

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 08 of 2023

Singsan Mog @ Singchha Mog, son of Sri Thaibai Mog,
resident of Kalshimukh (Madhya Mog Para), P.S. Baikhora,
District: South Tripura, Pin-799142.

.....Appellant

-VERSUS-

The State of Tripura.

..... Respondent.

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

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate. Mr. E. L. Darlong, Advocate.
For Respondent(s)	:	Mr. R. Datta, Public Prosecutor.
Date of hearing and delivery of judgment and order	:	08.01.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. E. L. Darlong, learned counsel appearing for the appellant also heard Mr. R. Datta, learned Public Prosecutor, appearing for the respondent-State.

[2] This criminal appeal has been filed under Section-374 of the Code of Criminal Procedure against the judgment and order dated 07.09.2021 passed by the learned Special Judge, South Tripura Belonia, in case No. Special 07 (POCSO) of 2020 whereby convicted the accused-appellant under Section-376(3) of IPC and Section-4 of POCSO Act, 2012 and sentenced to suffer RI for twenty years and pay a fine of Rs.10,000/- in default, to suffer RI for further three months under

Section-4 of the POCSO Act, 2012 not separate sentence was passed under Section-376(3) of IPC.

[3] The facts which set the criminal law in motion, in short, are that on 29.11.2019 at about 4 pm the accused-appellant committed rape upon the minor daughter of the informant in a jungle situated near Manmohan Para under Baikhora police station after enticing her. Later on, the victim daughter of the informant disclosed the matter to her. On this, Baikhora P.S. Case No. 2019/BKR/108 under Section-376(2)(i) of IPC and Section-4 of POCSO Act was registered against the accused person and the case was endorsed to Smt. Ruma Noatia, WSI of Police. After completion of investigation the investigating officer filed charge sheet against the accused-person for commission of offence punishable under Section-376(2)(i) of IPC and Section-4 of POCSO Act.

[4] Thereafter cognizance of offence punishable under Section 376(2)(i) of IPC and Section-4 of the POCSO Act was taken against accused-appellant and subsequently during trial, charge was framed under Section-376(2)(i) of IPC and Section-4 of POCSO Act. The contents of the charges read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial. In total, 16 witnesses were examined by the prosecution to prove the charges against the accused person and exhibited certain documents. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the accused person was subjected to examination as warranted U/S 313(1) (b) of Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. However, he declined to adduce any witness on his defence.

[5] Having heard the learned counsel appearing for the parties, the learned Court below convicted the appellant and sentenced him and observed as under:

“In the result, I find that, the prosecution has successfully proved the charges framed under Sec.376(3) of IPC and Section-4 of POCSO Act, 2012 against the accused Sri Singsan Mog @ Singchha Mog @ Chingsha Mog, S/O Sri Thaibai Mog. Accordingly, accused Sri Singsan Mog @ Singchha Mog @ Chingsha Mog is hereby convicted for commission of offence punishable under Sec.376(3) of IPC and Section-4 of POCSO Act, 2012. He is taken in custody.”

[6] Being aggrieved by and dissatisfied with the judgment and order passed by the learned Court below, the present appeal has been preferred by the appellant before this Court for redress.

[7] Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. E. L. Darlong, learned counsel has submitted that the learned Court below has committed gross error in passing the impugned judgment and order of conviction relying upon the purported witnesses in the present case whose evidence were untrustworthy and improbable and were not legally tenable.

[8] The learned Court below has failed to appreciate the fact that PW-I Smt. Supriya Tripura, mother of the victim in her cross examination stated that she did not witness the incident and as such being a hearsay witness, her evidence should have been discarded by the Court below. The learned Court below has failed to appreciate the fact that PW-2 Kumari Manika Tripura, the victim in her examination-in-chief stated that on 29.11.2019 at about 4 pm she went to the house of Subin Kumar Tripura whom she used to call as Chuchu (Dada, or Grandfather). Two female persons namely Khajana Tripura and Jaganmala Tripura accompanied her. In the house of Subin Kumar Tripura the victim took her lunch. There Chingsha Mog called her, took her in a jungle and raped her.

[9] It has been submitted that what has been appreciated by the learned Court below is virtually impossible to take the victim and rape her when she was in the house Subin Kumar Tripura and being accompanied by two females. As such the whole prosecution story is hard to believe making the Judgment and order of conviction liable to be

set aside. PW-3 Sri Gobinath Tripura, further of the victim girl is also a hearsay witness and as such his evidence was inadmissible.

