates brought her to her parental house from her matrimonial home. The said complaint was received by the officer-in-charge of Srinagar Police Station on 13.11.2010 at 1625 hrs and registered it as SRN PS C/no 21/10 u/s 376/506 of IPC.

3. Investigation was endorsed to S.I. Rajendra Debarma and during his investigation, he visited the place of occurrence, recorded the statements of the available witnesses, arranged for recording statement of the victim under Section 164(5) of Cr.P.C. before the Magistrate and prepared hand-sketch map with the index of place of occurrence. Seized the wearing apparels of the victim in front of the witnesses and sent the same to State Forensic Science Laboratory (SFSL) for examination. After collecting all evidence and materials on record, the investigating officer submitted the charge-sheet against the accused-appellant for the offences punishable under Section 376 & 506 of IPC. On receipt of the charge-sheet, the learned SDJM, Bishalghar, West Tripura took cognizance of the offence, and after observing all formalities, committed the case to the Court of learned Sessions

Judge, West Tripura. The learned Sessions Judge transferred the case to the Court of learned Addl. Sessions Judge. At the commencement of trial, charge was framed against the accused under Section 376 and 506 of IPC to which the accused pleaded not guilty and claimed to be tried.

4. In course of trial, the prosecution examined as many as 17 witnesses and altogether, 10 documents were brought on record on proof, including Exbt-M/O-1-seized '*petti coat*' of the victim. At the closure of recording evidence, the accused was examined under Section 313 of Cr.P.C., wherein, he was noticed to the incriminating evidences surfaced against him by the prosecution witnesses and the materials on record to which, the accused-appellant denied all the allegations levelled against him. However, the accused-appellant declined to adduce any evidence on his behalf.

SUBMISSIONS ON BEHALF OF THE APPELLANT

5. Appearing on behalf of the appellant, Mr. S.M. Chakarborty, learned senior counsel assisted by Mr. A, Bhattacharje, learned counsel at the very outset has drawn our attention to the fact that in the complaint, the victim stated that she was raped by the accused on 09.11.2010 but the victim deposed on 'OATH' before the Court that the date of occurrence

was on 10.11.2010. Due to such variation of mentioning the date, learned Sr. Counsel tried to persuade this Court that the very genesis of the case appears to be false since the prosecution has failed to prove the actual date of alleged offence.

5.1. Next, learned Sr. Counsel contended that FIR was lodged after 4(four) days without any explanation which was confirmed by the oral testimony as well as from the contents of the complaint itself (Exbt-1) and that made the prosecution case fatal.

5.2. Mr. Chakraborty, learned Sr. Counsel drawing our attention to the testimony of the victim (P.W.-9) contended that the prosecutrix was not at all trustworthy and her evidence was of no credence. Learned Sr. Counsel tried to persuade us contending that there were serious omission and contradiction in the deposition of the prosecutrix (P.W.-9) and also her evidence was found to be full of improvements and exaggerations. Learned Sr. Counsel also noted so many inconsistencies in the statements of the victim (P.W.-9).

5.3. Criticizing the judgment of the learned Addl. Sessions Judge, learned Sr. Counsel contended that the learned Trial Court misinterpreted and misconstrued the provision of Section 114(b) and Section 114(g) of the Indian Evidence Act. Next, Mr.

Chakraborty, learned Sr. Counsel would contend that the statements made by the victim on 'OATH' before the Trial Court were found absent in her previous statement recorded under Section 164(5) of Cr.P.C., which, were further confirmed by the evidence of learned SDJM at the time of deposition before the Court.

5.4. Criticizing strongly the finding of the Trial Court on the issue of oral testimony of the prosecutrix vis-a-vis the medical examination report and the evidence of the doctor, learned Sr. Counsel quite emphatically argued that the medical report totally improbabilised the story of rape upon the prosecutrix (P.W.9) by the accused-appellant.

5.5. Proceeding further, learned Sr. Counsel submitted that there was no reason to disbelieve, P.W.-1 and P.W.-2 who according to the victim entered into her room after half/one hour of the incident when she narrated the incident of rape upon her to Smt. Ujjala Sarkar (P.W.-4).

