

GAHC010275112023



AS:10113-DB

2026:GAU-

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

Case No. : CRL.A(J)/145/2023

BIREN NAG
S/O SHRI RUBEN NAG, VILL- NO. 1 BHAGIAN, BALIPATHAR, P.S.-
BOKAJAN, DIST- KARBI ANGLONG

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:SRI NUHA CHAWRIA
S/O-LT. ISHU DAS CHAWRIA

VILL- BHAGJAN
PO BALIPATHAR
PS BOKAJAN
DISTRICT KARBI ANGLONG
ASSA

:::BEFORE:::

HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocates for the appellant : Ms. B. Sarma, Amicus Curiae.

Advocates for the respondents : Ms. B. Bhuyan, APP, Assam.

Ms. M. Barman, Amicus Curiae (R-2)

Date on which judgment is reserved : **21/07/2026**

Date of pronouncement of judgment : **23/07/2026**

Whether the pronouncement is of the : No.

operative part of the judgment ?

Whether the full judgment has been : Yes

pronounced?

JUDGMENT & ORDER (CAV)

(M. Zothankhuma, J)

1. Heard Ms. B. Sarma, learned Amicus Curiae, for the appellant. Also heard Ms. B. Bhuyan, learned senior counsel APP, Assam and Ms. M. Barman, learned Amicus Curiae for the Respondent No. 2.

2. This is an appeal against the impugned judgment dated 17/07/2023 passed by the learned Special Judge, POCSO, Karbi Anglong, Diphu, in POCSO case No. 27/2022, arising out of Bokajan PS Case No. 80/2022, by which the appellant has been convicted under Section 6 of the POCSO Act and sentenced to undergo rigorous imprisonment for 20 years with a fine of Rs.10,000/-, in default, to undergo simple imprisonment for 2 months.

3. The facts of the case in brief, is that one Noha Chawria (PW-1/informant) submitted an FIR dated 10/09/2022 to the Officer-in- Charge, Bokajan Police Station, which is to the effect that the appellant had repeatedly raped the victim, who was the appellant's adopted daughter. The FIR also stated that the victim was now 13 years of age and that she had been raped since April, 2022. Further, the mother of the victim had prevented the victim from disclosing the rape to others. Unable to bear the pain, the victim had initially disclosed the matter to PW-4 on 09/09/2022 at about 10 a.m, who was a resident of the same village. When he was also informed about it, they asked the victim about it, which was confirmed to be true by the victim.

4. Pursuant to the FIR, Bokajan Police Station case No. 80/2022 under section 376 IPC read with section 6 of the POCSO Act was registered on 10/09/2022. The victim was produced before a Doctor for medical examination on 11/09/2022 and her statement under section 164 Cr.P.C was recorded on

12/09/2022.

5. After the investigation was completed, the Investigating Officer (PW-7) submitted a charge-sheet against the present appellant and the appellant's wife, inasmuch as, a *prima facie* case was found under section 376/201 IPC read with section 6 of the POCSO Act against the appellant. A *prima facie* case was also found against the appellant's wife under section 201 IPC read with section 17/21 of the POCSO Act.

6. The learned Trial Court thereafter framed charges against the appellant under section 376/201 IPC and read with section 6 of the POCSO Act, to which he pleaded not guilty and claimed to be tried. Charges were framed against the appellant's wife under section 201 IPC read with section 17/21 of the POCSO Act, to which she pleaded not guilty and claimed to be tried. The learned Trial Court thereafter examined 7 (seven) Prosecution Witnesses and one Court Witness (victim). The appellant and his wife were then examined under section 313 Cr.P.C. The learned Trial Court thereafter came to a finding that a case punishable under section 6 of the POCSO Act had been proved against the appellant, as an offence under Section 5(n) of the POCSO Act had been committed. The appellant was however acquitted from the charge under Section 201 IPC. So far as the appellant's wife was concerned, she was acquitted from the charges under Section 201 IPC read with Section 17/21 of the POCSO Act.

