IN THE HIGH COURT OF TRIPURA
A G A R T A L A

CRL.A(J) No.10 of 2019

Sri Bahadur Debbarma,
son of late Pran Krishna Debbarma of Lenti Bari, P.S. Champahour, District-Khowai Tripura

..... **Appellant**

– V e r s u s –

The State of Tripura

..... **Respondent**

For the Appellant (s)	:	Mr. D. Debbarma, Adv.
For the Respondent (s)	:	Mr. S. Debnath, Addl. PP
Date of hearing	:	01.07.2020
Date of delivery of Judgment & order	:	**07.10.2020**
Whether fit for reporting	:	YES: ; NO: √

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

JUDGMENT & ORDER

[*Talapatra, J*]

The appellant was charged under Section 376(2) (i) of the Indian Penal Code, the IPC in short, and under Section 4 of Protection of Children from Sexual Offences Act, 2012, the POCSO Act in short. After regular trial, the appellant has been convicted under Section 376 (1) of the IPC by the judgement dated 30.07.2018 delivered in Special POCSO 12 of 2016 by the Special

Judge (POCSO), West Tripura, Khowai. Pursuant to the said judgment, the appellant has been sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- with default stipulation. It has been observed by the Special Judge that if the fine is realized, the said money shall be paid to the victim as compensation for her and for her minor child born out of rape. The benefit of Section 428 of the Cr.P.C. has been extended and as such, the detention as suffered by the appellant shall be set off from the term of imprisonment.

[2] By means of this appeal filed under Section 374(2) of the Cr.P.C., the said judgment and order of conviction and sentence dated 30.07.2018 have been challenged.

[3] The genesis of the prosecution is located in the written complaint [Exbt.5] filed by one Radhakanta Debbarma[PW-1], revealing that his minor daughter [name withheld for protection of her identity] was suspected of something 'untoward' when his wife asked their daughter about her health. Then he came to learn that about 4 month's prior to that day, in one evening [dust], his daughter had gone to the rubber garden located at the backside of that house of Bahadur Debbarma of their village for grazing cow. At that time, Bahadur Debbarma, aged 55 years, committed

rape on his daughter. After commission of rape, Bahadur Debbarma threatened his daughter not to disclose that incident to anyone. PW-1's wife informed the said culpable act to the wife of Bahadur Debbarma when she had gone to that house of Bahadur Debbarma. Even the wife of Bahadur Debbarma requested PW-1's wife not to disclose the said occurrence to anyone. On the following day, Bahadur Debbarm's wife came to the house of PW-1. Thereafter, PW-1's wife had taken their daughter to Khowai for medical check up. The doctor told them that their daughter was having pregnancy for four months. Thereafter, PW-1's wife informed the matter to the village elders. Bahadur Debbarma came to their house and told them not to file any case as he would pay money as well as land to them. But the village elders advised PW-1 to inform the police in the matter. Accordingly, the oral complaint was filed by PW-1 on 19.09.2015 to the Officer-in-Charge, Champahour Police Station, Khowai. Based on the said ejahar, Champahour P.S case No.2015CPHPS023 was registered under Section 376(2) (i)/506 of the IPC and under Section 4 the POCSO Act. The case was investigated by Ramulas Sangma [PW-11], a Sub-Inspector of Police posted in the said police station. On completion of investigation, the police report chargesheeting the

appellant, Bahadur Debbarma, was filed under Sections 376/506 of the IPC and under Section 4 of the POCSO Act. The appellant was arrested during the investigation.