5.6. Learned Sr. Counsel argued that when learned Trial Judge did not find any ingredient of Section 506 of IPC and acquitted the appellant from this charge, in that event, the learned Trial Court ought to have been acquitted the appellant from the charge levelled against him under Section 376 of IPC.

Besides, he argued that none of the independent witnesses had supported/corroborated the story of rape as projected by the prosecution.

5.7. Mr. Chakraborty, learned Sr. Counsel further contended that neither the village pradhan nor the husband of the victim nor the mother-in-law of the victim was produced to support the prosecution case.

5.8. Lastly, learned Sr. Counsel argued that it was a fit case of acquittal of the appellant.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

6. Refuting the aforesaid submission of the learned Sr. Counsel claiming acquittal of the appellant, Mr. S. Debnath, learned Addl. P.P. strongly defended the reasoning and findings given by the learned Addl. Sessions Judge while convicting the accused.

6.1. Learned Addl. P.P. contended that in rape cases, there would be none other than the victim of rape. He further contended that it should not be overlooked that a woman or a girl subjected to rape is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if

she was an accomplice. Learned Addl. P.P. contended that from the version of P.W.-2, Ms. Ruma Sarkar, it was established that on her approach, she gave her mobile to the prosecutrix when, the prosecutrix informed her elder sister. Learned Addl. P.P. further argued that starting from the episode of entering into the room of prosecutrix and her immediate narration of facts to P.W.2, & P.W.-4 viz Ms. Ruma Sarkar and Smt. Ujjala Sarkar respectively would form a complete chain in the entire chain of events which would lead the Court to draw the only inference that the appellant was guilty of committing the offence of rape upon the prosecutrix.

OUR DISCUSSION AND FINDINGS

7. Having heard the rival submission of the learned counsel appearing on behalf of the parties, we would like to proceed to make a short survey of the evidence and the materials brought on record by the prosecution to decide the sustainability of the conviction and sentence imposed upon the appellant.

8. Firstly, we would like to read the evidence of P.W.-9, the victim prosecutrix. In her deposition, the prosecutrix (P.W.-9) almost reiterated her statements that she made in her complaint mentioning the date and time of the incident of rape. Adding to the statement made in the complaint, P.W.-9 deposed that the

accused-appellant after committing rape had kept some money on the table and informed her that he was going to Bangladesh. At about 3.30 P.M. her mother (P.W.-3), husband of her sister, Sri Sujit Sukladas (P.W.-12) accompanied by her uncle Sri Haripada Sukla Das (P.W.-5) visited her matrimonial home. Her mother-in-law and husband also arrived when she narrated the incident to all of them. Hearing the same her mother-in-law (P.W.-3) instructed her husband to find out the appellant. Accordingly, the husband went out and returned back at about 7.30/8.00 P.M. On his arrival, her mother (P.W.-3) inquired about the appellant and wanted to know about his decision in regard to the incident to which her husband suggested to her mother to spend the night in her matrimonial home so that on the following day in the morning, he could seek redress of the matter through local people. On that day, at night, the matter was informed to the local pradhan by her uncle and husband of her sister when pradhan expressed his inability to do anything and advised them to take shelter of law. On that night, her husband arranged a rented house and on the following day, they shifted to that rented house along with the prosecutrix. Her husband requested her not to disclose the matter to anybody else in his absence. In the evening, her husband went to the market. P.W.-9 further mentioned that taking a mobile phone from one Soma Sarkar, a

resident of that area and the daughter of her 'aunt-in-law' she contacted her mother and requested her to take her back. On 12.11.2010, her mother visited her rented house and took her back to Agartala. Despite giving assurance to take her back by her husband, he did not visit her mother's house at Agartala on 12.11.2010 which prompted to lodge a written complaint on 13.11.2010 to the officer-in-charge, Srinagar Police Station. She further deposed that the police recorded her statement, seized her 'petti coat', and she was produced before the Medical officer for her medical examination and on the same day, she was produced before the Magistrate at Bishalgarh to give her statement. Accordingly, the Magistrate recorded her statement under Section 164(1) of Cr.P.C (Exbt-3).

