

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.(J)NO.33 OF 2022**

Sri Chiranjit Paul@ Ranjit
S/o.-Late Khokan Paul,
Of Madhab Nagar, P.S.- Manubazar,
Dist-South Tripura.

..... **Convict-Appellant**

Vs.

The State of Tripura.

..... **Respondent(s)**

For the Appellant(s) : Mr. A. Acharjee, Advocate.
Ms. M. Basu, Advocate.

For the Respondent(s) : Mr. Raju Datta, Public Prosecutor.

Date of hearing and delivery of
Judgment & Order : 13.12.2023

Whether fit for reporting : NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

JUDGMENT AND ORDER(ORAL)

T. Amarnath Goud(J)

सत्यमेव जयते

This present appeal has been filed under Section 374 of Cr.P.C. against the impugned Judgment of conviction and sentence dated 03.08.2022 passed by the learned Sessions Judge, South Tripura, Belonia in case No. Special 10(POCSO) of 2021 whereby and whereunder the appellant has been convicted under Section 341 of IPC and sentenced to suffer R.I. for fifteen days. Further, the appellant has been convicted under Section 4(2) of the POCSO Act and sentenced to suffer R.I. for 20(twenty) years and to pay a fine of Rs.20,000/-(twenty thousand) for the said

offence, in default to pay fine, the appellant shall suffer further R.I. for six months. Further, the appellant has been convicted under Section 506 of IPC and sentenced to suffer R.I. for 3(three) months and to pay a fine of Rs.2,000/-(two thousand) for the said offence, in default to pay the fine, the appellant shall suffer further R.I. for fifteen months.

2. The brief fact of this case is that on 30.09.2020, the victim daughter of the informant went to the house of the accused Chiranjit Paul @ Ranjit to attend a social program. On that night, at about 9.00 P.M., the accused Ranjit asked the victim daughter of the informant to come inside the rubber garden which was located on the back side of the dwelling house of the accused with one bowl of meat. At that time, the accused Chiranjit Paul @ Ranjit forcefully committed rape upon her pressing her mouth and also removed her wearing apparel. After committing rape, the accused Chiranjit Paul @ Ranjit threatened the victim girl with dire consequence.

3. In connection with that incident, Manubazar P.S. Case No.2020/MNB/052 under Section 341, 376 and 506 of IPC and Section 5 of the POCSO Act was registered against the accused person herein and the case was endorsed to one S.I. of Police, Sri Satya Ranjan Nandi. The case was investigated and on completion of the investigation, the I.O., filed the charge sheet against the accused person Sri Chiranjit Paul @ Ranjit for commission of

offence punishable under Section 341, 376 and 506 of IPC and Section 4 of the POCSO Act.

4. Having received the charge sheet, the Court below took cognizance of offence punishable under Section 341, 376 and 506 of IPC and Section 4 of the POCSO Act against the accused herein. After that the Court below-framed charges against the accused Sri Chiranjit Pual @ Ranjit for commission of offence punishable under Section 341, 376(3), and 506 of IPC and Section 4 of the POCSO Act. The content of the charges was read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial.

5. Multiple witnesses were examined by the prosecution to prove the charge against the accused person. The same is produced here-in-below:-

- i. P.W.-1, Sri Nirmal Pal(informant).*
- ii. P.W.-2, Victim girl.*
- iii. P.W.-3, Smt. Kajal Pal.*
- iv. P.W.- 4, Sri Bimal Pal.*
- v. P.W.-5, Sri Rama Pal.*
- vi. P.W.-6, Smt. Puja Pal.*
- vii. P.W.-7, Smt. Airunmala Tripura.*
- viii. P.W.-8, Smt. Sangita Tripura.*
- ix. P.W.-9, Sri Nimai Bhowmik.*
- x. P.W.-10, Sri Samar Dey.*
- xi. P.W.-11, Sri Bisnu Kumar Tripura.*
- xii. P.W.-12.- Dr. Drisha Das Majumder.*
- xiii. P.W.-13, Dr. Sabyasachi Nath.*
- xiv. P.W.-14, Sri Satyaranjan Nandi.*
- xv. P.W.-15, Sri Debajyoti Majumder.*

6. After conclusion of recording of the evidence adduced by the prosecution side, the accused person was subjected to examination as warranted under Section 313(1)(b) of Cr.P.C. with

respect to the incriminating circumstances surfaced against him in the evidence on record. The accused pleaded total denial and false implication for property dispute. One defence witness, namely, Sri Satyajit Pal was also examined.

