

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Crl. A. No. 17 of 2019

Makraj Limboo,
Aged about 45 years,
Son of Shri Mangal Singh Limboo,
Resident of Ralap Busty,
P.O. & P. S. Phodong,
Mangshila,
North Sikkim.

*Presently lodged at Central Prisons,
Rongyek, East Sikkim.*

..... **Appellant**

Versus

State of Sikkim

..... **Respondent**

**Appeal under section 374(2) of the
Code of Criminal Procedure, 1973.**

Appearance:

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) with Mr. Sushant Subba, Advocate (Legal Aid Counsel) and Ms Sushmita Gurung, Advocate.

Mr. Yadev Sharma, Additional Public Prosecutor for the Respondent.

Date of hearing : 8.12.2020 & 9.12.2020

Date of judgment : 07.01.2021

JUDGMENT

Bhaskar Raj Pradhan, J.

1. On 10.01.2018, the victim (PW-1) lodged the First Information Report (FIR) (Exhibit-3) at Sadar Police Station,

Gangtok, alleging that she was raped by the appellant on 17.08.2013, due to which she became pregnant and had to abort the baby on his advice. It was alleged that, thereafter, the appellant assured the victim that he would marry her. She further alleged that the appellant had taken her to his house after a month of the miscarriage in the pretext of changing his clothes and raped her again.

2. In Sessions Trial (F.T.) Case No. 15 of 2018 (*State of Sikkim vs. Makraj Limboo*), the learned Judge, Fast Track Court, East and North Sikkim at Gangtok (the learned Judge), on 30.07.2019, convicted the appellant and sentenced him on 31.07.2019 under section 376(1) of the Indian Penal Code, 1860 (IPC) to undergo seven years rigorous imprisonment and a fine of Rs.50,000/-. It was held that the case of repeatedly committing rape on the same woman under section 376(2)(n) IPC had not been made out. The learned Judge concluded that the appellant having committed rape upon the victim could not be ruled out. The learned Judge also held that the victim had explained the delay in lodging the FIR in detail.

3. Mr. N. Rai, learned Senior Counsel for the appellant, challenges both the findings of the learned Judge. He further submits that even if this court were to believe the version of the victim, it would be seen that the act complained of may have been consensual and the FIR was lodged only because the

appellant did not marry the victim. According to Mr. N. Rai, the delay of five years in lodging the FIR have not been explained sufficiently.

4. He drew the attention of this court to the judgment of the Supreme Court in ***Sudhansu Sekhar Sahoo vs. State of Orissa***¹, to impress that the sole testimony of the victim can be the basis for conviction, provided it is safe, reliable and worthy of acceptance. It was held that the evidence of the prosecution should be cogent and convincing and if there is any supporting material likely to be available then the rule of prudence requires that evidence of the victim may be supported by such corroborative material. Court should be strict and vigilant to protect society from such evils and in the interest of society, serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides, and in a criminal case a court has to consider the triangulation of interest. It involves taking into account the position of the accused, the victim and his or her family and the public.

5. Mr. N. Rai relied upon ***Ramdas and Others vs. State of Maharashtra***², in which the Supreme Court found that the delay of eight days in lodging the FIR has not been satisfactorily

¹ (2002) 10 SCC 743

² (2007) 2 SCC 170

explained and the appellant therein was given the benefit of doubt. It was held:

