

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Rev.P. No.16/2022

Shri Nandalal Baidya, son of Late Bhuvan Chandra Baidya, resident of
Debendrachandra Nagar, P.S.-West Agartala, District-West Tripura.
.....Petitioner(s).

V E R S U S

The State of Tripura
.....Respondent(s).

For Petitioner(s)	: Mr. Sankar Lodh, Advocate, Mr. Kishalay Roy, Advocate, Ms. Ayesha Saha, Advocate.
For Respondent(s)	: Mr. Ratan Datta, P.P., Mr. Samrat Ghosh, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **28th April, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Sankar Lodh, learned counsel for the petitioner and
Mr. Ratan Datta, learned Public Prosecutor assisted by Mr. Samrat Ghosh,
learned Additional Public Prosecutor appearing for the respondent-State.

2. Aggrieved by the judgment dated 15.03.2022 passed by the
learned Sessions Judge, Khowai, Tripura in case No. Criminal Appeal 05 of
2021 whereby the learned Appellate Court has confirmed the conviction and

sentence imposed upon the petitioner under Sections 354 and 354A of the Indian Penal Code (IPC, for short) by the learned Judicial Magistrate First Class, Khowai, Tripura vide judgment of conviction and sentence dated 23.09.2021 in case No.PRC(WP) 76 of 2019, the petitioner is in revision under Sections 397 read with Section 401 of the Code of Criminal Procedure (Cr.P.C., for short).

3. The prosecution was launched on the complaint of the Inspector Smt. Tripti Debnath, ROI(West) under the office of Superintendent of Police, West Tripura, Agartala dated 04.07.2019, *inter alia*, on the basis of the written complaint of the prosecutrix/victim (PW-1) made before the Superintendent of Police (GRP), Tripura, Agartala on 26.04.2019 making the following allegations:

That, the victim, a Group-D employee of GRP Unit, then posted at Teliamura GRPS alleged that Sub-Inspector (UB) Nandalal Baidya, the petitioner herein, had about 6/7 months ago after few days of his joining found the complainant alone in P.S. office and used to frequently indulge in irrelevant talks with her and offered love before her. The victim realizing his bad intention did not respond to his irrelevant talk and silently performed her official duty. On 08.02.2019 the said victim went to the bathroom of the Police Station when the accused Nandalal Baidya

approached before the door of the bathroom and tried to whisper with her. She also alleged that the accused used to take alcoholic drink in his office room and ordered her for bringing other necessary things for taking his drink. On 19.02.2019 as per his order when the victim went before him for giving water on his table, the said accused caught her right hand and asked her to remain standing before him. He also stated that he wished to look over her.

4. On the complaint of the victim, the Superintendent of Police, GRP Unit, Tripura ordered an inquiry into the matter by the Internal Complaints Committee and submit a report. The report was submitted by the Deputy Superintendent of Police (GRP) Headquarters, the Chairman of the Internal Complaints Committee, which is enclosed to the written complaint dated 04.07.2019. Based on the allegations, the informant requested to register an F.I.R. against Nandalal Baidya. Upon completion of investigation, charge-sheet was filed and after taking of cognizance under Sections 354 and 354A of the IPC, the learned trial Court of Judicial Magistrate Ist Class, Khowai, Tripura framed charges under Sections 354 and 354A of the IPC. After denial of his guilt, the trial proceeded.

5. Prosecution examined 15(fifteen) witnesses, *inter alia*, as under:

PW-1 : Name withheld (Victim);
PW-2 : Shri Bikash Debbarma;
PW-3 : Shri Rabindra Debbarma;
PW-4 : Shri Nabadurga Sarkar;
PW-5 : Shri Naresh Ch. Paul;
PW-6 : Smti. Anita Das;
PW-7 : Smti. Namita Deb;
PW-8 : Smt. Tripti Majumder;
PW-9 : Shri Swapan Debbarma (husband of the victim);
PW-10: Shri Sunirmal Baishya;
PW-11: Smti. Tripti Debnath (informant);
PW-12: Shri Gauranga Debbarma;
PW-13: Md. Babul Hussain;
PW-14: Shri Himangshu Roy; and
PW-15: S.I. Subhrangshu Bhattacharjee (I.O.).