[4] As the appellant denied the charge and claimed to face the trial, the prosecution in order to substantiate the charge, adduced as many as 13 witnesses including the forensic expert [PW-2], the medical officer who examined the victim [PW-13], the victim [PW-5], the victim's father and the informant [PW-1] and the victim's mother [PW-2]. Fourteen documentary evidence were adduced by the prosecution including the medical examination report of the victim [Exbt.14] and the forensic report in respect of DNA matching [Exbt.12]. The victim's statement was also recorded under Section 164(5) of the Cr.P.C. The defence did not lead any evidence. After the prosecution evidence was recorded, the appellant was examined under Section 313 of the Cr.P.C. where he had reiterated his plea of innocence and termed those evidence incriminating him as false and fabricated. He had also taken the plea that his blood sample was never collected. He had also denied that he ever committed to give land and money for the victim. After appreciating the evidence as well as the arguments so placed by the prosecution and the defence, the trial

judge has believed the prosecution's story and observed that the DNA test has conclusively proved the involvement of the appellant in the rape. However, since the prosecution has failed to prove the age of the victim of the said sexual assault, the appellant could not be convicted under the provisions of POCSO Act and not even under Section 376 (2)(i) of the IPC. The conviction was under Section 376(1) of the IPC for forceful intercourse without consent.

[5] Mr. D. Debbarma, learned counsel appearing for the appellant has submitted that there is huge delay in filing the complaint in the police station. The delay is more than 4 months. According to the first information report, the incident took place 4 month's prior to 19.05.2015, the day when the complaint was filed in the police station. According to Mr. Debbarma, learned counsel, lot of parlays had taken place and in order to exploit the appellant, the case was embellished. On the basis of such complaint, the investigation which commenced has failed to churn out the truth. Mr. Debbarma, learned counsel has further submitted that discrepancy between the date of occurrence which has also not ascertained and the age of pregnancy is highly material but that was completely overlooked by the trial Judge.

Mr. Debbarma, learned counsel has also submitted that the complaint has been filed out of 'family rivalry'. According to Mr. Debbarma, learned counsel, the trial Judge has relied the evidence of PWs-1,2 & 4 without exercising requisite caution knowingfully well that they are highly interested in the outcome of the trial. PWs-3,7 and 8 are also interested witness but they are all hearsay witness. Moreover, Mr. Debbarma, learned counsel, has submitted that the appellant has categorically stated in his statement recorded under Section 313 of the Cr.P.C. that from him no blood sample was collected. Thus, the result of the DNA test is irrelevant for purpose of returning conviction. The conviction being based on surmise and unsustainable material be interfered with and set aside. In support of his contention, Mr. Debbarma, learned counsel has relied on a few reports in **Rajoo and Others vs. Stat of M.P.,** reported in **AIR 2009 SC 858** the apex court has observed that *'the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully*

agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in State of Punjab vs. Gurmit Singh & Ors. : (1996) 2 SCC 384 to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is, however, significant that Sections 113A and

113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far 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.'

[6] Even though Mr. Debbarma, learned counsel has placed reliance on **State of Himachal Pradesh vs. Mange Ram**, reported in **AIR 2000 SC 2798** and **Uday vs. State of Karnataka,** reported in **AIR 2003 SC 1639** but those reports are remotely relevant in the context of the case. Both the reports

primarily are concerned with consent on misconception of fact or sexual intercourse on promise of marriage. No such plea can be raised by the defence in this case inasmuch the victim never stated that there was promise of marriage or on misconception of fact she allowed the appellant to have sexual intercourse with her. On the aspects of paternity, another decision has been placed for consideration by Mr. Debbarma, learned counsel in **Kaini Rajan vs. State of Kerala**, reported in **2013 Cri.L.J. 4338**, where the apex court had occasion to observe as follows:

> **"19. Behaviour of the parents of the prosecutrix viz. PW3 and PW4 also appears to be strange. On their evidence they stated that they came to know about the relations between the appellant and the prosecutrix when they found her pregnant. Prosecutrix had told them that the appellant had agreed to marry her. They knew the appellant and his family already. However, there is not even a whisper that they approached the appellant or his family members for marrying the prosecutrix. They straightaway went to the police station to lodge the report, that too after the birth of the child. All these factors cast a doubt on the prosecution version. The version of victim, in rape commands great respect and acceptability, but, if there are some circumstances which cast some doubt in the mind of the court of the veracity of the victim's evidence, then, it is not safe to rely on the uncorroborated version of the victim of rape."**