7. The learned Amicus Curiae for the appellant submits that the explanation given by the appellant to the evidence of having committed rape during his examination under Section 313 Cr.P.C. appears to be a plausible explanation, that the case of rape is a fabricated case. She submits that the appellant in his 313 Cr.P.C. examination has clearly stated that he and his wife had adopted the victim girl when she was 5 years old and that he had assaulted her because she refused to go to school and she used to message a boy through mobile. Due to the above reason, a false case had been made against him by the victim. The learned Amicus Curiae for the appellant submits that when the victim had been adopted by the appellant and his wife since the time she was 5 years old, it was impossible for the appellant to have raped his adopted child. However, in today's age, when children are aware of many things which were taboo during earlier times, denying them the freedom to do what they like, sometimes results in children taking extreme measures and steps, to show their displeasure. The learned Amicus Curiae also submits that there is a huge delay in filing the FIR. She submits that the incident apparently first occurred in April 2022. However, the FIR had only been filed 5 months later, i.e. on 10/10/2022, which gave enough time for the victim girl to make embellishments in the story, to make

out a false case of rape against the appellant. The learned Amicus Curiae for the appellant thus submits that the impugned judgement should be set aside and the appellant should be acquitted of the charge under section 6 of the POCSO Act.

8. The learned APP and learned Amicus Curiae for the respondent no. 2 submit that the evidence shows that the appellant had raped his adopted daughter many times. Though the victim had told her mother about the incident, her mother had told the victim not to speak about the same to anyone. However, the victim later informed PW-4 and the informant about being raped by the appellant. They submit that the cause for delay in filing the FIR has been properly explained by the victim and it was only because of the victim's mother preventing her from disclosing the rape to anyone else, that the incident of rape came to light after a few months, after the weight of the rape became unbearable to the victim girl. The counsels for the respondents submit that the Doctor's evidence corroborates the evidence of the victim, showing that the victim was no longer a virgin. The victim's date of birth of 06/04/2009 was also proved as per the original Birth Certificate of the victim, which was exhibited as Material Object-1. They also submit that the explanation given by the appellant in his examination under section 313 Cr.P.C, that the victim used to message a boy on her mobile was a false explanation, inasmuch as, no Prosecution Witness, including the victim, had been confronted with the said explanation given by the appellant. The victim had only been given a suggestion during her cross-examination, that she made a false case against the appellant as she had been beaten up as she refused to go to School. They also submit that as the Investigating Officer had not made the victim a Prosecution Witness, the victim had been made to give her testimony as a Court Witness. They also submit that there is no reason to disbelieve the testimony of the victim that she had been raped by her father on numerous occasions. They accordingly pray that the impugned judgement should be upheld.

9. We have heard the learned counsels for the parties.

10. The evidence of PW-1 is to the effect that he was the informant in the case and that he knew the appellant and the victim. The incident took place in the year 2022, when the victim informed her (PW-4) that the appellant often raped her in the house. The people in the village thereafter gathered in his house the next day and held a meeting. In the meeting, the appellant confessed his guilt, due to which the appellant was handed over to the Police. A case was also lodged against the appellant by PW-1. PW-1 also identified his signature in the seizure list, by which the original Birth Certificate of the victim was seized by the Police in his presence.

In his cross-examination, PW-1 stated that the victim was not his relative and that he had known the victim girl for the last 4 years prior to the incident. PW-1 also stated that he did not know the names of the parents of the victim girl and that PW-4 was not the sister of the victim. He also stated that he did not know when the appellant had adopted the victim.

11. The evidence of PW-2 is to the effect that he was a seizure witness to the seizure of the Birth Certificate of the victim.

12. The evidence of PW-3 is to the effect that he knew the informant and the victim. He also knew the appellant and his wife.

13. PW-3 stated that at the time of the incident, he was the Village Defence Party (VDP) President of the area and that the victim had been adopted by the appellant and his wife. He also stated that at the time of the incident, the victim was around 12 - 13 years of age. He also stated that on asking the victim girl, the victim girl told him that the appellant had raped her. He also stated that the victim was now residing in Anath Ashram at Dhansiri.

In his cross-examination, PW-3 stated that the victim was not the biological daughter of the appellant and his wife. He also did not know when the victim was adopted by the accused persons and that he did not try to find the actual parents of the victim. He also stated that the informant did not have any relation with the victim.

