

**HIGH COURT OF TRIPURA
AGARTALA**

CRIMINAL APPEAL (J) 10 OF 2023

Sri Suman Tripura @ Sukhen, S/o Sri Jahar Tripura,
Resident of Vill-Gajanpara, North Kaladepa,
P.O. and P.S. Manubazar, Dist. South Tripura,
At present residing in Kendriya Sansodhanagar,
Bishalgarh, Tripura.

----Appellant

Versus

The State of Tripura.

----Respondent

For Appellant : Mr. B. Banerjee, Advocate.

For Respondent(s) : Mr. Ratan Datta, P.P.
Mr. Sumit Debnath, Addl. P.P.

Date of hearing : 04.07.2023

Date of delivery of
Judgment & Order : **29.08.2023**

Whether fit for reporting : Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Judgment & Order

(Arindam Lodh, J)

This appeal is directed against the judgment and order of conviction dated 19.11.2019 and sentence dated 22.11.2019 respectively, passed by the learned Special Judge, South Tripura, Belonia in connection with case No. Special 3 (POCSO) of 2019 whereby and whereunder the appellant, namely, Sri Suman Tripura alias Sukhen has been convicted and sentenced to suffer rigorous imprisonment for 7(seven) years along with fine of Rs.10,000/- (Rupees ten thousand) being found guilty for committing offence punishable under Section 366 of the Indian Penal Code (for short, IPC) and further sentenced to suffer imprisonment for life along with fine of

Rs.10,000/- (Rupees ten thousand) for committing offence punishable under Section 376(2)(n) of IPC with default stipulation.

2. The prosecution case as projected by the learned Special Judge may be reproduced here-in-below in verbatim:

“The fact of the case in brief is that on 06.01.2018 at about 11 a.m. the victim child (name is withheld) was waiting for vehicle near the road side of East Takka, Debendra Para to come at Manubazar market, at that time the accused persons namely Suman Tripura @ Sukhen and Kamal Tripura came there and forcefully taken the victim girl by a motorbike and wrongfully confined her in a jungle of Kaladhepa. Thereafter, accused Suman Tripura @ Sukhen committed rape upon the victim child repeatedly. After that, on 08.01.2018 the victim child managed to talk with her brother-in-law through mobile phone and then the accused Suman fled away from there leaving the victim child alone in the jungle. Thereafter, the guardian of the victim child rescued her from that jungle.”

3. On the basis of aforesaid complaint, the Officer-in-Charge of Manubazar Police Station on 09.01.2018, registered MNB PS Case No.2018/MNB/002 under Sections 366(A)/343/376/34 of IPC and under Section 6 of POCSO Act, 2012. Thereafter, the case was endorsed to S.I. Ranjan Biswas for investigation and after completion of investigation, charge-sheet was submitted against the accused Suman Tripura alias Sukhen for commission of offence punishable under Sections 366A/343/376(2)(n) of IPC and Section 6 of POCSO Act and against Sri Kamal Tripura for commission of offence punishable under Section 366A/114 of IPC.

4. On receipt of the charge-sheet, learned trial court took cognizance of offences under the aforesaid sections and charge against accused Suman Tripura alias Sukhen was framed under Sections 366/376(3) of IPC and Section 4 of POCSO Act and another charge against accused

Kamal Tripura was framed under Section 366,376(3) read with Section 109 of IPC and Section 4 read with Section 17 of POCSO Act,2012. The contents of the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed trial.

5. During trial, the prosecution had examined as many as 16 witnesses and introduced the exhibited documents.

6. On closure of recording evidence, both the accused persons were examined under Section 313 CrPC when they were noticed about the incriminating evidence and materials brought on record by the prosecution witnesses to which they denied all the allegations brought against them and claimed that they were falsely implicated.

7. Thereafter, considering the submissions of the learned counsels appearing for the prosecution and the accused persons learned Special Judge, South Tripura, Belonia had passed the impugned judgment declaring the conviction and sentence against the present accused-appellant as aforestated.

8. Being aggrieved and dissatisfied with the findings arrived at by the learned Special Judge, the present appellant has preferred this appeal.

9. Heard Mr. B. Banerjee, learned counsel appearing for the accused-appellant namely, Suman Tripura alias Sukhen. Also heard Mr. Ratan Datta, learned P.P. assisted by Mr. S. Debnath, learned Addl. P.P. appearing for the State-respondent.