During her cross-examination, many of her statements were found absent in her previous statements recorded under Section 161 of Cr.P.C. Even when her attention was drawn to her statement recorded under Section 164(5) of Cr.P.C. in respect of the fact that she stated to the Magistrate that hearing her cry after elapse of half/one hour of the incident Ujjwala Sarkar (P.W.-4), her another aunt-in-law and Ruma Sarker entered into her room were found to be absent. She made many such statements which were not at all found in her statement under Section 164(5) of Cr.P.C.

9. Next vital witnesses are Ms. Ruma Sarkar (P.W.-2) and Smt. Ujjala Sarkar (P.W.-4) to whom the prosecutrix narrated the incident of rape committed by the accused-appellant on their entry into her room after a lapse of half/one hour of the incident on hearing her cry.

10. P.W.-2, Miss Ruma Sarker deposed that she did not know anything about the case. She was declared hostile in her cross-examination by the side of the prosecution. She denied the statements of the prosecutrix (P.W.-9) that on 10.11.2010 the prosecutrix went to their house in the afternoon and informed her that her father-in-law committed rape upon her. However, she stated that at the request of the prosecutrix, she gave her mobile phone to the prosecutrix when she talked to somebody, but, she did not hear anything about the conversation. Being further cross-examined P.W.-2 stated that she was asked to provide mobile by her '*boudi*' i.e. the prosecutrix from the verandah of her dwelling hut. At that time, the prosecutrix was in a normal mood. She further stated that no neighbours were found in the house of the prosecutrix at that time.

11. P.W.-4, Smt. Ujjala Sarkar deposed that her relation with the appellant was not good and on that day at about 3.00/3.30 P.M. she was informed by the wife of Prasenjit of a nearby house that on the same day the prosecutrix was raped by

the appellant. She further deposed that she never used to visit the house of the appellant and, therefore, she knew nothing apart from this statement she made in her chief examination. Deposing further, P.W.-4 stated that on the same day in the evening time, the mother of the prosecutrix visited her matrimonial house and requested her to go to their house but she did not go there and she had no idea about any incident of the appellant on the date of Kali Puja.

Being confronted with cross-examination, P.W.-4 admitted that she did not state to the I.O. that on a certain date at about 3.30/4.00 P.M., she was informed by the prosecutrix that her father-in-law committed rape upon her on the same day. She further denied that she was informed by the prosecutrix that the appellant committed rape upon her on a certain day about two years back. She also stated that she did not state to the I.O. that after the arrival of the mother of the prosecutrix, she was requested to visit their house. She further stated that she had no idea or knowledge about the involvement of the accused in that incident.

12. Next are the witnesses who came to the house of the prosecutrix after being informed about the incident. They were P.W.-3, the mother of the prosecutrix, P.W.-12, Sri Sujit Sukla Das and P.W.-5, Sri Haripada Sukla Das.

13. P.W.-3, Smt. Mani Sukladas deposed that her elder daughter, namely, Smt. Jayanti Sukladas informed her over the phone about the incident, particularly, the commission of rape upon her younger daughter, the prosecutrix. After hearing that, she visited the house of Haripada Sukladas, P.W.-5 and disclosed to him about the said fact and thereafter, she went to the matrimonial home of the prosecutrix. She found gathering in her matrimonial home and also noticed that her daughter was crying. She tried to take back her daughter but the husband of the prosecutrix and her mother-in-law did not allow the prosecutrix to go with her. On that date, they returned from their house and on the following day, in the morning again she being accompanied by her elder daughter, Jayanti and her husband went to the matrimonial house of the prosecutrix and found that the husband of the prosecutrix was taking preparation to shift to a rented house. They advised him not to do so but denying their proposal, he went to a rented house with the prosecutrix. On the following day, in evening time her elder daughter, namely, Jayanti again received a telephonic call from the prosecutrix when prosecutrix informed Jayanti that in the afternoon, her husband after some discussion with her father-in-law again started to torture her and she sought their help. As such, on the next date in the morning time, they went to rented house to bring back her daughter into

their own house. Husband of the prosecutrix also visited her house on the same day and assured her that he would mitigate the matter in presence of their pradhan and others respectively. On his assurance, they waited for that day but on the next day as there was no communication from the side of the husband of the prosecutrix, her daughter lodged the case against her father-in-law.

