

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. (J) 34/2022

Sri Priyanath Tripura

son of late Domela Ranjan Tripura, resident of Nirumani Para,
P.O. + P.S. Raishyabari, District- Dhalai, Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. D. Sarkar, Advocate
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP
Date of hearing & delivery of	:	30.08.2023
Judgment & Order		
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

(Amarnath Goud, J)

Heard Mr. D. Sarkar, learned counsel appearing for the appellant. Also heard Mr. S. Ghosh, learned Additional PP appearing on behalf of the respondent-State.

2. This present appeal is filed by the appellant assailing the judgment and order of conviction and sentence dated 04.08.2017 passed in connection with case No. Special (POCSO) 23 of 2015 by the learned Special Judge, Unakoti Judicial District Kamalpur, whereby the learned Special Judge convicted the appellant for commission of offence punishable under Section 376(2)(i)/379 of the IPC, and sentenced him to suffer R.I. for 10 (ten) years and also directed him to pay a fine of Rs. 5,000/- with default stipulation under section 376(2)(i) of the IPC, and further sentenced him to suffer R.I. for 3 (three) months for the offence punishable under Section 379 IPC and to pay a fine of Rs. 1,000/- with default stipulation.

3. In short, the fact leading to institution of this appeal is that, on 24.08.2014 the appellant and her relatives went to Tirthamuk Mandirghat to

meet their relatives in the Bangladesh Border and for that purpose they went to Nirumanipara where they made contact with the appellant who assured them to make arrangement for meeting with her relatives at night near Indo-Bangladesh Border at Dyke No. 1 on payment of Rs. 300 per head. Accordingly, they started to proceed towards the Border and after waling short distance the appellant told them that he would arrange one by one to meet with their relative. Accordingly, the appellant keeping the two relatives of the victim in a lunga took the victim with him and after crossing a short distance he committed rape upon her in the jungle keeping her confinement there upto 1:00 am. Thereafter, her two relatives recovered her from the jungle with the help of BSF personnel and the BSF personnel also detained the appellant.

4. The said complaint was registered as Raishyabari PS case no. 15 of 2014. The matter was investigated by the investigating officer, and after completion of investigation submitted charge-sheet against the appellant under Sections 342/376(2)(i)/379/411 of the IPC and under Section 4 of the POCSO Act, 2012.. At the commencement of trial, the learned Special Judge had framed charge against the appellant to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charge had adduced 18 witnesses. After closure of recording evidences, the appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations leveled against him by the prosecution witnesses. After hearing arguments and on examining the evidences and materials on record, the learned Special Judge had convicted and sentenced the appellant for committing offence, as aforestated. Hence, this appeal before this court.

6. Mr. Sarkar, learned counsel appearing for the appellant has submitted that there is no eye witness to the alleged incident, Learned counsel has further submitted that the delay in lodging the FIR has not been properly explained. Learned counsel has further argued that none of the prosecution witnesses are trustworthy and their evidence has no evidentiary value, hence, learned counsel has urged this court to set the appellant at liberty. In fine, learned counsel has argued that without properly appreciating the evidences on record, the learned trial court had convicted the appellant.

7. On the other hand, learned Additional PP appearing for the respondent-State has urged to maintain the findings of the learned trial court since there is no infirmity or illegality in the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have perused the evidences and materials on record and the judgment passed by the learned Sessions Judge.

9. To substantiate the findings of the learned trial court, this court has perused the deposition of the prosecution witnesses as well as the defence witnesses wherefrom it is revealed that PW-1 is the victim to the alleged incident. As per deposition of PW-1, on the alleged date, the appellant the appellant told the victim and her relatives that he will arrange them to meet with their relatives in Indo-Bangladesh border on payment of Rs. 300 each. Thereafter the appellant did not take her across the border rather he took her to a jungle and insisted upon her to have sex with him for which she begged to him to let her go, but he did not pay any heed and asked her to remove her clothes and when she refused, the appellant slapped and assaulted her and forcibly removed her clothes and had sex with her. PW-1 further deposed that she managed to hit the appellant with lathi and hid in the jungle and about two

hours later her relatives and police rescued her. She also deposed that the appellant had fled away with her bag and belongings. The cross-examination of PW-1 by the defence was of total denial.

