

GAHC010024642016



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : CrI.A. 227/2016

1:NASIR UDDIN ALI
S/O ALI AHMED OF DIGBOI CLUB, DIGBOI, P.O. and P.S. DIGBOI, DIST.
TINSUKIA, ASSAM.

VERSUS

1:THE STATE OF ASSAM and ANR,
REPRESENTED BY P.P.

Advocate for the Petitioner : MR. N ZAMAN

Advocate for the Respondent : MR. N K KALITA(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE RUMI KUMARI PHUKAN**

JUDGEMENT AND ORDER (CAV)

31.08.2020

Heard Mr. N. Hasan, learned counsel appearing for the appellant/accused as well as Mr. N.K. Kalita, learned Addl. P.P., Assam appearing for the State respondent.

2. Present appeal is directed against the judgment and order dated 12.07.2016, passed by the learned Assistant Sessions Judge, Tinsukia, in Sessions Case No.64(M)/2011, whereby the accused/appellant has been convicted under Section 376 of the IPC and sentenced to undergo rigorous imprisonment for a period of 9 (nine) years and to pay fine of Rs.1,000/-, in default further imprisonment for three month.

3. The prosecution case in nutshell is that on the night of 26.11.09, at about 10:00 P.M., while the victim was on her way to home on foot from Digboi Chariali market and arrived near Digboi club, one Muslim man having beard forcefully took her to the bathroom of nearby swimming pool and committed rape upon her. On receiving the verbal information from the victim on the following day i.e. on 27.11.2009, at 11.45 A.M., the Digboi Police Station GD Entry No.1014, dated 27.11.2009 was made and the victim was sent to the hospital for medical examination. ASI Sashi Thakuli , who was entrusted with the investigation of the case by the Officer-in-charge, Digboi P.S., visited the place of occurrence and prepared the sketch map and also recorded the statement of the witnesses. On 27.11.09 itself, as shown by the victim, the accused was apprehended and brought to the police station. The formal ejahar was lodged by the victim on the same day at about 5.30 P.M. and accordingly Digboi P.S. Case No.264/09, under Section 376 of the IPC was registered. The statement of the victim was recorded under Section 164 of the CrPC and the accused was arrested and forwarded to Court. The medical report of the victim was collected and after completion of the investigation, the charge sheet was filed against the accused/appellant under Section 376 of the IPC.

4. On being committed, the case was tried for commission of offence under Section 376 of the IPC and the accused denied the charge.

5. During the course of trial, the prosecution examined as many as seven (7) witnesses including the I.O. and M.O. The statement of the accused was also recorded under Section 313 of CrPC. In support of his case, the accused/appellant examined two defence witnesses. The plea of the defence

was of denial and after completion of the trial, the accused/appellant was held guilty and convicted, as stated earlier. Hence the appeal.

6. I have heard the argument of learned counsel for both sides at length and perused the record and evidence adduced by both parties.

7. The learned counsel Mr. N. Hasan, appearing on behalf of the appellant with vehemence has submitted that in the present case the victim has changed her version in course of trial as that of the FIR but the learned trial Court has failed to appreciate the aforesaid discrepancy and inconsistent evidence of the victim and also the fact that the medical report does not support the case of the prosecution. Furthermore it has been contended that the wearing apparel of the victim were not seized by the I.O. for forensic examination, although the victim has stated that the same were taken by the I.O. Over and above, it is the contention of the learned counsel appearing for the appellant that the evidence of the victim is also not supported by any independent witness, nor the relevant witnesses referred by the victim has been examined by the I.O. Assailing the judgment that the conviction rendered by the learned trial Court on the basis of sole testimony of the victim is bad in law and it is prayed to allow the present appeal and to set aside the impugned judgment and order and acquit the accused/appellant from the offence.

8. In support of the above submission, learned counsel for the appellant has heavily relied upon the following decisions of the Hon'ble Apex Court:

(1) Santosh Prasad @ Santosh Kumar vs. State of Bihar, AIR 2020 SC 985;

(2) Rai Sandeep @ Dipu vs. State (NCT of Delhi), (2012) 8 SCC 21;

(3) Narendra Kumar vs. State (NCT of Delhi), (2012) 7 SCC 171;

(4) Krishna Kumar Malik vs. State of Haryana, (2011) 7 SCC 130 and

(5) Raju and others vs. State of Madhya Pradesh, (2008) 15 SCC 133.