7. The learned Trial Court below took up the following points for discussion and decision.-

i. Whether on 30.09.2020 at about 9 pm accused Chiranjit Paul @ Ranjit wrongfully restrained the victim girl in order to commit rape on her in a rubber garden situated back side of his house at Madhabnagar under Manubazar P.S.?

ii. Whether on the alleged date, time and place accused Chiranjit Paul @ Ranjit committed Rape upon the victim girl, under sixteen years of age?

iii. Whether on the alleged date, time and place, accused Chiranjit Paul @ Ranjit committed criminal intimidation by threatening the victim girl with dire consequence?

iv. Whether on the alleged date, time and place accused Chiranjit Paul @ Ranjit committed penetrative sexual assault on the minor victim child, who was below 16 years of age?"

8. After hearing the arguments from both sides, the learned Court below found the appellant guilty and convicted the appellant as stated here-in-above.

9. Being aggrieved and dissatisfied with the impugned Judgment of conviction and sentence dated 03.08.2022, the appellant has preferred this instant appeal seeking to set aside the impugned Judgment of conviction and sentence.

10. Heard Mr. A. Acharjee, learned counsel assisted by Ms. M. Basu, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., appearing for the State-respondent.

11. Mr. Acharjee, learned counsel appearing for the appellant submits that the incident occurred on 30.09.2020 and FIR was filed on 06.10.2020. So, there is 6(six) days delay in filing

the FIR, and no reason has been assigned for such delay. As such, there is doubt regarding those 6(six) days of delay in filing the FIR. There is also dispute between the families regarding the settlement of boundaries and in fact D.W.-1 stated that there is no cordial relationship between the accused and the informant due to the land dispute. Learned counsel, relied upon the deposition of P.W.-12, i.e. Dr. Disha Das Majumder, wherein she stated that she had conducted medical examination of the victim and she found no injury. P.W.-13, i.e., the Senior Scientific Officer, in his forensic report stated that seminal stain or spermatozoa or blood stain of human origin could not be detected in the relevant exhibits marked and no opinion could be given regarding the presence of any foreign hair in the exhibits. P.W.-15, the medical officer who examined the accused, after receiving the FSL report opined that the accused person is sexually active i.e., potency test positive but there is no evidence of sexual intercourse at recent time and FSL report also. There is contradiction between the Doctor's report and the forensic report. Stating thus, learned counsel appearing for the appellant prayed to set aside the impugned Judgment of conviction and sentence dated 03.08.2022.

12. On the other hand, Mr. R. Datta, learned P.P., appearing for the State respondent submitted that the witness of P.W.-1 i.e., the father of the victim and the informant is corroborated by the statement of the victim i.e. P.W.-2. Further, P.W.-4 and P.W.-5 are the eyewitnesses to the incident. Stating

thus, learned P.P., urged this Court to dismiss this appeal as the impugned Judgment of conviction and sentence dated 03.08.2022 is just and proper and needs no further interference.

13. We have heard both sides and scrutinized the evidence on record.

14. For the sake of brevity of justice let us reproduce some important witnesses:-

14.1. P.W.-1, is the father of the victim and is the informant of this case. He deposed that the incident took place on 30.09.2020 at about 9.30 pm. On that date, the accused asked him to send his daughter to his house for a function on the occasion of the ritual of his father's death. His daughter went to his house to assist in work. The accused asked his daughter to come with a bowl of meat in the rubber garden. His daughter went to the rubber garden with meat in a bowl. The accused after pressing the mouth of his daughter raped her after throwing the meat. He also threatened his daughter that if she told anyone about his incident, he would kill his daughter. His daughter came and informed her mother about the incident. His wife shared this information with him. He informed the matter to the panchayat. When the panchayat did not take any action, he lodged FIR at Manubazar PS. He also deposed that the delay was caused only because he was waiting for response from panchayat.

In the cross, P.W.-1 has supported the place of occurrence, denied that there was family dispute regarding the

boundary, and has also denied that he demanded Rs. 3 lakhs for compromising the case from the accused. The rest of the cross is denial.

14.2. P.W.-2, the victim deposed that the incident took place on 30.09.2020 and the day was Wednesday and the time was about 9.30 p.m. The accused invited them. Her mother and father returned home but she was in the house of Chiranjit, the accused herein. She was working in his house. The accused asked her to bring one bowl of meat to the rubber garden. She went with the bowl of meat to the rubber garden. The accused threw the meat bowl and grabbed her and opened her clothes and put her on the surface and raped her. He also threatened that if she disclosed the fact to anyone he would kill her. She informed the incident to her mother. She was taken to hospital. She was also taken to the Court where her statement was recorded and she put her signature on the statement. She identified her signature as exbts.- P.-6.

In cross, she admitted that she went to the house of the accused with her mother and father.