During her cross-examination, many of her statements which she made in the examination-in-chief were found to be absent when her attention was drawn to her previous statement recorded under Section 161 of Cr.P.C.

14. P.W.-5, Sri Haripada Sukla Das, deposed that about two years back on a certain evening time, he was informed by the P.W.-3 that the father of Prasenjit i.e. the husband of the prosecutrix committed rape upon the prosecutrix. On request, he accompanied P.W.-3. He went to the matrimonial home of the prosecutrix. On his arrival, he found Jayanti and her husband was sitting in a *khat*. Thereafter, keeping P.W.-3 in that house, he went to the matrimonial house of his daughter who used to reside in that area and he spent the night therein. On the following day, in the morning, he came to know that the prosecutrix along with her husband went to the rented house.

During his cross-examination, he stated that he found the prosecutrix, her sister, Jayanti and Jayanti's husband talking to each other and he was asked by the husband of the Jayanti as to why he settled the marriage of the prosecutrix in that house.

15. P.W.12, Sri Sujit Sukladas i.e. the husband of Jayanti deposed that on 10.11.2010 at about 3.00 P.M., the prosecutrix informed her wife, Jayanti over the phone that she was raped by the appellant on the same day. Hearing this he went to the residence and along with Jayanti he visited the house of the prosecutrix accompanied by P.W.-3 and P.W.-5. On their arrival at the matrimonial house of the prosecutrix, they were informed about the incident. They tried to take the prosecutrix back to the house of P.W.3 but the inmate of the house of prosecutrix did not allow her. On the following day, he came to know that the prosecutrix and her husband went to a rented house. On that day, in the evening time, the prosecutrix informed his wife over the phone that her husband created pressure upon her not to lodge any complaint against her father-in-law. On the following day, they again visited the rented house of the prosecutrix and brought her to Agartala. Thereafter the prosecutrix lodged a complaint and he was witness to the seizure list of '*Peti coat*'.

16. P.W.-13, Smt. Jayanti Sukladas, the elder sister of the prosecutrix deposed that on 10.11.2010 at about 2.45 P.M. she

was informed by her prosecutrix/ sister over the phone that she was forcibly raped by her father-in-law while she was sleeping in her bed. Having received that information, she along with her husband, mother and one uncle, namely, Sri Haripada Sukla Das, P.W.-5 went to the matrimonial home of the prosecutrix. They tried to take her back with them but her inmates did not allow her. They came back to Agartala. On the following day in the morning, she received another telephonic call from the prosecutrix when she had informed that the husband of the prosecutrix arranged a rented house at Bankumari and they shifted to that house. On the same day, in the evening time, she was informed by her sister-prosecutrix that she was pressured by her husband not to lodge any complaint against the appellant. On the following day, they visited the rented house and took the prosecutrix back to Agartala on 13.11.2010. The prosecutrix lodged a written complaint to the P.S.

During her cross-examination, her statement in respect of the fact that her sister-prosecutrix was forcibly raped by the appellant was found absent in her previous statement recorded under Section 161 of Cr.P.C.

17. P.W.1 Smt. Sadhana Bhowmik deposed as an independent witness and she deposed that she had no knowledge about the incident. She was declared hostile.

In the cross-examination, she denied the suggestions put forth to her by the prosecutrix.

18. P.W.8, Smt. Putal Debnath is not a material witness.

19. P.W.-10. Dr. Pranab Chowdhury, conducted potency test of the appellant and found him capable of performing sexual intercourse.

20. P.W.11, Dr. Madan Mohan Debnath examined the prosecutrix and P.W.-15, Sri Darsu Chakma is the Scientific Officer.

21. On examination, P.W.11 deposed that he collected vaginal swab and also packed and sealed the same and handed over to ASI Hemanta Debbarma. He opined in his report that there was evidence of sexual intercourse on multiple occasions. He further opined that there was evidence of approximately 16 weeks gestation. He kept his final opinion reserved after obtaining the vaginal swab examination report.