14. The evidence of PW-4 is to the effect that she knew the informant who was her paternal uncle. She also knew the appellant, his wife and the victim, who was the adopted daughter of the appellant. PW-4 stated that the incident took place in the month of March-April when the victim was about 12-13 years old. The victim had come to her house and informed her that the appellant had raped her. On hearing the victim girl, PW-4 told her to inform her mother. Thereafter, PW-4 also informed the nearby villagers that the appellant had raped his victim daughter. The villagers informed the matter to the VDP members, who in turn informed the matter to the Police.

In her cross-examination, PW-4 denied the suggestion that the victim had not come to her house or had not informed her that the appellant had raped her.

15. The evidence of PW-5 is to the effect that she knew the informant and the victim, who was the adopted daughter of the appellant. PW-5 stated that she came to know from her neighbours that the

appellant had raped the victim. She also stated that the appellant and his wife were staying in her house as tenants. On hearing the news, she informed the VDP members, who thereafter informed the Police. The police then came and apprehended the appellant and his wife, besides taking the victim to the Police Station.

16. The evidence of the Doctor (PW-6) is to the effect that she was posted at Diphu Medical College and Hospital as a Demonstrator in the Department of Pathology. She examined the victim on 11/09/2022 and the genital examination showed the following:-

“Genital Examination: (a) Genital organs- Developed

(b) Vulva- Healthy

(c) Hymen- 2 finger passed

(d) Vagina- Healthy

(e) Cervix- Healthy

(f) Uterus- Not palpable per abdomen.

(g) Evidence of venereal disease- Not detected clinically.

(h) Evidence of injury on her body or private parts- Not detected.”

According to PW-6, the X-ray reports showed the approximate age of the victim to be more than 14 years, but less than 16 years.

17. The evidence of PW-7 is to the effect that on 10/09/2022, while being posted at Bokajan Police Station as SI of Police, one villager made a call to the Police Station and gave information that the appellant had raped the victim. The Police were also informed that the accused person had been detained and kept tied up by the villagers. A GD entry was made at about 4.40 pm. Thereafter, PW-7 proceeded to the place of occurrence and the appellant was brought to the Police Station. On the same day, PW-1 lodged an FIR against the appellant and the same was registered as Bokajan PS case No. 80/2022 under Section 376 IPC read with Section 6 of the POCSO Act. PW-7 then examined the informant and interrogated the appellant. She also seized the Birth Certificate of the victim and sent her for medical examination. She also produced the victim before the Bokajan Court where her statement under Section 164 Cr.P.C was recorded. She also visited the place of occurrence and prepared a sketch map. After examining the witnesses, PW -7 sent the victim girl to Japrajan Shelter Home and then to

the CWC as per a Court order. She also arrested the wife of the appellant. After investigation of the case, she submitted the charge sheet. She also stated that she saw the original Birth Certificate in the Court on the day of her testimony, which was exhibited as Material Object-1.

In her cross-examination, PW-7 stated that the informant (PW-1) was the relative of the victim, though the same has been denied by PW-1.

18. A perusal of the charge sheet submitted by PW-7 shows that there are only 7 Prosecution Witnesses in the charge sheet. The victim was never made a Prosecution Witness by the Investigating Officer. However, the learned Trial Court took the testimony of the victim by calling her as a Court Witness-I (CW-1).

19. The evidence of the victim (CW-I) is to the effect that she knew the informant and the appellant, who was her foster father. She also stated that her foster parents adopted her from her childhood. The occurrence took place in the month of April, 2022 when her foster mother went out for work in the Tea Garden. The victim's testimony is to the effect that the appellant raped her many times starting from April, 2022. Whenever she refused, the appellant used to scold her and beat her with a *lathi*. He also threatened her that if she did not do as he said, he would kill her. Though she reported the matter to her mother, her mother advised her not to disclose such facts to any person. However, she informed PW-1 and PW-4. CW-1 further stated that as she had no relative or any close person, she was now residing in the children's home in Dhansiri. She also stated that she came to the Court with a case worker from the said children's home. She also stated that she had been taken to a hospital for medical examination and to the Bokajan Court for recording her statement under section 164 Cr.P.C.