14.3. P.W.-4, Sir Bimal Pal and P.W.-5, Smt. Rama Pal are husband and wife who reside near the place of occurrence. Both the witnesses have deposed that there was a last ritual ceremony in the house of the accused. They heard sound from the side of the rubber garden. P.W.-4 saw the accused and the victim. Similarly, P.W.-5 also noticed the accused with the victim in the rubber garden. P.W.-4 took the victim to her house. On being asked by

P.W.-5, the victim informed her that the accused called her into the rubber garden and opened her clothes and raped her.

In the cross of both the witnesses, only denial has been given.

14.4. P.W.-12, Dr. Drisha Das Majumder, conducted the medical examination of the victim on 06.10.2020, and during the examination, she found vaginal orifice-old tearing over the vaginal wall at 8 O'clock. Hymen was ruptured at the time of her examination. There was no sign of STD. Condition of Uterus was normal. Cervix was also normal discharge was present white in colour. After examination, she opined that there is a sign indicative of recent vaginal penetration due to the presence of one old tearing (about 4-5 days back) over the outer vaginal wall and it is easy to penetrate two fingers inside the vaginal canal.

During cross, P.W.-12 admitted that she did not find any injury mark on her person except the private part and also admitted that the tearing was not possible by fingering of the patient herself.

14.5. P.W.-13, Dr. Sabyasachi Nath, Senior Scientific Officer-cum Asst. Chemical Examiner, SFSL, Naringarh, Agartala has deposed that on 10.12.2020, his office received one sealed parcel containing some exhibits marked as Exbt-A to G in connection with Manubazar P.S. Case No.2020/MNB/052 dated 06.10.2020 being forwarded by SDPO, Sabroom, South Tripura. The case was endorsed to him by his Director for chemical

examination and report. Accordingly, he conducted the examination on the twelve exhibits during the period from 14.12.2020 to 28.12.2020. On examination, he opined that seminal stain or spermatozoa or blood stain of human origin could not be detected in the exhibits marked as A1, A2, A3, D1, D2, D3, D4 and G. Saliva/urine stain could not be detected in the exhibits marked as D1, D2, D3 and D4. No opinion could be given regarding the presence of any foreign hair in the exhibits marked as A2 and A3. He identified the report prepared by him along with the forwarding as Exbt-P-12.

14.6. P.W.-15, Dr. Debajyoti Majumder examined the accused on 07.10.2020 and gave his final opinion on 15.03.2021 that the accused is sexually active but there is no evidence of sexual intercourse at recent time. He identified his report as exbt-P-18. To the query of the Court, the witness deposed that after bathing of the penis, the symptoms of recent sexual intercourse may not be found.

CONCLUSION

15. It is seen from the record that the age of the victim is not disputed. The evidence of P.W.-1, who is the father of the victim (informant) corroborated by the evidence of the victim girl i.e. P.W.2 and Exbt-P-11 (*The Report of Medical Examination in sexual offense for female*) wherein it is quoted that "There are sign of indicative of recent vaginal penetration due to the presence of old tearing(about 4-5 days back) over outer vaginal wall. It is easy

to penetrate 2 fingers inside the vaginal canal" clearly indicates that there was penetrative sexual assault. The evidence of the medical Doctor i.e., P.W.-12 also indicates the presence of evidence of recent penetration. The finding of the SFSL report that seminal stain or spermatozoa or blood stain of human origin could not be detected in the above-mentioned exhibits could be explained by the fact that if the test was conducted 6 to 7 days after the incident, such material could be found on the body of the victim if she had regularly washed her body in that period of time. Here, it is also pertinent to mention that the argument of the learned counsel appearing for the appellant that there was a land dispute between the parties could not be considered as because the witness of D.W.-1 is not corroborated by any other witness. Further, here it is to be mentioned that during cross, P.W.-12, i.e. the medical doctor who examined the victim girl stated that she did not find any injury mark on her person except her private part.

16. So, in view of the above discussion and evidence of record and also taking into consideration the report/opinion of the medical Doctor, this Court is of the view that Section-6 of the POCSO Act i.e. aggravated sexual assault is not applicable to the convict-appellant herein as there is no injury on the private parts and on the body of the victim girl as per medical and forensic evidence. However, the opinion given in the medical report clearly indicates that there was recent sexual penetration and there is slight change in the vaginal normalcy. Accordingly, this Court is

inclined to consider the present case in the light of Section 4 of the POCSO Act and reduces the sentence of conviction of the accused convict from R.I. for 20(twenty) years to R.I. of 10(ten) years.

17. With the above observation and direction, this present appeal is partly allowed to the extent indicated above, and other sentence(s) as observed by the Court below shall remain unaltered. As a sequel, stay if any stands vacated. Pending application(s) if any also stands closed.

Send down the LCRs.

B. PALIT, J

T. AMARNATH GOUD, J

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