[7] Mr. Debbarma, learned counsel has, based on the proposition of law as raised in **Kaini Rajan *(supra),*** contended that the victim's statement is bereft of any materials. That apart, in the cross-examination, she has stated thus:

> **"Today police brought me before the court.**
> **I also adduce my evidence as per dictation of police officer.**
>
> **First time when I appeared before the court I also adduced my evidence as per dictation of police officer. My parents are also present today. On the first day when I came to the court my**

> **parents were also with me and on that occasion they also dictated me."**

Thus, it is evidently clear that the victim's statement cannot be relied at all. Even in the examination-in-chief, the victim did not furnish the details of the rape. For purpose of reference, the entire the examination-in-chief with the observation of court is reproduced hereunder:

> **"About two months back on a certain day Bahadur raped me in a garden at about 1100 hours. After committing rape accused threatened. I was also examined by the Medical Officer. I was produced before the court and stated that when I was collecting firewood accused committed rape upon me. Bahadur is known to me. He is present and is identified. [Repeatedly questions asked to the witness through the interpreter but no rational answer give by the witness.]"**

[8] Thereafter, Mr. Debbarma, learned counsel has submitted that the DNA is the genetic blueprint for life and is virtually content in every cell. No two persons, except identical twins have ever had identical DNA. DNA testing can make a virtually positive identification when the two samples match it exonerates the innocence and helps to convict the guilty. According to some opinions, the DNA testing hits the nail on the head of the accused and is the last and clinching piece of evidence which shows that it is the accused and the accused alone who committed the rape of the victim. Mr. Debbarma, learned counsel has relied on a decision of the Gujarat High Court in **State of Gujarat vs Jayantibhai Somabhai Khant** [judgment dated

30.04.2015 in R/CR.A/224/2012] where it has been observed as follows:

> **"36. We are not unmindful of a decision of this Court in the case of Premjibhai Bachubhai Khasiya va. State of Gujarat : 2009 Cri LJ 2888 wherein a Division Bench of this Court observed that if the DNA report is the sole piece of evidence, even if it is positive, cannot conclusively fix the identity of the miscreant, but if the report is negative, it would conclusively exonerate the accused from the involvement or charge. It was observed that science of DNA is at a developing stage and it would be risky to act solely on a positive DNA report. This decision was rendered more than four and a half years back. Science and Technology has made much advancement, and world over DNA analysis technology is being relied upon with greater confidence and assurance. We do not think that the Indian Courts need to view the technology with distrust. Of course, subject to the laboratory following the usual protocols, DNA result can be of immense value to the investigators, prosecutors as well as courts in either including or excluding a person from involvement in a particular act. The said decision of this Court must be viewed in the background of the facts in which it was rendered. It was a case where the accused were charged with offence under Sections 363, 366, 376 read with Section 114 of the Indian Penal Code. All important witnesses including the prosecutrix herself had turned hostile and did not support the prosecution. Despite which, the trial Court handed down conviction primarily on the basis of DNA report which opined that the DNA profiling of the foetus matched with that of the appellant original prime accused. It was in this background while reversing the conviction, the above noted observations were made. It can thus be seen that mere establishment of the identity of the father of the foetus in any case would not be sufficient to record conviction of the accused for rape and gang-rape under Sections 363, 366 and 376 of the Indian Penal Code. The said decision, in our opinion, therefore, cannot be seen as either rejecting the reliability of the DNA technology or laying down any proposition that in every case the DNA result must be corroborated by independent evidence before the same could be relied upon."**