No defence witness was examined. The prosecution had also exhibited the hand-sketch map of the P.O. and its index as Exhibit-6 and 7 respectively. The deposition of the victim recorded under Section 164(5) of the Cr.P.C. was also exhibited.

6. After conclusion of the prosecution evidence, the statement of the accused was recorded under Section 313 of the Cr.P.C. in which he stated that he had been falsely implicated. Apart from that, the accused did not offer any explanation in his defence to the materials deposed against him by the prosecution witnesses.

7. After conclusion of the trial and hearing the arguments of the prosecution and the defence, learned trial Court held the accused guilty of the charges under Sections 354 and 354A of the IPC and sentenced him to undergo Simple Imprisonment for one year with a fine of Rs.500/- under Section 354 of the IPC and R.I. for 6(six) months for the offence punishable under Section 354A of the IPC. Both the sentences were ordered to run simultaneously vide impugned judgment and order of sentence dated 23.09.2021. The petitioner being aggrieved by the judgment of conviction and sentence approached the appellate Court of learned Sessions Judge, Khowai, Tripura in Criminal Appeal No.05 of 2021. However, the appellate Court after perusal of the impugned judgment and the materials adduced during the trial by the prosecution and the statement of 313 Cr.P.C. by the accused affirmed the conviction and order of sentence, *inter alia*, holding as under:

"6) On the other hand Ld PP submitted that the evidence led by prosecution is sufficient to prove the charges framed against the accused person and Ld Trial Court rightly convicted the appellant and as such, there is nothing to interfere with the order of conviction and sentence passed by the Ld Trial Court.

7) In addition to the grounds of memo of appeal, Ld Advocate of the appellant submitted that :-

(i) The person who called the appellant-accused and the relevant point of time when the victim lady went to the wash-room was not cited as witness in the instant case. Hence, adverse inference should be taken under Section 114 (g) of

Indian Evidence Act. This is sufficient to disbelieve the prosecution story.

(ii) There is delay of 56 days in lodging the ejahar and there is no suitable explanation for such inordinate delay which is fatal to disbelieve the prosecution story.

(iii) The ingredients of Section 354 and 354-A of IPC are not at all proved.

8) On perusal of the evidence on record and after hearing both sides I cannot be of same opinion on the following grounds.

a) So far section 114 (g) of Evidence Act is concerned the settled principle of law is that if a party suppresses or withholds some evidence in his possession the court may presume that the evidence if produced would be un-favourable to that party. Other important aspects of section 114 (g) of Evidence Acts are that the witness should be a material and important witness, withholding or suppression of witness is deliberate. Depending upon the whole set of facts and adverse inference may rise against a party where he does not produce available evidence. Certainly things will be different for non production of unidentified witnesses. Adverse inference can only be drawn only if there is withholding evidence not merely on account of failure to obtain evidence.

In the instant case PW 01 (Rachana Debbarma), the victim during cross-examination admitted that there is only one common bathroom at their office which is also used by the O/C, the appellant. So, it may be difficult for the IO to identify that particular witness who called the O/C at the relevant point of time.

During argument Ld PP submitted that here the appellant is the best person to identify that person as the circumstance says that it is within his exclusive knowledge. Ld PP also referred section 106 of Evidence Act.

From the evidence on record, it appears that the person who called the O/C, when the victim lady was in washroom could be a witness but not a material and important witness as here the most vital witness is PW 01, the victim lady who was duly examined and cross-examined.