10. Mr. B. Banerjee, learned counsel appearing for the appellant has submitted that the prosecution has failed to prove the case beyond reasonable

doubt as the evidence adduced by the prosecution witnesses suffers from serious discrepancies which should not be termed as minor discrepancies in any manner. Mr. Banerjee, learned counsel has drawn our attention to the medical examination report of the victim i.e. Exbt.15 showing that the medical officer has mentioned in the report itself that—*“seeing FSL reports, as spermatozoa is present in Exbt.A and as hymen is not intact (no fresh tear/injury, may be old ruptured hymen) sexual intercourse has occurred. May or may not be raped (inconclusive)”*. So, the submission of learned counsel of the appellant was that the doctor could not interpret whether the said rupture was old or recent. Learned counsel had tried to persuade this court that to constitute the offence of rape, the prosecution had to prove beyond reasonable doubt that it must be forceful and without the consent of the victim. His further submission was that there was no rape, but, it was consensual sex.

11. Refuting the submissions of learned counsel for the appellant, Mr. Ratan Datta, learned P.P. appearing on behalf of the State-respondent, vehemently argued that the prosecution had discharged its burden successfully that the victim was raped by the appellant. According to Mr. Datta, learned P.P., the sole testimony of the prosecutrix can be the basis for convicting the accused-appellant. Learned P.P. further argued that the way the victim girl deposed during her examination-in-chief and in the statement recorded under Section 164(5) of CrPC before the Judicial Magistrate it is sufficient to conclude that her deposition instills confidence to return a finding of guilt against the accused-appellant. Lastly, Mr. Datta, learned P.P. submitted that the learned Sessions has rightly passed the impugned judgment and order of conviction and sentence and accordingly, he prayed for upholding the same.

12. We have given our anxious thought to the submissions of the learned counsels and perused the evidence and materials brought on record to test the credibility and genuinity of the prosecution witnesses. For the sake of brevity, we may first discuss the evidence adduced by the prosecution.

13. PW-1, the victim deposed in her examination-in-chief that about one year back from the date of her deposition i.e. on 17.05.2019 she was waiting on the road side of Debendra Para for going to Manubazar. There, one Suman Tripura alias Sukhen and Kamal Tripura came with a bike and forcefully took her with their bike. She raised alarm, but nobody could hear her voice. They took her to the Lichu garden through jungle road. They had taken her mobile phone. Accused, Kamal Tripura left towards his house and thereafter, in the jungle, accused Suman alias Sukhen Tripura forcefully raped her for the entire night stating that he would marry her and on the following day, he also kept her against her will and did not provide her any food. She was kept in the jungle for two days. PW-1 again deposed that after two days, she somehow managed to snatch away her mobile phone from the accused and informed the husband of her sister namely, Shyamal Tripura and thereafter she was recovered by her parents. Subsequently, she lodged an 'ejahar' before the police narrating the incident.

During cross-examination, PW-1 deposed that the road from where she was forcefully taken is a particular point where another road linked with that road. To some distance from that place, there was grocery shop run by one Ajit Dey. She had denied the fact that accused Suman Tripura regularly

visited their house; he came to the place of occurrence on her phone; she gave proposal to Suman to marry her and that as Suman did not agree to her proposal, she lodged the case falsely. She further denied that she was not raped by Suman Tripura continuously for two days. PW-1 again deposed in her cross-examination that after escaping from the place of occurrence, she came to the road side which was far away from the place of occurrence and after coming on the road, she telephoned her brother-in-law.

13.1 PW-2, one Ajit Kumar Tripura, the owner of the grocery shop was declared hostile by the prosecution. So, nothing could be gathered from his evidence. P.W-3 being an Assistant Teacher of Dhani Chandra Para High School proved the school certificate issued by the Headmaster of his school in respect of the victim of the case. PW-4 is the seizure witness of that school certificate. PW-5 Smt. Shilpi Roy (Sen) is a staff nurse of Manubazar CHC and she is also a seizure witness in respect of biological sample of the victim. PW-6, Sri Bablu Karmakar is also a seizure witness of wearing apparels of the accused. PW-7 is another seizure witness of motor bike bearing registration no.TR-03C-7009 (Hero Honda) and PW-8 is the seizure witness of biological samples of the accused person.