9. The learned Addl. P.P., Assam, Mr. N.K. Kalita, appearing for and on behalf of the State has vehemently opposed the appeal and submitted that the case of the prosecutrix has been fully supported by the facts and circumstances and other witnesses examined by the prosecution and merely because medical report is not conclusive, the evidence of the victim cannot be discarded. Relying on the decisions of Om Prakash vs. State of U.P., (2006) 9 SCC 787 it is submitted that the evidence of the prosecutrix in an offence like rape should not be discarded for the lack of supporting evidence, where her evidence inspire confidence and there is no likelihood of false implication of the accused in the given case. Referring to the decisions filed by the appellant side in Raju and others (Supra), it has been submitted in the said decisions also that the Hon'ble Apex Court held that ordinarily the evidence of prosecutrix should not be suspected and should be believed and no corroboration is necessary, if her evidence is found reliable. It has also been submitted that the totality of the circumstances appearing on the record discloses that the prosecutrix have no any motive or reason for false implication of the accused and nothing emerges to suspect her evidence. Further it has also been submitted that no self-respecting woman will come forward to the Court just to make a humiliating statement against her honour involving commission of rape upon her. Reliance has been place on the decision of Bipul Medhi vs. State of Assam, 2007 (2) GLR 2000, wherein it has been held that evidence of a woman of the society given at the cost of her reputation cannot be disbelieved by the Court, except for extra ordinary reason.

10. Mr. Kalita, learned Addl. P.P., Assam also pointed out that the statement of the accused given under Section 313 of the CrPC and also his evidence as DW.1 is clear admission on his part about his presence at the place of occurrence at night hours which is again corroborated by the evidence of the PW.2 and he has measurably failed to prove his plea that the victim came on a motorcycle with another person namely Sanjay Upadhyay on the day of occurrence and all these aspects suggestive of his complicity with the occurrence. So far as regards the discrepancy in the FIR and in statement regarding the time, etc. it is submitted by the learned Addl. P.P., Assam that the statement of the

victim otherwise remain constant including the statement given under Section 164 CrPC and minor discrepancy cannot dispel the entire prosecution case, as there was no major contradiction to shake the prosecution case.

11. Making the above submissions and relying on the decision, it is submitted that the appeal is devoid of merit and liable to be dismissed.

12. I have considered the submission of the learned counsels for both the parties and the decisions referred as well as gone through the impugned judgment and order and the evidence on record.

13. The present case can be differentiated from the decision of Sontosh Prasad (Supra) in as much as the prosecutrix has no any enmity/dispute with the accused person and it is not a case of no any supporting evidence. In the aforesaid decision, the accused was convicted solely relying upon the testimony of the prosecutrix and the Hon'ble Apex Court set aside the conviction primarily on the ground of enmity between the parties, lack of medical as well as other supporting evidence and serious contradiction in the evidence of the prosecutrix as regard the occurrence.

14. So far as regards the other cases referred above i.e. Raju and others (Supra), Rai Sandeep (Supra), Krishna Kumar Malik (Supra) and Narendra Kumar (Supra), they relate to a proposition that to base conviction on solitary evidence of the prosecutrix, her evidence should be reliable and unblemished and should be of sterling quality. In Rai Sandeep (Supra) and Krishna Kumar Malik (Supra), the Apex Court had the occasion to consider who can be said as a sterling witness. For proper appreciation of the matter let us re-capitulate the observation made by the Hon'ble Supreme Court.

15. In case of Rai Sandeep @ Dipu (Supra), it has been observed as follows:

“22 In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end,

namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have correlation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

16. Similarly in case of Krishna Kumar Malik (Supra), it has been held that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided that the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

17. On the other hand, in Om Prakash (Supra) the Hon'ble Apex Court has also dealt with the prospect as to the reliability of the testimony of the prosecutrix in following manner:

"13. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scuttling her own prestige and honour.