So, considering, the discussion made above under point No. (a), I am of the opinion that this case is not fit for

drawing adverse presumption under section 114 (g) of Evidence Act.

b) So far the point of delay in lodging the FIR as raised by the Ld Advocate of the appellant, is concerned, the Judgment passed in state of Punjab Vrs Gurmit Singh (AIR 1996 SC 1993) by Hon'ble Supreme Court is very much relevant. The Hon'ble Supreme Court observed :-

“In sexual offences delay in lodging FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to police and complain about the incident which concerns reputation of the prosecutrix and the honour of the family. It is only after giving it a cool thought that a complaint of sexual offence generally lodged.”

So, much importance should not be given always in delay in lodging FIR particular in sexual offence cases.

In the instant case the victim lady is a Group-D employee and the accused is the O/C of the PS. So, certainly it is very difficult for a Group-D employee to take instant action against her officer.

Here the delay in lodging the ejahar is sufficiently explained by the victim lady and there is no ground to disbelieve her statement. Moreover, in one line the delay as pointed out by Ld Advocate of the appellant is not at all fatal here.

Next comes the important part of the case i.e. whether the alleged activities of the appellant attract the ingredients of section 354 and section 354-A of IPC.

In case of Section 354 of IPC guilty intention of the accused plays a vital role in determining the offence. State of Punjab Vrs Major Singh (AIR 1967 SC 63).

From the evidence of PW 01 (victim), it appears that she specifically stated that on 08.02.2019 when she went to bathroom of the GRS police station, the accused approached before the bathroom for illicit love by whispering. Due to this she would not come out from the bathroom. Again she specifically stated that on 19.02.2019 at about 01.41 p.m. the accused called her to his room. She thought that he called her for water. The accused caught her hand, dragged her inside

the room and touched her breasts and outraged her modesty. Such activities clearly indicates his guilty intention to outrage her modesty. Simply physical conduct and advances including specific sexual gestures, a demand or request for any kind of sexual favour are sufficient to attract section 354-A of IPC.

During argument Ld Advocate of the appellant submitted that out of fatherly feelings the appellant caught the hand of the victim lady but the fact is that the lady is the right person to comment upon the nature of the touch of the appellant whether it was friendly, brotherly or fatherly. From the evidence it becomes clear that the victim lady clearly felt the bad intention of the accused her modesty was outraged by the appellant. She categorically stated that she informed the matter to Rabindra Debbarma (PW 03), Bikash Debbarma (PW 02), Naresh Paul (PW 05), Babul Hossain (PW 13). All of them supported the version of the victim lady. There is no ground to disbelieve the statement of the victim lady. There is no discrepancy among the statement of the witnesses. The witnesses corroborated the version of the victim lady.

During argument Ld Counsel for the appellant questioned the concluding part of the Judgment passed by the Ld Magistrate.

In my view, the way of writing judgment may be different as per the Ld Advocate of the appellant but the conclusion arrived at on the basis of evidence of the prosecution, by the Ld Magistrate is correct and there is no space to interfere with the Judgment passed by the Ld. Magistrate.

ORDER

In the result, the appeal preferred by the appellant is dismissed.

The conviction and sentence passed by the trial court is upheld.

The appellant is directed to surrender before the Trial Court on or before 16.04.2022 to suffer the period of sentence as ordered.

Accordingly, the appeal is disposed of on contest.

Make relevant trial entry in the relevant register.

Send back the L.C record along with the copy of this Judgment to the Ld. Trial Court.

Also supply a copy of this Judgment to the appellant free of cost."

8. Learned counsel for the petitioner has, *inter alia*, assailed the impugned judgment and order of sentence of the trial Court as affirmed in appeal on the following grounds:

(i) That, there is a delay of about 66 days in the complaint made by the victim at the first instance vide Exhibits-1 and 2 on 26.04.2019 from the alleged date of incidence, i.e. 19.02.2019 without any plausible explanation which is fatal to the case of the prosecution;

(ii) That, the learned Courts below have failed to appreciate that apart from the victim (PW-1), there are no eye witnesses to corroborate the incidence;

(iii) That, the allegations have been exaggerated in the depositions of the victim (PW-1) and also her husband (PW-9) beyond what was alleged in her first complaint (Exhibit-1) made on 26.04.2019 before the Superintendent of Police (GRP), Tripura;