“24. Counsel for the State submitted that the delay in lodging the first information report in such cases is immaterial. The proposition is too broadly stated to merit acceptance. It is no doubt true that mere delay in lodging the first information report is not necessarily fatal to the case of the prosecution. However, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice. This fact has to be considered in the light of other facts and circumstances of the case, and in a given case the court may be satisfied that the delay in lodging the report has been sufficiently explained. In the light of the totality of the evidence, the court of fact has to consider whether the delay in lodging the report adversely affects the case of the prosecution. That is a matter of appreciation of evidence. There may be cases where there is direct evidence to explain the delay. Even in the absence of direct explanation there may be circumstances appearing on record which provide a reasonable explanation for the delay. There are cases where much time is consumed in taking the injured to the hospital for medical aid and, therefore, the witnesses find no time to lodge the report promptly. There may also be cases where on account of fear and threats, witnesses may avoid going to the police station immediately. The time of occurrence, the distance to the police station, mode of conveyance available, are all factors which have a bearing on the question of delay in lodging of the report. It is also possible to conceive of cases where the victim and the members of his or her family belong to such a strata of society that they may not even be aware of their right to report the matter to the police and seek legal action, nor was any such advice available to them. In the case of sexual offences there is another consideration which may weigh in the mind of the court i.e. the initial hesitation of the victim to report the matter to the police which may affect her family life and family's reputation. Very often in such cases only after considerable persuasion the prosecutrix may be persuaded to disclose the true facts. There are also cases where the victim may choose to suffer the ignominy rather than to disclose the true facts which may cast a stigma on her for the rest of her life. These are cases where the initial hesitation of the prosecutrix to disclose the true facts may provide a good explanation for the delay in lodging the report. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the

facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters, and each case must rest on its own facts. It is settled law that however similar the circumstances, facts in one case cannot be used as a precedent to determine the conclusion on the facts in another. (See *Pandurang v. State of Hyderabad* [(1955) 1 SCR 1083 : AIR 1955 SC 216] .) Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.”

6. He also relied upon *Vijayan vs. State of Kerala*³, in which the Supreme Court had considered a case solely based on the evidence of the prosecutrix. The complaint had been made after seven months after the alleged commission of rape. It was held that in cases where the sole testimony of the prosecutrix is only available, it is very dangerous to convict the accused, especially when the prosecutrix could venture to wait for seven months for filing the FIR for rape leaving the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix had willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR, it would be very hazardous to convict on such sole oral testimony.

³ (2008) 14 SCC 763

7. Mr. Yadev Sharma, learned Additional Public Prosecutor, on the other hand, vociferously supported the judgment of conviction and order on sentence passed by the learned Judge. It was his contention that the FIR (Exhibit-3), the statement of the victim recorded under section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.) (Exhibit-5) and her deposition in court had elaborately detailed the circumstances of how, when and why, the victim had been raped by the appellant which could not be demolished inspite of the exhaustive cross-examination. It was, therefore, contended that the judgment of conviction and order on sentence, need not be interfered.

8. The prosecution has examined 18 witnesses including Shekhar Basnett, the Investigating Officer (PW-18). The defence has examined Birkha Bdr. Limboo (DW-1) and San Bdr. Limboo (DW-2), raising a plea of alibi that on the date of the incident, i.e., 17.08.2013, the appellant was in Nepal with them. The learned Judge disbelieved the plea of alibi as it was not cogently proved. The defence plea of alibi would be relevant if the prosecution discharged its burden of proof.

9. The only direct evidence relating to the alleged rape by the appellant is that of the victim. The victim has in her FIR dated 10.01.2018 (Exhibit-3), statement recorded under section 164 Cr.P.C dated 26.02.2018 (Exhibit-5) and her deposition dated 13.02.2019, given a detailed account of what transpired

with her before, during the two incidents of alleged rape and thereafter. According to her deposition, she knew the appellant whose wife used to be her teacher in her school. Sometimes in the year 2013, she had met the appellant at a funeral in the village where he had asked her about her future and promised to help her secure a government job. The victim was aware that the appellant had good political contacts and was an influential person. She was aware that he had helped other people of their village to secure government jobs. At the funeral, the appellant told her that he would take her to Gangtok to get her a government job. He took her mobile number and told her that he would contact her in a few days regarding the job. The victim deposed that after two-three months on 17.08.2013, the appellant called her over the phone and told her that he would take her to Gangtok for the job. Thereafter, the victim, along with her brother, who also had to go to Ramthang, North Sikkim, went with the appellant in his vehicle (MAXX bearing registration no. 0042). The appellant dropped her brother at Ramthang and thereafter, they proceeded to Gangtok. On the way to Gangtok, the appellant suggested that they should go to his room at Development Area to prepare an application for her job. According to the victim, she did not agree to go to his room and said that she would wait for him in the market. The appellant insisted that she should go with him so that he could dictate the contents of the job application. According to the victim, after