[9] Mr. S. Debnath, learned Addl. PP appearing for the State has quite emphatically submitted that the decision of the Gujarat High Court cannot be the universal illustrator of all occasions. In that case, the victim herself did not support the prosecution case but here, the victim has categorically stated that she was raped by the appellant. True it is that expected

elaboration has not been placed by the victim or in the cross-examination, her statement about the police assistance may create confusion, but this statement cannot be treated at par with the tutored statement. That apart, PW-10 has clearly stated that he had collected the DNA sample of the appellant and he sent it and thereafter to the SFSL, Narsingarh. Similarly he had collected the blood sample of the victim and her baby. The said statement was not contested by way of cross-examination by the defence. Therefore, the challenge regarding sampling cannot stand inasmuch as the prosecution has proved the sampling to the hilt. Since the state has not challenged the finding of the trial judge in respect of age of the victim, it is of no utility to argue on that aspect. The case of the prosecution has been proved in conformity to the standard and no doubt has been left unanswered. In **Deepak Gulati vs. State of Haryana**, reported in **AIR 2013 SC 2071,** the apex court has shed light on the sensitivity involved in the prosecution of reprehensible crime of rape. It has been observed as follows:

> **"17. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire**

> **society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks."**

[11] Mr. Debnath, learned Addl. PP has submitted that the psychological harm as caused to the victim is of enormous proportion and the court should take into consideration while appreciating her testimony else the victim who is finding survival a challenge would be deprived of justice.

[12] For appreciation of the submissions advanced by the learned counsel for the appellant and the state, it would be appropriate to make a short survey of the evidence as recorded in the trial.

PW-1, Radhakanta Debbarma lodged the complaint[Exbt.1] stating that the victim [his daughter] on a certain date at about 1200-1300 hours was raped by the appellant. After lapse of 4 months, his daughter disclosed the fact to his wife. At that time, on examination by the doctor, his daughter was found 4 month's pregnant. There was village meeting over that issue. In the meeting, the appellant was instructed to pay Rs.16,000/- and give 2 kanies of land in the name of his daughter. But the appellant did not abide by. Thereafter, PW-1 lodged the said complaint. He has denied the

suggestions contrary to what he had stated in the examination-in-chief. He has also denied the suggestions that there was no village meeting or instruction on the appellant to pay money or give certain amount of land in favour of the victim. But PW-1 has admitted that there are few houses nearby the rubber garden where his daughter was raped. The neighbour work there throughout the day. In the northern side of the said garden, a road runs. In the vicinity, there is a shop of the appellant. The people visit that shop for purchasing articles. Kamalpur road situate adjacent to the said rubber garden. On the said road, there is frequent movement of vehicles.

[13] PW-2, Shantirani Debbarma is the mother of the victim. According to her, on a certain day at about 1200 hours her daughter [even though PW-2 has named, but for purpose of protecting her identity the name is withheld] went inside the rubber garden for grazing cow. At that time, the appellant committed rape on her daughter. She has disclosed that after about 1 month of the occurrence, her daughter informed her. At that time, she was pregnant. The local headman was informed. There was a village meeting where the appellant asked *'to pay some cash money and 2 kanies of land in the name of my*

daughter'. But the appellant did not abide by the said decision. Afterwards, the said complaint was lodged by her husband. PW-2 had identified the appellant in the trial. She has also stated that in the month of *Poush* last, her daughter gave birth to a child. Her daughter was living with them with her baby. In the cross-examination, she had denied the suggestion contrary to what she had stated in her examination-in-chief, but she has clearly stated that she cannot say the contents of the seizure list [Exbt.2] on which the police officer did take her signature.

[14] PW-3, Smt. Asharani Debbarma has testified in the trial that the victim went to rubber garden for grazing cow. At about 2 pm at Lenti Bari, the appellant did 'wrong' to the victim in the rubber garden. After about 4 months, the appellant informed her about the occurrence. At that time, she was not physically fit. The victim is her relative. She has also stated about the village meeting and instruction to the appellant to pay Rs.17,000/- and to transfer 2 kanies of land in favour of the victim. But the appellant did not abide by. As a result, a case was filed against him. PW-3 also corroborated that the victim gave birth of a child. The victim and the child were living with her parents. She has denied the suggestions to contradict her statement in the

examination-in-chief. She has stood by her statement made to the police officer.