13.2 PW-9, being the mother of the victim deposed that when her daughter i.e. the victim went out of her house, she was not at home. Her daughter did not return on that day. She waited upto following day and thereafter she gave missing information to the police. She further deposed that she being led by Pradhan of their village found the victim on the road side but, the victim did not tell her anything. Again, she deposed that the case was already compromised.

13.3 PW-10, the Pradhan deposed nothing and he was declared hostile by the prosecution.

13.4 PW-11, Dr. Sabyasachi Nath deposed that he being a Senior Scientific Officer of Tripura State Forensic Science Laboratory, Narsinghar on 10.08.2018 received one parcel from SDPO, Sabroom where he found twenty exhibits containing several samples taken by the investigating agency for examination. He examined all those exhibits applying all scientific methods and on examination he detected spermatozoa of human origin, but group could not be detected. He accordingly submitted report and on identification it was marked as Exbt.12 and his signature on the said report was marked as exbt.12/1 respectively.

13.5 PW-12 is a medical officer who examined the accused Suman Tripura alias Sukhen and after examination, he opined that accused was physically healthy and mentally fit and there was nothing to suggest that the said person was incapable of performing sexual intercourse under normal circumstances.

13.6 PW-13 being the O.C. Manubazar P.S. only deposed in regard to the registration of this case and nothing more.

13.7 PW-14 being a Doctor of Manubazar CHC deposed that he had examined the victim on 09.01.2018 in connection with Manubazar P.S. Case No.2018/MNB/002. He had examined the victim and after examination he gave the following opinion:

“That there is evidence of sexual intercourse as hymen is not intact. But there is no evidence of injury mark over her body. Moreover, victim has taken bath, changed clothes and cleaned and washed private parts after the incident. I have sent samples of high and low vaginal swab, pubic hair sample, 5 ml dried blood to SFSL

for laboratory investigation and had advised USG of lower abdomen to see for any pregnancy and also gave opinion for x-ray dentition to confirm her actual age. Final conclusion (pending) till reports arrive.

During examination, I took following samples:-

Blood sample of 5 ml dried blood in gauge piece, matted public hair and loose hair by pubic hair combing taken. I handed over the samples taken by me to SI Ranjan Biswas. The samples were seized by SI Ranjan Biswas and I signed in the seizure list. This is my signature in the seizure list, on identification marked Exbt.7/1. I submitted my report first time on 09.01.2018. On 30.09.18 IO produced SFSL report and as per SFSL report, spermatozoa was found present in Exbt.A of the SFSL report and basing on that report as hymen is not intact, I opined that sexual intercourse has occurred and it may or may not be raped. Since there is no injury found on the body of victim, victim may be consented in sex or may not be given consent in sex, so I mentioned the word 'may or may not be raped' since age of the victim was not confirmed at that time....."

13.8 PW-15 is Ranjan Biswas who was the investigating officer of this case. He deposed that during the course of investigation, he arranged for recording statement of the victim; arranged for medical examination of the victim; seized the wearing apparels of the victim in presence of witnesses and collected samples of the victim for chemical examination by Forensic Expert. On 09.01.2018 he visited the place of occurrence, prepared hand sketch map with separate index; arrested the accused Suman alias Sukhen Tripura on 10.01.2018; seized one motor bike; arranged for medical examination of the accused Suman alias Sukhen Tripura; collected samples of the accused for chemical examination and thereafter on being transferred he handed over the case docket to the O.C., Manubazar PS for doing needful.

13.9 PW-16, Sri Ranjit Das, being the third IO deposed that he investigated the case after SI, Ranjan Biswas and SI Jahar Debbarma. During examination, he examined available witnesses and recorded their statements under Section 161 of CrPC; collected SFSL report and after completion of

investigation on being prima facie satisfied he submitted charge-sheet against the accused-appellant with other accused person.