In his cross-examination, P.W.-11 stated that after examining the seminal stain, spermatozoa of human origin could not be detected in the exhibit marked as Y which as per the description of the exhibit is the preserved vaginal swab of the victim girl. P.W. 11 further stated that '*in case of forcible sexual*

intercourse, there is a possibility of miscarriage/threaten abortion of a pregnant lady if she is carrying 16 weeks gesture'.

22. P.W.15, Sri Darsu Chakma is the Scientific Officer who chemically examined the vaginal swab collected from the victim. He deposed that seminal stain could not be detected from the 'petticoat' worn by the victim at the time of occurrence.

23. Now on minute scrutiny of the evidence and materials brought on record, it is revealed that the statement of the victim lady in respect of the fact that after the occurrence, Smt. Ujjala Sarkar (P.W.-4) and Smt. Ruma Sarkar (P.W.-2) entered into the room of the victim does not get support from their statements. Smt. Ruma Sarkar has categorically stated in her evidence that she never went to the room of the victim. In the afternoon, she being a resident of an adjacent house had seen the victim in the veranda where she used to reside, when, on her demand, she gave her mobile phone. She further stated that she found the victim (P.W.-9) in a normal mood. Though this witness was declared hostile but her evidence elicited in the cross-examination, in our opinion, cannot be brushed aside. So, the very genesis of the case appears doubtful to us. It is further revealed from the statement of the Sub Divisional Judicial Magistrate who recorded the statement of the victim under Section 164(5) of Cr.P.C. in respect of the fact that the victim in

her statement did not state before him specifically that hearing her cry after a lapse of half/one hour of the incident, Ujjala Sarkar, her aunt-in-law and Ruma Sarkar entered into her room. It is further stated that the victim did not state to him that taking the phone from Ruma Sarkar (P.W.-2) she made contact with her sister. SDJM, Sri S. Sarma Roy, (P.W.-14) further stated that the victim did not make any such statement before him that her mother, uncle, and husband of her sister visited her matrimonial house at about 3.30 P.M. on the date of the incident. One striking feature in the statement of P.W-14 is that the victim only stated to him that on 13.11.2010 she lodged the complaint to Srinagar P.S. but she did not state that despite giving assurance to take her back by her husband, her husband did not visit her mother's house on 12.11.2010 and, therefore, on 13.11.2010, she lodged the case. P.W.-14 further stated in his cross-examination that sufficient opportunities were provided to the victim to recollect her memory at the time of recording of her statement judicially under Section 164(5) of Cr.P.C.

24. Smt. Ujjala Sarkar, P.W.-4 deposing before the Court stated that at about 3.00/3.30 P.M. on a certain day about two years back, she was informed by the victim who was the wife of Prasenjit and a resident of the nearby boundary of her house that on the same day, her father-in-law committed rape upon her.

Noticeably, the victim P.W.-9 did not mention the time of occurrence of the offence in her written complaint. She only stated that during the daytime on 09.11.2010, the accused committed rape upon her. Further during her deposition, the victim (P.W.-9) stated that it was at about 12.30/12.45 hours, the accused committed rape upon her. Surprisingly, we noticed that though the incident occurred at 12.30 hours, but, even for a moment, if we believe the statement of P.W.-4, then, also, it has come to light that immediately after the incident, the victim did not inform the factum of the incident to any of her neighbours. P.W.-4 further deposed that her relation with the accused was not good and she did not visit the house of the accused and she had no idea about any other incident. The prosecution did not declare P.W.-4 as hostile.

From her cross-examination, it is revealed that she has not stated the statement she made in examination-in-chief that she was informed by the victim on the fateful day at about 3.00/3.30 PM in respect of the fact that her father-in-law committed rape upon her. So, this statement also is found to be an improved version of P.W.-4.