entering the room, the appellant bolted the door from inside. She told him not to do so. The appellant said that if people saw them together, they would misunderstand. The appellant then told her to sit on the bed, brought a table beside it and started dictating the job application. She started writing it. The appellant inquired about her family. Suddenly, the appellant pushed her on the bed and started kissing her on her mouth, cheeks and neck, despite her resistance. He even fondled her breasts. Although, she tried to resist, he overpowered her. Somehow, she managed to reach the door but before she could unlatch the door, the appellant dragged her to another room where again he bolted the door from inside. The room appeared like a kitchen but had a small bed. The appellant took her to the bed, forcefully opened her clothes and his, as well. She resisted and pleaded that she was menstruating. He did not stop and committed rape on her. She tried to raise hue and cry, but the appellant covered her mouth with his hand, and she was helpless. After the incident, she was traumatised and cried. The appellant threatened her not to disclose the incident and assured her that he would take her as his second wife. He also told her that he had done such activities with nearly a hundred girls. The appellant did not let her go on her own and stayed with her all the while. He, thereafter, took her to a restaurant. She was not in a state to eat anything. From the restaurant, the appellant took her to the Secretariat. They could not meet the officers as they had already left. Later, on the

same date, the appellant dropped her back home and told her to inform him whether she got her monthly period or not. After about ten-fifteen days, the appellant called her again and told her that he would take her to Gangtok for the job that he had promised. The victim was in a frustrated state and thought that it would be best for her if she got the government job. So, she agreed to meet him at Zero, North Sikkim. When they met at Zero, the appellant told her that he had to change his clothes and insisted that she should accompany him to his house. Once they reached there, she noticed that there was no one at home. The appellant taking advantage once again forcefully committed rape on her. After the incident, the victim fought with the appellant and went home and told him that she no longer wanted the job. According to the victim, even after the incident, the appellant used to call her over the phone and inquire whether she had her monthly period or not. After a month of the incident, she missed her monthly period and so, when the appellant called her, she informed him about it. The appellant brought a pregnancy test kit and when she checked, she found out that she was pregnant and told the appellant about it. The appellant gave her a pill to abort her pregnancy and made her take the pill in front of him. After taking the pill, she started bleeding for about fifteen days and her health started deteriorating. Eventually, she had many health issues and was diagnosed with depression for which she was treated at Central Referral Hospital, Manipal. The

victim was later informed by her family members that in her state of depression, she used to be delirious and search for the appellant and say that he had killed her child. Her family members doubted that the appellant had done something to her and when they returned home after the treatment, they asked her what happened. The victim then told them about both the incidents. Her family members then called the appellant and asked him about the incidents. The appellant accepted the fact in her presence. The appellant also agreed to take her as his second wife to make up for what he had done and also set the date as 25.09.2017. According to the victim, her brother had also videographed the said conversation in his mobile phone. However, the appellant did not come on the said date but sent his wife along with some money and requested her not to report the matter to the police and also forced her to accept a sum of Rs.1,00,000/-. An agreement was also prepared stating that the wife of the accused would pay a sum of Rs.2,50,000/- by way of compensation for the medical expenses incurred by her during her medical treatment. Thereafter, the victim decided that it would be best for her to lodge a complaint against the appellant and accordingly, lodged the FIR (Exhibit-3). During her cross-examination, she admitted that there was a delay of five years in lodging the FIR; she was aware that the appellant was a married man with children; that he was a rich person working as a contractor and a social worker; that they had gone to hotel Potala

after the alleged incident that took place in Development Area, which had many staff present and near the hotel there were many people walking by; that she also saw traffic police personnel on the way to the hotel; that because she was undergoing treatment for depression and was not in a proper frame of mind, she had made different statements before the police and the Magistrate; during the five years she did not disclose about the incident to anyone including the police. She admitted that her statement, that the appellant started kissing her on her mouth, cheeks and neck and fondled her breasts and although she tried to resist him, he overpowered her - was being mentioned by her for the first time in court. She also admitted that although she went home after the incident at Development Area, she did not disclose about it to her family members. She admitted that she was around 29-30 years old.