14. 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 Court, 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. This position was highlighted in State of Punjab v. Gurmeet Singh, (1996) 2 SCC 384.

15. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. There is no rule of law or practice incorporated in the Indian Evidence Act, 1872 (in short 'Evidence Act') similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is own to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. This position was highlighted in State of Maharashtra v. Chandraprakash Kewalchand Jain (1990 (1) SCC 550).”.

18. In State of Punjab vs. Gurmit Singh, (1996) 2 SCC 384; the same proposition was laid down.

19. Bearing in mind the above proposition of law, what is parameter to be considered to rely the evidence of the prosecutrix and other facts and circumstances and to appreciate whether evidence of prosecutrix is inspiring and trustworthy and of sterling quality, we have to turn down to the evidence on record now. It has been held in above catena of decisions that the testimony of the prosecutrix

must be appreciated on the background of the entire case and the totality of the circumstances appearing on the record and to appreciate as to whether any scope for false implication of the accused. Having been swayed by the broader prospective as laid down above, when we examine the case in hand, it is to be noted that the victim is a twenty years old girl working in a private hospital on daily wage basis and she has no earlier acquaintance with the accused person nor any enmity for false implication of the accused. It is also noted that the place of occurrence is not at her own locality and hence she was not aware about the residents of the locality. So she has briefly referred the name of some persons like chowkidar of the Swimming Pool as well as the officers of the Club, etc.

20. In her evidence the prosecutrix as PW.1 has stated that on the day of occurrence, at about 9:00/9:30 P.M. while she was returning from her duty in IOC Medical Ward, the accused person suddenly restrained her on the way and asking her some irrelevant questions, dragged her away to the bath room of nearby swimming pool by gagging her mouth and committed rape upon her. There was nobody to hear her hue and cry. After commission of the offence, the accused fled away and she stayed there till early morning weeping all through. Thereafter she went to the house of nearby person and reported to matter. She also asked one Sankar Chetry/the chowkidar about the accused person who showed her the house of accused. Then the victim went to the house of accused and reported the matter to his wife, who scolded her and drove her away. The prosecutrix also reported the matter to the authority of the swimming pool and the club and they asked her to report the matter to the police and accordingly she filed the FIR on the next day, which was written by a police official in the police station. Vide Ext.1 is the FIR and Ext.2 is her statement under Section 164 CrPC. She has specifically denied that on the day of incident, she came with one Sanjay Upadhyay, office peon of the IOC Club and they were stopped by one Basu Rai/security personnel, IOC and then Sanjay fled away. Rather she stated that she do not know any person namely Sanjay Upadhyay. Although she implicated the accused al-through but in her statement under Section 164 CrPC, she stated that for the sake of the family of the accused, she do not want to proceed with the case. She

has also specifically denied that as no rape was committed upon her, she made such statement.

21. The fact that the victim immediately after the occurrence, went to the house of nearby person and reported the matter is supported by the evidence of PW.3, who has stated that on the day of occurrence at night hours about 1:30 A.M., one nepali girl forcefully knocked the door of their house and on opening the door, the girl came inside in frighten manner and took shelter stating that one person is after her. The girl remained in their house till the morning and went away at about 5 A.M. PW.3 was declared hostile as he denied his statement that he stated before the police about the name of the girl as well as the person who committed rape upon her. Now even by skipping the hostile portion, facts remains that he lent support to the factum of the prosecutrix that immediately after the occurrence she reported the matter to him and took shelter in his house.

22. PW.2 Sankar Chetry who is the night chowkidar of Digboi Club has stated that on the night of incident at about 11.30 P.M., he along with the accused were on duty of the Digboi tennis court. They saw one boy entering the Digboi tennis court by riding a bike and the accused person told the name of the boy as Sanjay Upadhyay. At about 1:10 A.M., the accused person asked him to open the gate of Digboi club as he wanted to go home and accordingly he opened the gate and the accused/appellant went home. Later on he came to know that one girl has lodged a case against the accused for commission of rape upon her. Two things emerges from his evidence that the accused was present at the place of occurrence on the date of incident till 1:10 A.M. and he heard on the next day that a girl has lodged a rape case against the accused, however he has not disclosed the genesis of the entire case. More so, his evidence does not support the plea of the accused that the victim girl came along with one Sanjay Upadhyay, as PW.2 has simply stated about one boy Sanjay but not about any girl accompanying him. The falsity of plea of the defence is apparent.