(iv) The victim has also accepted in her cross-examination that there was some dispute regarding the duties of Group-D staff at their office. This statement of the victim shows motive for false implication as an afterthought after about 66 days of the alleged incidence;

(v) That, other prosecution witnesses such as, PWs-2, 3, 4, 5, 12 and 13 have though supported the case of the victim but not dilated upon the exact allegations made by the victim in her deposition or her statement made under Section 164(5) of the Cr.P.C.;

(vi) That, the report of the Internal Complaints Committee which was enclosed with the F.I.R. has not been exhibited to show whether the allegations were found to be true in the Internal Complaints inquiry;

(vii) Learned trial Court and appellate Court have failed to appreciate the absence of the necessary ingredients prescribed under Sections 354A of the IPC. As per the allegations made in the FIR and the complaint (Exhibit-1) made on 26.04.2019 by the victim, the ingredients of Section 354A(i) or (ii) are not made out. The victim had at best in her complaint made on 26.04.2019 not categorically made clear allegations of touching of her breast, rather she had only stated that the accused held her right hand and pressed it and asked her to keep standing near him when she kept the glass of water on the table on his asking.

9. Learned counsel for the petitioner has submitted that no proper opportunity was granted by the learned trial Court on the point of sentence as the sentence was pronounced on the same date just after the order of

conviction, i.e. 23.09.2021. As such, the ingredients of Section 235(2) of the Cr.P.C. are breached and the order of sentence stands vitiated.

10. Learned counsel for the petitioner has relied upon the following decisions in support of the plea that the delay on the part of the prosecution has not been properly explained and is fatal to the trial:

(i) ***Ravinder Kumar and another vrs. State of Punjab*** reported in **2001 AIR SCW 3366** (Paragraph-13); and

(ii) ***State of Himachal Pradesh vrs. Gian Chand*** reported in **2001 AIR SCW 1903** (Paragraphs-10 & 11).

11. Learned counsel for the petitioner submits that the petitioner has since superannuated. During the trial he has not undergone any custody. However, it is submitted that the failure on the part of the learned trial Court and appellate Court to appreciate the evidence in its proper perspective in the light of the ingredients of the offences under Sections 354 and 354A of the IPC has led to an erroneous finding which is not sustainable in law. This Court in exercise of the revisional jurisdiction, therefore, may interfere in the findings of the learned trial Court and appellate Court as affirmed by the appellate Court as they are suffering from illegality and are not proper. The order of sentence also suffers from irregularity. The impugned judgment may be set aside and the petitioner may be acquitted of the charges.

12. Learned Public Prosecutor has strongly opposed the prayer. He has drawn the attention of this Court to the materials adduced during the trial in which 15(fifteen) prosecution witnesses were examined out of whom PW-1 is the victim who has fully supported her case relating to the outraging of her modesty by the accused. Other staff of GRP being PWs-2, 3, 4, 5, 12 and 13 have also supported the incidence.

It is submitted that in such a case of outraging of modesty of a woman inside the precincts of the office of an immediate superior, it is highly unlikely that a direct eye witness would be available to support the case of the victim though other co-staff of the GRP such as, PWs-2, 3, 4, 5, 12 and 13 who were told about the incidence by the victim have duly supported her case. Apart from them, none of the other witnesses had turned hostile during trial.

It is submitted that the husband of the victim had duly advised the victim to wait for some time to see the change in behaviour of the accused and that is why there was some delay in lodging of the complaint by the victim. The victim being a lady conscious of her reputation at the first instance chose to lodge a complaint for inquiry by the Internal Complaints Committee rather than approaching the police as it related to an immediate superior in the office. It is only at the instructions of the Superintendent of

Police, West Tripura, Agartala on the basis of the complaint and the report of the Internal Complaints Committee against the accused by the DSP (GRP) HQR, the Chairman of the Committee, that the FIR was lodged by the Inspector, ROI (West) under the office of the Superintendent of Police, West Tripura for initiation of the criminal proceedings.