25. Next, it would be relevant to discuss the veracity of the statements of the P.W.-9, the victim. We have noticed her statement that on 10.11.2010, at about 12.00/12.45 PM, while

she was sleeping in her bed to take rest, her father-in-law entered into her room and on the plea of watching T.V., he came to her bed and by gagging her mouth he raped her forcibly. She tried her level best to make herself free but failed. At that time, she was carrying four months of pregnancy. Here, we find that in the written complaint that was lodged on 13.11.2010, she stated that the accused raped her on 09.11.2010. In the written complaint, the victim has stated that while she was sleeping her father-in-law entered into her room for watching T.V. Question arises, if she was sleeping how could she come to learn that her father-in-law entered into her room for watching T.V.

26. The next circumstance is that after half/one hour of the incident, her aunt's-in-law i.e. P.W.-4, Ujjala Sarkar along with Ruma Sarkar, P.W.-2 entered into her room when she narrated the incident to them. But as we said earlier that both P.W.-2 & P.W.-4 denied that they had gone to the house of the victim. More so, these statements of the victim are found absent in her previous statements recorded under Section 161 of Cr.P.C. Even this statement is found to be absent in her statement recorded under Section 164(5) of Cr.P.C. Noticeably, almost all of her statements which she deposed during her examination-in-chief are found to be absent in her previous statements recorded under Section 161 of Cr.P.C which came to light after her attention was

drawn to her previous statements. Another most important feature, in this case, is that Dr. Madan Mohan Debnath, P.W.11, who medically examined the victim on 15.11.2010 opined that there was evidence of sexual intercourse on multiple occasions and she was having 16 weeks' gestation.

In his cross-examination, P.W.-11, Dr. Madan Mohan Debnath stated that the Senior Scientific Officer could not detect any seminal stain in the '*petticoat*' i.e. the Exbt. marked as 'Y' which as per the description of the exhibit is the preserved vaginal swab of the victim. It makes the prosecution story more doubtful for the reason that the victim in her examination-in-chief deposed that initially she tried to resist the accused from committing rape but she failed. That means the accused had been able to completely fulfill his lust and in that case, there was every chance of detection of the seminal stain in the vaginal swab of the victim. Another interesting feature surfaced in the evidence of the Doctor (P.W.-11) is that he categorically stated that if there was any forcible sexual intercourse then, there was a possibility of miscarriage /threaten abortion of a pregnant lady if she was carrying 16 weeks gestation. In the present case, there is no evidence of any miscarriage suffered by the victim.

27. Furthermore, from the evidence, it is revealed that on the date of the incident, in the afternoon, the mother(P.W.-3),

her sister(P.W.-13), brother-in-law (P.W.12) accompanied by her uncle Haripada Sukladas (P.W.-5) visited the house of the victim and after hearing everything they wanted to take the victim with them to the house of P.W.-3, the mother of the victim at Agartala but at the request of the inmates they allowed the victim to stay in the same house. At that juncture, they brought another story that the husband of the victim assured P.W.-3, P.W.-13, P.W.-12 and P.W.-5 that on the next day he would take her wife to a rented house. On the next day, both the victim and her husband went to the rented house, wherefrom, the victim informed her mother to take her back because the husband started to inflict torture upon her at the advice of her father-in-law. It makes us to suspect the real intention of the victim whether at all, she wanted to stay together with her in-laws or to stay separately with her husband. It appears unnatural to us that even after being suffered from the pain of rape by a person who is her father-in-law, she stayed at that house for that night and did not lodge any complaint before any lawful authority. She only lodged information on 13.11.2010 that is after four days, if her statement is believed that she was subjected to rape by the accused on 09.11.2010. Added to it, the Officer-in-charge, Inspector Akhtar Hossain (P.W.-16) has categorically stated that

in the complaint there was no explanation for the delay caused to lodge the complaint.

28. On the overall assessment of the evidence and materials brought on record, we find that there are full of inconsistencies in the version of the prosecution in respect of the story of rape. Further, there are many improvements and exaggeration not only in the statement of the victim (P.W.-9) but also in the evidence of her near relatives apart from contradictions apparent in the oral testimony of the prosecution witnesses.

29. Having held so, according to us, the appellant is entitled to get benefit of doubt. Accordingly, the appellant is acquitted on the benefit of doubt. The appellant is on bail. He is discharged from his bail bond and surety is also discharged.

30. The appeal stands allowed.

Send down the LCRs.

JUDGE

JUDGE