[15] PW-4, Smt. Archana Debbarma is a women Sub-Inspector of Police. On 21.09.2015, she recorded the statement of the victim in Kakborok using the Bengali script.

[16] PW-5, the victim has been reproduced extensively when recording the submission of Mr. Debbarma, learned counsel appearing for the appellant.

[17] PW-6, Sayani Sen was the Staff Nurse on 16.03.2016. She stood as the witness of seizure of the blood sample of the victim and her baby by the seizure list [Exbt.4]. She and one doctor, Bikram Debbarma, collected the blood samples containing in one gauge paper and thereafter, the sample was handed over to the investigating officer.

[18] PW-7, Iswar Chandra Debbarma has stated that 5/6 months ago, parents of the victim informed him that the appellant had sexual intercourse with the victim and the victim had become pregnant and on that day, the victim's pregnancy was 4/5 months old. PW-7 has further testified that over that issue, there was a

village meeting. It was decided in the village meeting that the appellant would make payment of Rs.17,000/- and transfer a piece of land measuring 2 kanies in favour of the victim but the appellant did not fulfil the said commitment. He had denied the suggestions contrary to what he had stated in the examination-in-chief. But he did not confirm whether at the time of occurrence, the victim was a student of Bangshirambari School.

[19] PW-8, Swarajit Debbarma has stated that both the victim and the appellant are known to him. One year prior to the day of recording the deposition in the trial, he was informed that the victim had been raped by the appellant in a rubber garden. The victim had become pregnant. A village meeting was convened but according to him, the appellant did not attend the said meeting. But it was decided in the meeting that a piece of land measuring 2 kanies would be transferred in the name of the victim. Even the parents of the victim was assured of making payment of some cash money. According to PW-8, the distance between the rubber garden of Bahadur and Jharia is about 3 Kms. He has denied the suggestion that Bahadur did not attend the *Salish* nor did he make any commitment of giving 2 kanies of land and cash money to the victim.

[20] PW-9, Dhirendra Debbarma was the teacher-in-charge of Sahadas Baishnabbari S.B. School [a primary section] on 02.02.2016 when he handed over a copy of the admission register to the investigating officer. He had denied the suggestion that the victim was not a student of that school or he was not the teacher-in-charge in the year, 2014.

[21] PW-10, Dr. Bikram Debbarma was a medical officer at Khowai District Hospital on 16.03.2016. He has admitted that he did collect blood sample of Bahadur Debbarma for DNA profiling. After the samples were prepared and seized those were sent to SFSL, Narshingarh for DNA profiling. The blood sample was collected from the victim and the baby.

[22] PW-11, Remulas Sangma had investigated the case. He has narrated in the trial how he did carry out the investigation by making seizure, recording the statements of the witnesses. He has also stated that he did receive the blood samples for DNA test. It has been mentioned by him in the trial that the victim gave birth of a baby prior to collection of blood for DNA test. He has also stated in the trial that he seized the admission register of the Sahadas Bashnabbari Senior Basic School by preparing the

seizure list [Exbt.10]. After completion of investigation, since a strong *prima-facie* case had surfaced, PW-11 filed the chargesheet sending up the appellant to face the trial under Section 376/506 of the IPC. In the cross-examination, he has stated that no ossification test was done. PW-11 has categorically stated in the trial that Asharani Debbarma [PW-3] did not state him that Bahadur Debbarma committed rape on the victim. Even he has denied in the cross-examination that Bahadur did not give any commitment to pay Rs.17000/- or to transfer 2 kanies of land in favour of the victim.