23. The evidence of PW.4 who was working in the Digboi Club has also supported the testimony of the PW.1/prosecutrix (that she went to inform the authority of the Digboi Club), as he saw her coming

to the office of Digboi Club crying and heard that she has been raped by someone.

24. Next is the evidence of the Medical Officer/PW.5, who examined the victim on the next day of occurrence and has opined that she found no any mark of injury on the private part and body of the victim and commission of rape cannot be ascertained.

25. Lastly the PW.6 and PW.7 are the investigating officers and their evidence is of formal in nature. PW.6 has however stated that the PW.3 in his statement under Section 161 CrPC has stated that the victim reported him about the commission of rape by the accused. PW.7 further stated that in the morning of 27.11.2009, at about 11:45 A.M., the victim girl came to the Digboi P.S. and on her verbal information about the incident, he made the GD Entry No.1014, dated 27.11.2009. He sent the victim for medical examination and also visited the place of occurrence and prepared sketch map vide Ext.3. PW.7 went to the house of the accused but he was not found and subsequently accused was arrested as shown by the victim. The PW.7 further stated that as the wearing clothes were washed off by the victim, so he did not seized her clothes.

26. The accused person examined himself as DW.1 and another person as DW.2. It is the statement of the accused as DW.1 that on the day of occurrence, while he was on duty as chowkidar of Digboi Club along with Shankar Chetry (PW.2), who is also night chowkidar, they saw a person coming on a bike with a girl towards the tennis court and when they went there, Sanjay Upadhyay fled away after dropping the girl. Then the girl went to the house of Sahid Ali (PW.3)/barbar of the Digboi Club. After the night duty when he return home, his wife told him that a girl who stayed in the house of Sahid Ali/PW.3 came to their house and made hue and cry and asked for his identity card. Thereafter he was called to the police station on the allegation that he has committed rape upon a girl.

27. The DW.2 is an officials from IOC Ltd., who has stated that there is no record in the IOC that the victim was working in the IOC Hospital on or before 26.11.2009. However in cross-examination he

stated that there was appointment on contractual basis, which is maintained by the separate contractor. His evidence is of no help to defence.

28. In his statement under Section 313 CrPC, the accused appellant has given the same statement as he has given in his evidence as DW-1. Thus, the plea of the accused appellant is relevant in the present case, inasmuch, as he has admitted his presence at the time of occurrence at such odd hours of night. In Answer to the Question No. 4 under Section 313 CrPC, he stated as follows:-

“At the time of occurrence, I was doing night duty at Digboi Club. At night, security personnel came on patrolling duty twice. I saw one Sanjay Upadhyay entered into the tennis Court along with a girl. I ran to the place along with chowkidar of the garden, Basu Ray and one Gogoi and said Sanjay Upadhyay and the girl was caught hold. Sanjay Upadhyay worked in the Digboi Club and I asked Sanjay as to why he had brought girl to the Club and as I rebuked them, both the girl and Sanjay went away. On the very next day, said girl came to my house and asked for my identity card and otherwise, she will lodge case against me. I will examine Vasu Ray as defence witness”.

29. Since the accused person has taken a specific plea as stated above, the burden shifts to him to prove such plea. But as discussed above, prosecution has been able to prove that on the fateful day, the accused has committed the offence of rape upon the victim in the said vicinity, whereas, the accused has totally failed to prove his plea taken during the course of trial. He did not produce the other chowkidar, Basu Ray in support of his plea, whereas, evidence of PW-2, who also happened to be present at the time of occurrence has belied the story projected by the accused. Further, his statement also supported the contention of the victim girl that she went to the house of the accused to complain to his wife and thus, the testimony of the victim is found to be an authentic one.