It is submitted that the statements of the prosecution witnesses on a complete reading establish the charges against the accused and they do not suffer from any such infirmities or unnecessary exaggerations.

It is submitted that the findings of the learned trial Court as affirmed in appeal do not suffer from any perversity in appreciation of evidence which warrants interference in the revisional jurisdiction by this Court. It cannot be said that the findings are based on no evidence or are contrary to the materials produced during trial. Furthermore, the accused has not been able to give any explanation despite sufficient opportunity granted by the trial Court while recording his statement under Section 313 of Cr.P.C.

It is also pointed out that there are no exaggerations in the statement of the victim as compared with the statement made under Section 164(5) of the Cr.P.C. The ingredients of Section 354A (i) and (ii) would definitely be made out on the basis of the materials adduced during trial since undisputedly the accused had caught hold of her hand and sought

sexual favours. As such, the impugned findings or the order of sentence do not suffer from any infirmity which call for interference by this Court in revision. Moreover, the pronouncement of sentence on the same date after recording the judgment of conviction does not suffer from any such irregularity which has caused prejudice to the petitioner. The instant revision petition, therefore, deserves to be dismissed.

13. I have heard learned counsel for the parties. I have gone through the relevant materials placed from the lower Court records and have also perused the impugned judgment of the learned appellate Court and also the learned trial Court.

14. It needs to be observed at the outset that the powers of revision conferred upon this Court under Section 397 of the Cr.P.C. are primarily intended to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded and as to the regularity of any proceedings of such inferior Court. Revisional power cannot be equated with the appellate proceedings. In the facts of the present case as are borne out from the materials placed from the lower Court records, it is clear that the complainant/victim was working under the accused, the Officer-in-Charge of GRP Section of Teliamura Railway Station, in the capacity of a Group-D employee at the time of incidence. The victim on being accosted

on the two occasions as are mentioned in her complaint made on 26.04.2019 (Exhibit-1) for the first time approached the Superintendent of Police (GRP), Tripura, Agartala for an inquiry into the indecent behaviour of the accused, Officer-in-Charge (GRP), Teliamura Railway Station. The victim has in her complaint also stated that she had informed other co-staff, such as ASI Pradip Rudra Paul, Constable Rabindra Debbarma (PW 3), Naresh Pal (PW 5), and Group-D employees Bikash Debbarma (PW 2) and Nabadurga Sarkar (PW 4) and subsequently, after lot of deliberation informed the matter to her husband who with an eye to ensure her safety and protect her modesty had advised her to approach the Superintendent of Police (GRP), Tripura first for appropriate steps against the accused Nandalal Baidya to ensure her safety and let her perform her official duty. It was on the basis of this complaint that the Internal Complaints Committee conducted an inquiry and the FIR was lodged by the Inspector, Smt.Tripti Debnath, ROI (West) under the office of Superintendent of Police, West Tripura on 04.07.2019. The FIR also enclosed the inquiry report though it was not formally exhibited at the time of trial. The incidence relates to 08.02.2019 and 19.02.2019 when the accused had allegedly for the first time accosted her near the bathroom and on the next date caught her right hand and pressed her when she offered water on his asking while he was drinking wine in the office. The victim has stood the test of cross-examination as PW-1 and other

staff of the GRP such as, PWs-2, 3, 4, 5, 12 and 13 have supported her statement though they are not direct eye witnesses whom the victim had informed after the incidence as is evident from the complaint made by her on 26.04.2019 (Exhibit-1). It is highly unlikely that in such a situation in an organization when a junior employee is being accosted by an immediate superior like the accused, Officer-in-Charge of the GRP at the Teliamura Railway Station, there could be eye witnesses to the occurrence. However, corroboration of her statement by her co-staff whom she had also informed about the incidence does lead to credibility of the allegations made in the complaint by her and the lodging of the FIR on 04.07.2019. The husband of the victim (PW-9) has in his deposition also stated that he had advised her to see if the behaviour of the accused changes and only thereafter the complaint was lodged. These chronology of facts do offer adequate explanation for the delay in lodging of the complaint on 26.04.2019 by the victim, more so, since she at the first instance did not want to expose her reputation to the public eye by going to the police station against her own superior.