PW-2, is the father of the victim from whose examination and cross-examination nothing material has been elucidated. PW-3, PW-4 and PW-5, are the BSF personnel, in their cross examination they have stated that there was no complaint of rape to them against the appellant. Nothing material has been elucidated from the deposition of PW-6. PW-7 is the BDO-cum-Executive Magistrate to him the appellant has narrated an incident of rape on a chakma girl by him and the said statement was videographed. This witness further stated that the appellant led them to an abandoned house from where the bag of the victim girl was recovered. PW-9, deposed to the same tune to that of PW-8. PW-10 is a seizure witness. PW-10 and PW-11 are the independent witnesses who have deposed to the same tune to that of PW-8. Nothing material has been evolved from deposition of PW-12. PW-13 is a seizure witness who seized the school certificate of the victim from the headmaster of the school. PW-14, is the photographer and nothing material has been elucidated from his deposition. PW-15 is the Medical Officer who examined the victim and also the accused. PW-16 is a seizure witness and nothing material has been elucidated from his deposition. PW-17 is the investigating who after investigation submitted the charge sheet against the appellant before the learned trial court. PW-18 is the Headmaster of Laxmancherra SB School who issued a school certificate in the name of the victim basing on the admission register of the victim in the school.

10. On appreciation of the evidences of prosecution witnesses, there is ample evidence and material implicating and establishing the appellant's

involvement in crime beyond doubt. However, from the disclosure statement of the appellant (Exbt. 6) it is revealed that the appellant had confessed that he had committed rape upon the victim for two times till about 1 o'clock at night in the dark in the jungle while he was about to cross them the Indo-Bangladesh Border. In the said disclosure statement, the appellant has confessed that when the BSF personnel alongwith the other two relatives of the victim were searching for the victim, he fled away alongwith the bag of the victim. The appellant thereafter, showed the place of occurrence and the place from where the bag of the victim was recovered. From the deposition of PWs 7, 8, 9, 10 and 11 it is well established that there is corroboration between their deposition and the disclosure statement of the appellant, and the same has also been supported by the statement of the victim (PW-1). The date of birth of the victim was 01.01.2000 as per the School Certificate (Exbt. 17) issued by PW-18, which shows that on the date of occurrence the victim was minor.

11. From the evidence of the victim (PW-1), it is revealed that she was forcibly raped by the appellant in a jungle and after about two hours she was rescued by her relatives and police personnel and in her cross examination PW-1 has stated that the BSF personnel has detained the appellant. The Medical Officer (PW-15) has clearly deposed that during examination he found the hymen of the victim was found ruptured which supports the evidence of the victim that she was raped by the appellant forcibly.

12. Obviously the appellant is not known to the victim prior to the incident and any relation between them has not been established during their entire trial. It cannot also be said that there is any enmity between the appellant and

the victim or her family, thus, implication of the appellant in the instant case for such crime cannot be ruled out. From the entirety of the prosecution case, it can safely be presumed that the victim is reliable and trustworthy. Further, the appellant could not adduce any defence on his behalf to prove that he had not committed any sexual assault upon the victim. Thus, from the entire deposition and the chain of evidence it is well established that the victim was sexually assaulted by the appellant in a jungle after confinement by the appellant, and during that commission of offence, the victim was a minor, as is evident from Exhibit-17. Hence, there is no dispute about the correctness of the decision arrived at by the learned trial court.

13. Considering the findings recorded by the learned trial court, obviously in this case, the appellant has committed an offence of penetrative sexual assault upon the victim following theft of her property, and subsequently, the learned trial court, considering the gravity of the offence has awarded the appropriate punishment to the appellant. In the present scenario the appellant is in jail since 24.08.2014 and during investigation and trial the appellant remained in jail. After conviction he was also in jail. Thus, presently he is in incarceration for about 8 years. It is also admitted that the appellant is poor. During trial he was not represented by counsel of his choice, so the contention of learned counsel for the appellant to adopt a lenient view in awarding the sentence to the appellant is fully acceptable. Thus, on the point of conviction the appeal is dismissed. So far as regards the quantum of sentence is concerned, this court feels that, the period already undergone by the appellant shall be adjusted by giving the benefit under Section 428, Cr.P.C.

Therefore, keeping in view the facts and circumstances of the present case, we are of the view that end of justice would be served, if the appellant is

sentenced to imprisonment for the period, which he has already undergone, consequently the awarded sentence is reduced to the period already undergone by the appellant. It is hereby also directed that the fine clause shall be unaltered. Appellant is directed to deposit the fine money before the trial court. The amount, if deposited shall be awarded in favour of the victim else the appellant shall suffer remaining period of detention.

Thus, this appeal is partly allowed on the point of sentence only.

Send down the LCRs.

JUDGE

JUDGE



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