10. There is an inordinate delay of five years in lodging the FIR (Exhibit-3). Much of the evidence which may have been available during the relevant time would have been lost. Rape is a violent offence. Penetration is a *sine qua non*. Due to the inordinate delay, medical evidence like injuries would have healed and material evidence would be lost. Yet her statement cannot be brushed under the carpet merely because she took time to come out and disclose it. The victim's statement regarding sexual offence is a delicate evidence which must be

examined closely keeping in mind various relevant factors. It is important to keep in mind that in the context of the present Indian and for that matter, even the Sikkimese social setting, a woman would not ordinarily make a false allegation of sexual assault or rape for the fear of stigma. However, more and more women are coming out setting aside their fear and reporting about sexual offences. The stigma which once existed amongst many women may be slowly receding at least with the educated and conscious populace. It is also equally important to keep in mind that the accused should not be put in the same pedestal as that of the victim of crime. One is the injured, the other, the predator. It is well settled that the court can, in a given case, rely upon the sole testimony of the victim if it is safe, reliable and worthy of acceptance and convict the accused. However, it is always prudent for the court to seek corroboration when the sole testimony is the only evidence available. What is, however, vital for the court to keep in mind is that like in all criminal cases, the burden is always upon the prosecution to prove its case beyond reasonable doubt. Due to the fact that in the present case, the victim had not reported about the incident for five long years, it is equally important to seek corroboration of what she deposed in court.

11. Quite evidently, there is no other eyewitness' account. The unnamed brother who accompanied the victim till Ramthang

on 17.08.2013, along with the appellant in his car, was not examined as prosecution witness. PW-10, her elder brother, was examined but he said nothing about travelling with the victim and the appellant on 17.08.2013.

12. Out of the 18 witnesses examined by the prosecution, several of them deposed about the settlement talks the family members of the victim had with the appellant. All of them were co-villagers and therefore, known to the victim and the appellant as well. Besides them, Ranjeeta Pradhan (PW-17) was the learned Judicial Magistrate who recorded the statement of the victim under section 164 Cr.P.C. on 26.02.2018. Bijay Subba (PW-14) was the Officer-in-Charge of the Police Station, who registered the FIR (Exhibit-3) and Shekhar Basnett (PW-18) was the Investigating Officer of the case. Dr. Samrat Singh Bhandari (PW-11) was the Associate Professor in Psychiatry at the Central Referral Hospital, Manipal, who examined the victim in August 2017 and January 2018 just before she lodged the FIR (Exhibit-3). Dr. Mani Gurung (PW-13) was the Gynaecologist at the STNM Hospital who examined the victim on 11.01.2018 a day after she lodged the FIR.

13. Amongst the prosecution witnesses who spoke about the settlement talks, PW-4, PW-7 and PW-8 were not related to the victim but lived in the same village as that of the victim and the appellant. PW-5 was the victim's niece and classmate. PW-9

was the victim's uncle. PW-10 was the victim's elder brother. PW-15 was the victim's distant relative and PW-16, the victim's cousin. PW-12 was the appellant's cousin. Their evidence reflects that the appellant and his wife were also involved in those settlement talks. The evidence suggests that at least two such meetings took place in the victim's house. It is also apparent that two documents were prepared during these meetings. PW-12 – the appellant's cousin, was the scribe of “Lena Dena Patra” (Exhibit-2) and the “Milapatra” (Exhibit-10). PW-4, who accompanied the appellant's wife to the meeting, deposed about their preparations. Some amount of money seems to have been offered during the settlement talks and a promise to pay more seem to have been made. PW-5 - the victim's niece, PW-8, PW-9 – the victim's uncle and PW-10 - the victim's elder brother, all spoke about it. PW-10, the victim's elder brother, admitted having received an amount of Rs.1,00,000/- from the appellant's wife. Some of the witnesses also deposed about the demand of the victim's family members for the appellant to marry the victim. Besides the victim, PW-8, PW-9 and PW-10 deposed about the appellant himself offering to marry the victim. PW-16, the victim's cousin, seems to have prepared a video on his mobile phone recording the execution of an agreement during one of the meetings. This video was transferred into a compact disk at Digital Color Lab in the presence of PW-2 and PW-3 and handed over to the Investigating Officer. The involvement of the

appellant's wife during these settlement talks have been deposed by PW-4, PW-5, PW-8, PW-9, PW-10, PW-12, PW-15 and PW-16. The fact that the appellant himself was also involved in at least one of the meetings has been deposed by PW-8, PW-9, PW-10 and PW-16.