14. After careful evaluation of the evidence of the prosecution witnesses, first of all we are to weigh the testimony of the prosecutrix, i.e. PW-1, the victim herself. The victim in the instant case specifically stated that she was forcefully taken by the accused Suman Tripura with his bike and took her to a lichi garden where he committed forceful rape upon her. From her statement it has also come to light that there was another accomplice of the accused namely Kamal Tripura, who had participated the accused accompanying the victim by their bike towards jungle. Thereafter, he had left the place. It was stated by the victim that she was raped by accused Suman Tripura throughout the night in the jungle with an assurance that he would marry her and she was captivated there for two days. In this situation, according to us, her evidence has to be looked into with broader aspects as to how it inspires confidence. PW-1, the victim though stated that she raised alarm but nobody could hear her voice. Only that much protest we have seen from her evidence. She was captivated for two days. She seemingly never tried to escape from the place of occurrence. She was a grown up girl and was matured and intelligent enough at the time of offence to understand the significance and the consequences of such act committed by the accused. If we go through the findings of learned trial Judge, where at Para 18 of the judgment learned trial Judge has observed that- *“the prosecution evidence is not sufficient to prove that the victim was minor at the relevant point of time since the school certificate cannot be the sole basis of a finding that she was a minor particularly when she was in the verge of attaining majority.”* So, She

could have realized the consequences that in future she might not be married by the accused. All these circumstances lead us to the conclusion that she had voluntarily and consciously consented to have sexual intercourse with the appellant throughout the night in the place of occurrence.

15. Now, let us come to the deposition of the medical officer who had examined her. PW-14 is the doctor who examined the victim and deposed that he examined the victim in the labour room of the CHC on 09.01.2018. The victim reported him that she was raped by the accused on 06.01.2018 and 07.01.2018; she changed her clothing; took bath and even washed her private parts. On examination, the doctor did not find any mark of violence or any injury over the body of the victim. On receipt of the SFSL report, PW-14 deposed that spermatozoa were found present in Exbt.A i.e. the sample of **high cervical swab** of victim. He further stated that basing on that report as hymen was not intact, he opined that sexual intercourse has occurred and it may or may not be a case of rape since there was no injury found on the body of the victim, victim may be consented in sex or may not be given consent in sex. On scrutiny of the testimony put forwarded by PW-14 before the trial court, a vital question comes to our mind that whether the victim was raped or not. The incident had occurred on 06.01.2018 and 07.01.2018 and she was examined by the doctor on 09.10.2018 from 12.50 pm to 1.35 pm. So, after more than 36 hours she was examined by the doctor when she had changed her clothing and washed her body. The doctor found her hymen was not intact and as such, it can be presumed that she might have committed sex with other fellow because it has been gathered from the examination report of the Forensic Expert, i.e. PW-11 that he examined all through the exhibits for

chemical examination and amongst the exhibits only in Exbt.A which was the cervical swab of the victim, he detected spermatozoa of human origin, but could not be detected in the Exbt. J that was the samples of seminal stain/spermatozoa/blood stain/epithelial cell collected from the accused Suman Tripura. So, the spermatozoa found in the sample of the victim did not match with sample of accused.

16. We are mindful to the proposition that the evidence of a prosecutrix must be examined in a broader perspective of the facts and surrounding circumstances of a particular case. There is no rule of law that the statement of a victim of rape should always be without exception and in all circumstances it should be accepted as gospel truth.

17. On careful scrutiny of the evidence of the prosecutrix, the medical evidence adduced by the prosecution as has been discussed here-in-above, we find that no implicit reliance can be placed on the testimony of the prosecutrix since it has not been supported by the medical evidence. It is not a case that the statement of the victim should be taken as gospel truth. Rather, if we go through the surrounding circumstances of the crime, we find that it was a consensual act of the victim and the accused as it can be safely presumed from their conduct, especially the conduct of the girl during her journey to the alleged scene of crime. More so, the medical evidence shows her hymen had old rupture, meaning thereby she might be habituated with sex and with these perspectives, the appellant is, therefore, entitled to get the benefit of doubt. Thus, the judgment and order of conviction and sentence recorded by learned Special Judge, South Tripura, Belonia under Sections 366/376(2)(n) of IPC is liable to be set aside.

18. The appeal, accordingly, is allowed. The judgment and order of conviction dated 19.11.2019 and sentence dated 22.11.2019 respectively, passed by the learned Special Judge, South Tripura, Belonia in connection with case No. Special 3 (POCSO) of 2019, is set aside and quashed. The accused appellant Suman Tripura is hereby acquitted and set at liberty. Surety is discharged from the liability of bail bond.

19. The appellant shall be released forthwith if not wanted in connection with any other case.

Send down the LCRs.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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