20. In her cross-examination, CW-1 stated that she did not know when her real parents died. She also stated that PW-4 and the other persons, whose names she did not know, were neighbours of the appellant. She also did not know when she was taken to the house of the appellant. She denied the suggestion that the appellant did not rape her. She also denied the suggestion that as she did not want to go to school, the appellant had assaulted her, due to which she had made a false case against him. She also denied the suggestion that she did not tell the police that she had been raped.

21. The statement made by the victim under section 164 Cr.P.C. is to the following effect:-

“I do not know my biological father and mother. I was adopted by Biren Nag and Milika Nag as father and mother. Presently I am studying in class 7. In the month of April, 2022 when one day I returned from

school I found that my mother has gone out for work and my Father Biren Nag was at home. I changed the uniform of my school. My father was lying on the bed naked and he called me, so i went to the bed. At that I was wearing a frock, my father asked me to get on the bed and lie down. The he opened my frock. I was wearing inside a panty and brief. My father Biren Nag opened my panty and brief then he started to squeeze my breast and then he put his mouth on my breast. Then he asked me to catch his penis. After that he told me to lie down on the bed and he got over me and inserted his tongue in my mouth and started to kiss my face and whole body and then Biren Nag inserted his tongue in my vagina. After that he hold his penis and inserted in my vagina and had sexual intercourse with me. After that he had sexual intercourse with me for about four time on different occasions. When I used to refuse, he used to beat me. Regarding the incident I told my mother Milika Nag but she told me to not to tell anyone. As it was unbearable for me, I told to one Susina Chouria whom I used to call sister. Susina then informed to other and the matter reached the police. Then they brought me here to record my statement. Now I want to with go with my maternal aunt Sanjeeta Ind.”

22. The explanation given by appellant's wife during her examination under Section 313 Cr.PC, is to the effect that she did not know if the appellant had raped the victim. She however stated that the victim had informed her that her husband (the appellant) had assaulted her.

23. The explanation given by the appellant during his examination under Section 313 Cr.PC is to the effect that he was innocent and had been falsely implicated in the present case. The reason given by the appellant for the victim to have made a false case against him is as follows:-

“We adopted the minor girl when she was 5 (five) years old. I assaulted her, because she refused to go to school and also she used to message a boy through mobile. Seen that reason, the minor girl gave false allegation against me and falsely implicated me in this case. I am innocent and did not commit any rape of the minor girl.”

24. As can be seen from the evidence of the victim, the appellant had raped her on many occasions and the same had been corroborated by her statement given under Section 164 Cr.PC. Though the victim had informed her foster mother about the rape, her mother had told her not to disclose the incident to anybody. It was only after the victim informed PW-1 and PW-4 about the rape that the FIR was filed.

25. In the case of *Apren Joseph alias Current Kunjunju and Ors. Vs. The State of Kerala*, reported in (1973) 3 SCC 114, the Hon'ble Supreme Court has held that an FIR is very useful if recorded before there is time and opportunity to embellish it, or before the informant's memory fades. Undue or unreasonable delay in lodging the FIR, therefore, may give rise to suspicion which put the Court on guard to look for the possible motive and the explanation for the delay and consider its effect on the trustworthiness or otherwise of the prosecution version. Thus, in terms of the above judgement, FIR should normally be lodged at the earliest possible opportunity. However, some laxity is provided and accepted in filing delayed FIRs in cases of sexual assault/rape.

26. In the case of *Deepak Vs. State of Haryana* reported in (2015) 4 SCC 762, the Supreme Court has held that the Courts cannot overlook the fact that in sexual offences and in particular, the offence of rape on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. In the case of *State of Punjab vs. Gurmit Singh*, reported in (1996) 2 SCC 384, the Supreme Court has held that in sexual offences, delay in the lodging of the FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. It also held that the Court should not uncharitably and unjustifiably characterize a girl as having loose morals, when there is no such reference of the victim girl being a girl of loose character.