30. Although the victim has reported the matter to so many other persons of the Digboi Club, but those were not examined by the IO, but same cannot be a ground to discard the prosecution case, as evidence of the prosecutrix is supported by other evidence and facts and the circumstances of the case. On close scrutiny of the entirety of the matter, there appears nothing on the part of the prosecutrix for false indication of the accused person, there being no earlier acquaintance nor any

enmity between the duo. Each and every aspect, she narrated, has been supported by the witnesses, but yes, there is no eye-witness to the occurrence and having regard to the isolated place of occurrence, odd hours of night and having no immediate residence nearby, non-having of eye-witness/independent witness is natural. The victim has withstood the lengthy cross-examination without any vital contradiction to raise suspicion. Only the facts remain that the victim girl in her statement under Section 164 CrPC after raising all the allegations, has also said one line that for the interest of the family of the accused, she is not interested to proceed with the case. The victim, in course of trial, has also admitted about saying so, but she also boldly denied that because of falsity of allegation, she did not want to proceed with the case. She might have made such statement under pressure being a young girl of 20 years. However it cannot lose sight that the victim pursued the case till conclusion of the trial and her statement remained consistent although. Some minor omission regarding the time of occurrence 09:30/10:00 pm and that she did not mention in the FIR about working on wages in IOC Hospital, that the FIR did not disclose all details above, are of little consequence and not destructive of genesis of the case. The evidence of prosecutrix in the given facts and circumstances give no room for any doubt and her evidence is akin to the "sterling witness" as she has qualified the test of "sterling witness" as has been held in the decisions referred above. The victim, herein is a poor girl and earns her livelihood as a daily wage earner and there appears no any occasion for false implication of the accused person. Non-seizure of wearing apparels of the victim for sending to FSL, is a lapse on the part of the Investigating Officer. On the other hand, the victim was examined after 2 years of the occurrence and some omission in her testimony that Police took her cloth is not found fatal.

31. So far as regards the non-finding of injury upon the victim, as per the medical evidence, it is to be noted that injury is not a *sine qua non* for deciding whether rape has been committed or not. It has to be decided on the factual matrix of each case. The Hon'ble Apex Court in (2013) 11 SCC 688, *Radhakrishna Nagesh - Vs- State of Andhra Pradesh*, it has been held that penetration itself proves

offence of rape, but contrary is not true, i.e., even if there is no penetration, it does not necessarily mean that there is no rape. The Hon'ble Apex Court further held that absence of injuries would justify any adverse inference against prosecution. In (2014) 13 SCC 574; *Krishan – Vs- State of Haryana*, it was also held by the Hon'ble Apex Court that it is not expected that every rape victim should have injuries on her body to prove her case.

32. In the present case, the conduct of victim is noteworthy, who immediately after the occurrence, reported the matter to the nearby people, to the Police, to the authority of the Digboi Club and the GD Entry and FIR was made on the next day of the occurrence without any delay and there is no material variation in her version. As the FIR was written by some other person, not by the prosecutrix herself, different mentioning of time etc. is not fatal as it does not go to the root of the case. There being no any other adverse circumstances, solitary version of the prosecutrix can be accepted as a true version of the occurrence, which is fully supported by the other evidence on record, coupled with the defence version. The prosecution has been able to prove the charge under Section 376 of the IPC, beyond the reasonable doubt and the learned trial Court has appreciated all relevant aspects.

33. The chastity of a woman ruined as soon as such offence is committed, while in a civilized society, respect or reputation is a basic right. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. Youthful excitement and an attempt for momentary pleasure on the part of a person upon a woman, had a devastating effect in the entire body and mind of the victim. It is to be kept in mind that such offence lowers the dignity of a woman and mars her reputation. The Courts are sensitized that rape is a violation of victim's fundamental right under Article 21 of the Constitution and rape victim is placed on a higher pedestal than an injured witness. Being the most hatred crime, rape tantamount to a serious blow to the supreme honour of a woman and is a crime against the entire society as well.

34. For the reasons and the discussions above, this Court is of considered view that the order of conviction is liable to be sustained and calls for no interference. However considering the fact that the accused person have family with five children and behind the bar since the date of conviction, when maintaining the conviction he is sentenced to statutory minimum period of conviction of seven years and the sentence remains the same. The period of detention already undergone shall be set off.

35. The appeal is partly allowed, as indicated above.

36. Return the LCR forthwith with a copy of judgment.

JUDGE

Comparing Assistant