[23] PW-12, Dr. Subhankar Nath was the Deputy Director cum Assistant Chemical Examiner in DNA typing division in State Forensic Science Laboratory [SFSL], Narshingarh. He has narrated in the trial that in connection with Champahour PS case No.2015/CPH/023 dated 19.09.2015, the SDPO, Khowai had sent the Exhibits.A, B & C, as marked by the SFSL, for forensic examination and DNA profiling. Exhibit-A, one sealed paper envelop carrying 7 seals of SDPO, Khowai and 8 signatures obtained on 16.03.2016. Exhibit-A contained bloodstain gauge, said to be the blood sample of baby. Exhibit-B was a sealed paper envelop having 6 seals of SDPO, Khowai and 7 signatures dated

16.03.2016 with the stamp impression of the emergency medical officer of Khowai District Hospital. Inside the said envelop, it was the bloodstain gauge, said to be the blood sample of the victim. Similarly, Exhibit-C is the bloodstain gauge, said to be the blood sample of the appellant. The DNA profiling was carried out within a period from 30.03.2016 to 12.04.2016. DNA was extracted from Exbts. A,B & C and thereafter, the DNA profiling was done as regards 3 Exbts. [Exbts.A, B & C]. Thereafter, PW-12 has testified in the trial as follows:

> **"On the basis of the observations it is opined that (1) .....[the name of the victim as withheld by this court] is the biological mother of the Baby Bahaduri Debbarma and (2) Shri Bahadur Debbrama is the biological father of baby Bahaduri Debbarma. The allelic distribution of genetic prolifilr of Exhibit-A,B and C has shown in the annexure A. The report was prepared by me and signed by me on 12.04.16. which was forwarded by the Director to the Forwarding Authority on 12.04.16."**

PW-12 admitted the said report [Exbt.12 series] in the evidence. He has explained the process of the said profiling in the following words:

> **"The amelogenin gene is responsible for sex chromosome of human being. The human male having with one X and one Y chromosome and the human female having 2 chromosome. In the allelic distribution table at amelogenin marker in exhibit-A there are XX chromosome has been expressed indicating that Bahaduri Debbarma is female in sex. In case of exhibit-B two X chromosome has been expressed in a amelogenin marker indicating the exhibit-B blood also a female blood i.e. the blood sample of .....[name withheld]. Whereas in exhibit-C at amelogenin maker XY chromosome has been expressed indicating the blood sample of the male blood, i.e., blood sample of Bahadur Debbarma."**

In the cross-examination also he has further elaborated about the process and the signs of DNA profiling by stating that DNA is a double helic structure consists of sugar phosphate and nitrogenous base are of two types namely, purine and pyrimidine. Purine are of two types viz. adenine and guanine. Pyrimidine are of two types viz. cytosine and thymine. According to PW-12, it is mandatory to study the nitrogenous basis to generate the DNA profile and comparison.

[24] PW-13, Dr. Supriya Debbarma, a medical officer working in Khowai District Hospital on 19.09.2015 has testified the trial to state that on that day the victim who was aged about 14 years was produced in the hospital by the police with alleged history of rape. On obtaining the consent from the father of the victim girl, Radhakanta Debbarma [PW-1] and following the due process, he had examined the victim. She found her hymen had old rupture. She was carrying pregnancy of 24 weeks. For purpose of confirmation of pregnancy urine test and thereafter, ultra sonography were done. She has stated that she opined in her report [Exbt.14] that the victim was pregnant and carrying the foetus of 24 weeks. She did not find any sign of violence on her body, no foreign public hair near the private parts. She

prepared the report on the prescribed form and she had duly singed the said report. She had denied that the girl was not 14 years of age in the cross-examination.