27. However, in the present case, the victim has been raped by her adopted father and her mother had apparently told her not to disclose the incident to anybody. Keeping the above in view, it is quite understandable for the traumatized victim girl to have remained quiet for some time and to have blurted out the said fact after it became unbearable to withhold the continuous rape. Keeping the above in view, we do not find any ground to disbelieve the allegation of the victim that she had been raped by her father, only because of the delay in filing the FIR, especially when the same has been filed by persons, living in the village, who are not the relatives of the victim and have no enmity with the appellant.

28. In the case of *State of H.P. vs. Gian Chand*, reported in (2001) 6SCC 71, the Supreme Court has held that delay in filing an FIR in rape cases is normal when the perpetrator is a relative.

29. In the case of *State of U.P. vs. Manoj Kumar Pandey*, reported in (2009) 1SCC 72, the Supreme

Court has held that absence of explanation in filing delayed FIR, does not *per-say* apply to cases of rape.

30. As stated earlier, the victim has clearly stated that her mother had told her not to disclose the incident to anybody about the fact that her father had raped her. Thus, there is a plausible explanation for the delay, as there was no one else to turn to, keeping in view the fact that the victim was the adopted child without any relatives in the village. Further, the victim is now living in a children's home after the incident.

31. With regard to the evidence of the Doctor (PW- 6), who stated that two fingers could pass through the hymen of the victim, appears to show that the victim was not a virgin, thereby corroborating the testimony of the victim that she had been subjected to rape. The statement of the victim under Section 164 Cr.PC, wherein she has stated that she had been raped, also corroborates her testimony that she had been raped.

32. As can be seen from the foregoing paragraph, a two finger test had been conducted by the Doctor, which showed that the victim did have an intact hymen. However, we are surprised to learn that a two finger test has been conducted by a Doctor, even though there have been decisions by the Supreme Court holding that the two-finger test and its interpretation as to whether the same give a clear indication that the prosecutrix was habitual to sexual intercourse, violates the right of rape survivors to privacy, physical and mental integrity and dignity. This has been clearly laid down by the Supreme Court in the case of ***Lillu alias Rajesh and another Vs. State of Haryana*** reported in ***(2013) 14 SCC 643*** and in the case of ***State of Jharkhand Vs. Sainendra Kumar Rai*** reported in ***(2022) 14 SCC 299***.

33. By the above two judgments, the Supreme Court had ruled that the pre-vaginum test has no scientific basis and re-traumatizes survivors. It also

directed that any medical professional conducting the two-finger test would be guilty of professional misconduct. It also held that an intact hymen does not rule out sexual violence nor does a torn hymen prove past sexual intercourse, as it can be torn due to various other activities, such as sports, accidents, etc. The above being said, what is clear is that the victim has been subjected to rape by the appellant.

34. With regard to the victim's age, it is seen that the original birth certificate of the victim, which had been exhibited as Material Object-1, had been produced in the Court and Para 32 of the impugned judgment clearly states that the date of birth of the victim was 06/04/2009 as per her birth certificate, in which case, the victim would have been 13 years of age at the time of the incident of rape/s. The appellant in his examination under Section 313 Cr.P.C. has also admitted that the victim was around 12/13 years old at the relevant point of time.

35. With regard to the explanation given by the victim's father that a false case had been filed against him by the victim, on account of the victim being assaulted by him, as she refused to go to school and used to message a boy through mobile, we find that though the victim girl had been confronted in her cross-examination, with a suggestion that a false case had been registered by her against the appellant, on account of her being assaulted due to not- going to school, the victim had not been confronted in her cross-examination, to the effect that she had been messaging a boy through mobile. As such, it cannot be said that a doubt has been created regarding the victim messaging a boy through mobile, which led to the victim being beaten by the appellant, which in turn resulted in a false case. Further, the victim had denied that she had refused to go to school, for which she had been assaulted by the appellant. The explanation given by the appellant appears to be an after-thought, as none of the witnesses have stated as such in their evidence, while the appellant had apparently admitted his guilt before the villagers, as per the evidence of PW-1.