14. Although the victim and her niece (PW-5) deposed that the victim had disclosed about the two incidents of rape to the victim's family members after her treatment at the Central Referral Hospital in the year 2017, none of them deposed that she had in fact disclosed to them about the rape on two occasions in the year 2013. PW-9, the victim's uncle, deposed about the appellant having admitted about the physical relationship he had with the victim and promising to marry her only. Even the victim's brother (PW-10) did not depose that the victim had disclosed about the two incidents of rape. In fact, he admitted that even in his statement to the police he had not stated that the appellant had raped his sister. PW-15, the victim's distant relative, admitted during cross-examination that the victim used to admire the appellant since the time she was studying in Class-XI. According to him, the victim used to say that she wanted to marry the appellant. He also admitted that initially the family of the victim and the appellant shared a cordial relation. However, after the appellant physically assaulted the brother of the victim, their relationship strained. The victim's

cousin (PW-16) deposed that the victim had confided to PW-5, her relative, about the sexual relationship between the victim and the appellant following which the victim had to abort the child. According to PW-4, the victim's brother (PW-10) told him that the victim was suffering from depression due to the sexual relationship between the appellant and the victim. PW-8 also deposed that he learnt about the physical relationship between them from the family members. According to PW-12, she had heard about the love affair between the two. She also admitted during cross-examination that she had gone to the appellant's house in the year 2017 when he had met with an accident and found the victim along with PW-5 and another girl from their village there. The victim and PW-5 had gone to see the appellant. PW-7 deposed that he had learnt about the affair between the appellant and the victim during the meeting. He also admitted that he had heard few years ago about the altercation between the victim's brother and the appellant.

15. PW-5 admitted during her cross-examination that she and the victim had studied together in Class-X in the year 2010. According to her, the victim had to drop her Class-X examination due to her serious skin infection. She also admitted that the father of the victim was suffering from hypertension and the victim was bearing all the expenses of her parents for the past four-five years. PW-8 and PW-9 (the victim's uncle) also

corroborated these facts. The victim's brother (PW-10) admitted that both their parents remained sick due to old age and the school expenses of their younger sister was borne by the victim as well. He admitted that his brother-in-law had expired two-three years ago. He admitted that the victim had nerve problems for which she had undergone operation. He also admitted that during her school days the victim had skin allergy due to which she had to drop one year from school. PW-5 admitted that the brother-in-law of the victim had died three-four years ago. She also admitted that the victim had become sad due to his death.

16. Dr. Mani Gurung (PW-13), a Gynaecologist at the STNM Hospital, examined the victim on 11.01.2018. This was five years after the alleged two incidents of rape. According to Dr. Mani Gurung (PW-13), the victim gave a history of two assaults by the appellant. She gave history of pregnancy and abortion. On local external genital examination, he noticed old healed hymenal tear suggesting of blunt force injury of the hymen in the past. However, during his cross-examination, he admitted that injury to the vagina could have been caused due to the impact of some material objects (scratch with nail or falling in a hard surface). He also admitted that he had not examined the victim regarding her pregnancy.

17. Dr. Samrat Singh Bhandari (PW-11) examined the victim on 10.08.2017 for the first time at Central Referral

Hospital, Manipal, Tadong. The victim was brought by her family members with the complaint of sleep disturbance, reduced interaction with family members, irrelevant talks at times and crying spells. She was also making some gestures indicating hallucinatory behaviour. All the symptoms were since the past four to five days. On mental status examination of the patient, he found that there was decreased psychomotor activity. There was decrease in rate, volume and productivity of speech. Her affect was blunt with decrease intensity and restricted range. They were not able to elicit any disturbance in thought and perception at that time. The victim was provisionally diagnosed with acute and transient psychotic disorder, schizophrenia like with associated stress. The victim was put on antipsychotic olanzapine. The victim was again brought for review on 08.01.2018. At that time, she had improved and had stopped taking her medicine. On mental status examination, there were no significant findings except ideas of reference. During his cross-examination, Dr. Samrat Singh Bhandari (PW-11) accepted that the symptoms he had noticed on the victim was multifactorial and could be a result of bereavement in the family, skin allergy, family responsibility, etc. The FIR was lodged on 10.01.2018, just two days after the victim was reviewed at the Central Referral Hospital. Exhibit-1 was the medical paper prepared by Dr. Samrat Singh Bhandari (PW-11) at the Central Referral Hospital on 08.01.2018 and exhibited by him. Although

not deposed to by him, it is important to note as per Exhibit-1, he had advised the victim to have tablet olanzapine 2.5 mg for two weeks and to follow up after two weeks.