15. Learned counsel for the petitioner has relied upon the decisions rendered by the Apex Court in the cases of *Gian Chand* (supra) and

Ravinder Kumar (supra) which relate to offences punishable under Section 376 of the IPC and Section 300 of the IPC respectively.

16. The Apex Court while dealing with relevant facts of the case had the occasion to observe that delay in lodging FIR is not illegal. Of course a prompt and immediate lodging of the FIR is the ideal as that would give the prosecution a twin advantage. First is that it affords commencement of the investigation without any time lapse. Second is that it expels the opportunity for any possible concoction of a false version. Barring these two plus points for a promptly lodged FIR the demerits of the delayed FIR cannot operate as fatal to any prosecution case. It cannot be overlooked that even a promptly lodged FIR is not an unreserved guarantee for the genuineness of the version incorporated therein [See Para-13 in the case of **Ravinder Kumar** (supra)].

17. Further, in the case of **Gian Chand** (supra), the Apex Court has in more or less in similar language observed that delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the First Information Report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily

explain the delay and there is a possibility of embellishment in prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.

18. These salient principles when applied to the facts of the instant case do not demolish the entire prosecution story as not only has the victim come out clearly in support of it but the FIR has been lodged on the basis of the Internal Complaints Committee report and other co-staff of the victim such as, PWs-2, 3, 4, 5, 12 and 13 have duly corroborated the testimony. Surprisingly, the accused despite being given more than sufficient opportunity by putting the entirety of materials adduced by the prosecution during his examination under Section 313 of the CrPC except for simple denial failed to offer any explanation on his part for any false implication by the victim. These material evidence appear to have been duly taken into consideration by the learned trial Court while recording the findings of guilt against the accused under Sections 354 and 354A of the IPC which stand affirmed in appeal.

19. The ingredients of Sections 354 and 354A are usefully extracted hereunder:

"354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

354A. Sexual harassment and punishment for sexual harassment.—(1) A man committing any of the following acts—

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or
 - (ii) a demand or request for sexual favours; or
 - (iii) showing pornography against the will of a woman; or
 - (iv) making sexually coloured remarks,
- shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

20. A mere perusal of the ingredients of these two provisions and in particular, Section 354A (i) and (ii) do make out the case of the prosecution as the materials on record unfailingly establish that the accused

Officer-in-Charge of GRP, Teliamura, an immediate superior of the victim, had not only accosted the victim near the bathroom on 08.02.2019 and whispered to her but on the next date on 19.02.2019 gone on to catch hold of her hand and also touched her breast. The ingredients of the offence having been made out on the basis of the materials adduced during trial, the findings of the learned trial Court as affirmed in appeal do not suffer from any perversity. It cannot be said that the findings are based on no evidence or they are contrary to the evidence on record or that the learned trial Court has failed to take into account material evidence which go to discredit the case of the prosecution in totality.

21. Learned counsel for the petitioner has also pointed out that the order of sentence was pronounced on the same date in the absence of the accused just after recording the order of conviction and is hit by the requirement of Section 235(2) of the Cr.P.C. However, learned counsel for the petitioner has not been able to show any prejudice caused by pronouncement of the sentence on the same date. In this regard, the provisions of Section 465 of the Cr.P.C. are material to be taken into note.

22. Taking into account all these circumstances and the materials adduced, the findings of conviction and order of sentence recorded by the trial Court as affirmed in appeal, this Court does not find any such infirmity

which require to be interfered by this Court in revisional jurisdiction. The findings of the learned trial Court as affirmed in appeal do not suffer from any such illegality or impropriety or irregularity.

23. As such, the revision petition is devoid of any merit. It is accordingly dismissed.

24. Send down the lower Court records forthwith.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ



सत्यमेव जयते