36. PW-1, in his evidence, has stated that the appellant had admitted to his guilt in the meeting held in his house where the villagers had gathered. The evidence of PW-1 in his examination-in-chief has not been controverted or

denied by the appellant, inasmuch as, PW-1 has not been confronted in his cross-examination, to the effect that the appellant did not admit to his guilt. Further, there is no suggestion being made by anybody that the evidence given by PW-1 is false or that there was any enmity between PW-1 and the appellant. The admission of guilt by the appellant in the house of PW-1 can be said to be an extra-judicial confession. Though an extra-judicial confession is a weak piece of evidence, conviction can also be based on an extra-judicial confession.

37. In the case of ***Pritinder Singh Vs. State of Punjab*** reported in **(2023) 7 SCC 727**, the Supreme Court has quoted a number of decisions of the Supreme Court with regard to extra-judicial confession, where it has been stated that extra-judicial confession requires appreciation with a great deal of care and caution and when it is surrounded by suspicious circumstances, its credibility becomes doubtful and loses its importance. However, it has also said that though it is a weak piece of evidence, it can be acted upon, provided the same is voluntary, truthful and is corroborated. It has also held that the extra-judicial confession can be accepted and be the basis of conviction. Paragraph 22 of the said judgement is reproduced herein below, as follows :-

“22. The law with regard to extra-judicial confession has been succinctly discussed in Munna Kumar Upadhyay v. State of A.P. [Munna Kumar Upadhyay v. State of A.P., (2012) 6 SCC 174 : (2012) 3 SCC (Cri) 42] , wherein this Court has also referred to its earlier judgments, which read thus : (SCC pp. 195-97, paras 56-63)

“56. This Court has had the occasion to discuss the effect of extra-judicial confessions in a number of decisions. In Balwinder Singh v. State of Punjab [Balwinder Singh v. State of Punjab, 1995 Supp (4) SCC 259 : 1996 SCC (Cri) 59] this Court stated the principle that : (SCC p. 265, para 10)

‘10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where an extra-judicial confession

is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance.'

57. In *Pakkirisamy v. State of T.N.* [*Pakkirisamy v. State of T.N.*, (1997) 8 SCC 158 : 1997 SCC (Cri) 1249] the Court held that : (SCC p. 162, para 8)

'8. ... It is well settled that it is a rule of caution where the court would generally look for an independent reliable corroboration before placing any reliance upon such extra-judicial confession.'

58. Again, in *Kavita v. State of T.N.* [*Kavita v. State of T.N.*, (1998) 6 SCC 108 : 1998 SCC (Cri) 1421] the Court stated the dictum that : (SCC p. 109, para 4)

'4. There is no doubt that convictions can be based on extra-judicial confession but it is well settled that in the very nature of things, it is a weak piece of evidence. It is to be proved just like any other fact and the value thereof depends upon the veracity of the witness to whom it is made.'

59. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in *State of Rajasthan v. Raja Ram* [*State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] stated the principle that : (SCC p. 192, para 19)

'19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made.'

The Court further expressed the view that : (*Raja Ram case* [*State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 : 2003 SCC (Cri) 1965] , SCC p. 192, para 19)

'19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused....'

60. In *Aloke Nath Dutta v. State of W.B.* [*Aloke Nath Dutta v. State of W.B.*, (2007) 12 SCC 230 : (2008) 2 SCC (Cri) 264] , the Court, while holding that reliance on extra-judicial confession by the lower courts in absence of other corroborating material, was unjustified, observed : (SCC pp. 265-66, paras 87 & 89)

‘ 87. Confession ordinarily is admissible in evidence. It is a relevant fact. It can be acted upon. Confession may under certain circumstances and subject to law laid down by the superior judiciary from time to time form the basis for conviction. It is, however, trite that for the said purpose the court has to satisfy itself in regard to : (i) voluntariness of the confession; (ii) truthfulness of the confession; (iii) corroboration.

89. A detailed confession which would otherwise be within the special knowledge of the accused may itself be not sufficient to raise a presumption that confession is a truthful one. Main features of a confession are required to be verified. If it is not done, no conviction can be based only on the sole basis thereof.’

61. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604 : (2011) 1 SCC (Cri) 79] held that : (SCC p. 611, paras 29-30)

‘ 29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma & Thimma Raju v. State of Mysore [Thimma & Thimma Raju v. State of Mysore, (1970) 2 SCC 105 : 1970 SCC (Cri) 320] , Mulk Raj v. State of U.P. [Mulk Raj v. State of U.P., AIR 1959 SC 902] , Sivakumar v. State [Sivakumar v. State, (2006) 1 SCC 714 : (2006) 1 SCC (Cri) 470] , SCC paras 40 and 41, Shiva Karam Payaswami Tewari v. State of Maharashtra [Shiva Karam Payaswami Tewari v. State of Maharashtra, (2009) 11 SCC 262 : (2009) 3 SCC (Cri) 1320] and Mohd. Azad v. State of W.B. [Mohd. Azad v. State of W.B., (2008) 15 SCC 449 : (2009) 3 SCC (Cri) 1082]]

30. In the present case, the extra-judicial confession by Balwan has been referred to in the judgments of the learned Magistrate and the Special Judge, and it has been corroborated by the other material on record. We are satisfied that the confession was voluntary and was not the result of inducement, threat or promise as contemplated by Section 24 of the Evidence Act, 1872.’

62. Dealing with the situation of retraction from the extra-judicial confession made by an accused, the Court in Rameshbhai Chandubhai Rathod v. State of Gujarat [Rameshbhai Chandubhai Rathod v. State of Gujarat, (2009) 5 SCC 740 : (2009) 2 SCC (Cri) 881] held as under : (SCC pp. 772-73, para 53)

‘ 53. It appears therefore, that the appellant has retracted his confession. When an extra-judicial confession is retracted by an accused, there is no inflexible rule that the court must invariably accept the retraction. But at the same time it is unsafe for the court to rely on the

retracted confession, unless, the court on a consideration of the entire evidence comes to a definite conclusion that the retracted confession is true.'

63. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witnesses must be clear, unambiguous and should clearly convey that the accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of conviction, if it passes the test of credibility. The extra-judicial confession should inspire confidence and the court should find out whether there are other cogent circumstances on record to support it. [Ref. Sk. Yusuf v. State of W.B. [Sk. Yusuf v. State of W.B., (2011) 11 SCC 754 : (2011) 3 SCC (Cri) 620] , SCC pp. 762-63, para 28 and Pancho v. State of Haryana [Pancho v. State of Haryana, (2011) 10 SCC 165 : (2012) 1 SCC (Cri) 223]."

38. The appellant had also been questioned with regard to his alleged confession before the village people during his examination under Section 313 Cr.P.C, to which the appellant stated that he was innocent and had been falsely implicated in the case.

39. In any event, though it could be speculated that due to being assaulted by the appellant for refusing to go to school, the victim could have some grudge against the appellant, we are not convinced that a false case would have been lodged by the victim, only because she had been assaulted by the appellant on account of her alleged refusal to go to School. In this respect, the attendance register of the victim in the School could also have been looked into, which was not done. The girl being subjected to rape by the very person who was to protect her, we are of the view that the allegation of rape made by the victim cannot be washed away easily, especially when the act of rape has been corroborated by the evidence of the doctor and the statement made by the victim under Section 164 Cr.PC.

40. The above being said, one curious fact that we have noticed is that the victim was not made a prosecution witness by the Investigating Officer in the Charge Sheet. This could have been due to many reasons, which could include the same being done for the benefit of the appellant. However, due to the alertness of the learned Trial Court, the victim has been called to give her testimony as a Court Witness (CW-1). The evidence/ testimony of the victim girl as CW-1 has not been shaken and the cross-examination of the victim girl has not shown any preponderance of probability that she had made up a false case. We are not convinced that disciplining of the victim on account of her refusal to go to school could be the reason for filing a false case against the appellant. The appellant could also have

adduced evidence along with his wife, if the above explanation given by the appellant in his Section 313 Cr.P.C. examination was to be taken to be true, for filing the alleged false case. However, the same has not been done in this present case.

41. In view of all the above reasons, we do not find any reason to interfere with the impugned judgment passed by the learned Trial Court. The appeal is accordingly dismissed.

42. Send back the TCR.

43. In appreciation of the assistance provided by the learned Amicus Curiae(s), their fees should be paid by the Gauhati High Court Legal Services Committee, as per norms.

JUDGE

JUDGE

Comparing Assistant