18. The learned Judge may have been correct in concluding that the appellant having committed rape upon the victim could not be ruled out. The victim's vivid description of the two incidents does lead one to understand that it may have been so. However, while it is important to be conscious about the trauma of the victim - a victim of alleged sexual assault, it is also important to be conscious about the well settled principle of criminal jurisprudence that more serious the offence, the stricter the degree of proof. What happened on 17.08.2013 in the confines of the appellant's room at Development Area, and thereafter, in his house would be known only to the victim and the appellant. The victim did not report the matter to the police immediately thereafter, although she was fairly educated and a woman who wanted to stand on her own feet. The victim has given a detailed account of what happened five years ago in great detail about the two alleged incidents. However, her deposition is conspicuously silent about the period thereafter, till the year 2017, when she went into depression. There is a serious discrepancy in the FIR (Exhibit-3) and the statement recorded under section 164 Cr.P.C on the one side and the deposition on the other. While she had alleged that in between the two rapes

she had aborted the child in the statement recorded by the police and the magistrate, in her deposition she alleged that she aborted her pregnancy after the second rape. The FIR (Exhibit-3) was lodged on 10.01.2018, after several deliberations between the victim's family and the appellant's well-wishers. Although, no definite date of the meetings has been given by the prosecution witnesses, from the evidence of the victim and her brother (PW-10), it seems these meetings were held after she was discharged from Central Referral Hospital in September 2017 and just before she lodged the FIR on 10.01.2018. The FIR (Exhibit-3) was lodged by the victim too close to the time of her depression, when admittedly, she had been suffering from transient psychotic disorder and schizophrenia and hallucinating and making irrelevant talks. Although, the victim deposed as if she was aware of the meetings and what transpired there, PW-4 on being questioned by the learned Judge, deposed that she was in fact present during the meeting but was sick and unable to understand what was going on. PW-5 - the victim's niece and classmate, also corroborated this fact. PW-10 - the victim's elder brother, deposed that the victim was in his house, a little above the main house where the meeting was held. According to PW-9 - the victim's uncle, who had visited the victim at Central Referral Hospital and thereafter, in her house, the victim was very weak and frail and not in a normal state. He deposed that during the meeting the victim was bedridden in the next room.

PW-16 also deposed that the victim was not in a proper state of mind.

19. In the circumstances, this court is of the considered view that although the evidence led by the prosecution leads to grave suspicion that the appellant had in fact raped the victim, it would not be judiciously prudent to convict the appellant on suspicion alone. None of what the victim deposed have been corroborated even by her family members. The victim's version of rape is not corroborated, so is her version of pregnancy and abortion. There is evidence to suggest that the victim had been infatuated by the appellant and had expressed her desire to marry him. Some of the prosecution witnesses have deposed about their love affair. There is evidence to suggest that the victim had herself visited the appellant when he had an accident. The possibility of a relationship gone sour cannot be ruled out. Several of the prosecution witnesses had deposed hearing about their "physical relationship" and "sexual relationship", both of which would not amount to rape. In such circumstances, this court is also of the considered view that the appellant must be given the benefit of doubt.

20. The judgment of conviction dated 30.07.2019 and the order on sentence dated 31.07.2019, are set aside. He shall be released forthwith, if not required in any other case. Fine, if any,

deposited by him in terms of the impugned order on sentence, shall be refunded to him.

21. The appeal is allowed.

22. Crl. A. No. 17 of 2019 stands disposed of as also the pending Interlocutory Application.

23. Copy of this judgment be sent to the learned trial court for information and records be returned forthwith.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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