[25] The trial Judge has correctly observed that age of the victim could not be proved by the required evidence. The trial Judge while appreciating the evidence of the victim has recorded that *'the examination of the prosecutrix shows that non-responding to the questions of interpreter indicates that the prosecutrix was under immense pressure. In such like it [sic] becomes the duty of the court to ensure that the witness deposing freely, without any pressure'.* The trial Judge, thus, has criticized the proceeding of the trial in an unusual manner. This is highly inappropriate. If the trial Judge felt any inadequacy in the testimony, he might have exercised his power as provided under Section 311 of the Cr.P.C. for purpose of elucidation and clarification. Regarding the report of the DNA Typing Division of SFSL, what Mr. Debbarma, learned counsel appearing for the appellant has submitted, cannot be accepted inasmuch as in **Jayantibhai Somabhai Khant** *(supra)* Gujarat High Court has expressed certain reservations even after observing that the DNA result can be of immense value to the investigators, prosecutors

as well as to the court in either including or excluding a person from involving in a particular act. But as the victim did not support the prosecution case by stating that she was violated, the Gujarat High Court has observed that mere determination of parentage would not be sufficient to record conviction of the accused for rape. The said report has also clearly noted that they were not laying down any proposition that in every case the DNA result must be corroborated by independent evidence.

The science of DNA profiling has been so perfected that unless the procedure is compromised, the accuracy of result cannot be doubted. When the DNA profiling is done properly it results are infallible.

[26] What we have observed in this case is that there had been no cross-examination of PW-12 in respect of the process of DNA profiling nor its result has been questioned. PW-12 has stated about the process that he had followed for purpose of DNA extraction and its matching. Hence, there cannot be any doubt about the results which have been definitely recorded in the report [Exbt.12]. What has been submitted by Mr. Debbarma, learned counsel in respect of the testimony of PW-5 requires further attention. The victim has clearly stated that she was raped

in a garden at about 1100 hours and after committing rape, the appellant threatened her. She had also stated in the trial that when she was collecting firewood, the appellant committed rape on her. The demeanour as recorded by the trial Judge in our considered opinion does not reflect adversely on the testimony of the victim. In the cross-examination, what she stated is that (i) the police brought her before the court (ii) she adduced her evidence as per dictation of the police officer and (iii) when she appeared first time in the court she had made the statement as per dictation of the police officer. But on the following line, she has stated that on the day when she came to the court, her parents were also with her. The question, therefore, is whether she was tutored or not. It cannot be lost sight of that the victim has been tormented and she is under serious duress. Her testimony was translated from Kokborok. When a positive statement has been made in the examination-in-chief and later on, she had made the statement that whatever she had stated was as per the dictation of the police officer, it might apparently destroy her positive statement substantively, but the result of the DNA test cannot be subsided as there had been no cross-examination or denial. But one aspect cannot be just brushed

aside that the victim stood by her statement made in the examination-in-chief by stating that *it is not a fact that I was not raped by Bahadur about 2 month's back in a garden at 1100 hours. Also it is not a fact that I was not threatened by the accused or that I was not examined by medical officer or that I gave false statement in the court for the first time.* This statement cannot be treated to have stated as per dictation of the police. On reading of the entire testimony, this court is dissuaded to come to an inference that the victim was indicating that she had made a false statement before the court as per the dictation of the police officer. Hence, in a cumulative assessment of the evidence, we do not have any hesitation to hold that the prosecution has proved the charge beyond reasonable doubt. Hence, there is no reason to interfere with the finding of conviction or the order of sentence.

[27] In the result, the appeal stands dismissed. The appellant shall serve out the sentence.

Before we part with the records, we are persuaded to give direction for compensation to the victim under Section 357A of the Cr.P.C. in terms of the Victim Compensation Scheme and for that purpose, the State Legal Services Authority shall determine the quantum of compensation that to be awarded

having all regards to the said scheme, as we consider the compensation as proposed by the trial court may not reach the victim in her hour of need. The rehabilitation of the victim of rape is the state's responsibility. Such compensation be paid latest by 2[two] months from the date when the State Government shall receive the recommendation from the State Legal Services Authority. The State Legal Services Authority shall invariably determine the compensation in the manner as noted above within a period of one month from the day of receiving a copy of this judgment.

A copy of this judgment be forwarded to the Member Secretary, Tripura State Legal Services Authority, Agartala.

Send down the LCRs forthwith.

JUDGE **JUDGE**

Sujay