[10] The learned trial Court failed to appreciate that PW-7 Sri Hiralal Tripura in his examination-in-chief identified the wearing apparels of the victim. During his cross examination he admitted that he did not see the victim wearing those clothes at the time of occurrence of offence and as such his evidence should have been discarded. PW-6 Sri Tarani Mohan Tripura in his examination-in-chief stated that the victim took meal in his house on the date of occurrence and after that she returned to her house along with 3/4 children. What the Court below failed to conceive was that the victim was not alone on the date and time of occurrence; as such the prosecution version should have been discarded.

[11] PW-4 Kantiram Tripura who is the only purported eye witness of the case, in his examination-in-chief stated that the victim girl reported to him that the accused raped her forcefully. But, during cross examination when this witness was confronted with his earlier statement recorded under Section-161 Cr.P.C. the witness admitted that such statement is not there as such, the learned Court should not have believed his statement.

[12] The learned Trial Court failed to appreciate that PW-13 WSI Smt.Ruma Noatia in her cross examination stated that in the hand sketch map 'G' is the house of Budhadhan Tripura and P.O. is within the audible range of that house. But, this vital point has not been appreciated that the victim in her deposition never stated that she cried when she was being violated. As such this unnatural conduct on the part of the victim was never considered by the Court below as such, the Judgment and order of conviction is liable to be set aside.

[13] PW-14 Dr. Debasree Reang, in her examination-in-chief stated that she found one fresh injury on the dorsal aspect of lower one

third of right forearm 5 cm length. Besides another scratch mark was found present over right medial condyl (heel bone) 1 cm in length and it was also fresh. In vulva, no abnormality was detected, clitoris: no abnormality detected, labia rash present on labia minora just above the urethral opening. Vaginal orifice widely open, hymen was absent. In vaginal mucous membrane rash present on labia minora just above the urethral opening. Further, the laboratory investigation report was negative for presence of seminal stain or spermatozoa or blood stain of human origin in cervical swab and vaginal swab, despite of the aforesaid findings though the examining doctor in her report wrote that *“possibility of recent sexual intercourse cannot be ruled out”*, but the learned Court below should have considered that if a girl of 13 years was being violated by a man of 50 years, there ought to be injuries and non-consideration of the aforesaid aspect makes the judgment and order of conviction liable to be set aside.

[14] PW-15 Dr. Kunal Das, in his examination-in-chief stated that on 13.11.19 he and Dr. Debasree Reang jointly examined the victim at Baikhora PHC. That PW-14, Dr. Debasree Reang in her deposition stated that she examined the victim on 30.11.19 jointly, as such there raises a reasonable doubt about the examination of the victim. Further, Dr. Kunal Das in his examination-in-chief stated that in the column 'per vagine', he mentioned that the hymen of the victim was found absent and in 'vaginal mucosa membrane'-rash present on labia mainora just above the urethral opening, vaginal canal widely open.

[15] He further stated that absence of hymen indicates that she might have sexual experience either by herself and she enjoyed sex or other means. PW-15 further stated SFSL report was negative for the presence of spermatozoa and even then Dr. Debasree Reang opined that possibility of recent sexual intercourse cannot be ruled out. He further admitted that the report which was subsequently submitted by Dr. Debasree Reang could be given by them at the time of their preliminary

report. He admitted that at the time of preliminary report they did not apply their mind. As such, it is evident that the medical evidence did not support the prosecution story.

[16] Mr. Bhowmik, learned senior counsel regarding rash in vaginal area has placed his argument very authoritatively and submitted that “*a rash in your vaginal area can have many different causes, including a skin condition, an infection or autoimmune condition or parasites.*” Most causes of vaginal rash aren’t medically serious and can be cured. But sometimes an underlying condition is serious or incurable. Psoriasis is an autoimmune condition affecting the skin, including the genitals. Psoriasis lesions on the vulva are more common in children than adults. It doesn’t affect the inside of the vagina.

[17] In view of above contentions, learned senior counsel appearing for the accused-appellant relied upon a decision of the Apex Court in *Yerumalla Latchaiah v. State of A.P.* reported in (2006) SCC Online SC 199, wherein it has been held thus:

“3. In the present case, age of the victim was only eight years at the time of alleged occurrence. Immediately after the occurrence, she was examined by Dr. K. Sucheritha (PW 7) who has stated in her evidence that no injury was found on any part of the body of the victim, much less on private part. Hymen was found intact and the doctor has specifically stated that there was no sign of rape at all. In the medical report, it has been stated that vaginal smears collected and examined under the microscope but no sperm detected. The evidence of the prosecutrix is belied by the medical evidence. In our view, in the facts and circumstances of the present case, the High Court was not justified in upholding the conviction.”

[18] He has relied on another decision of this Court in *Anil Debnath v. State of Tripura*, [Crl.A(J) No.14 of 2021], wherein, it has been held thus:

“26. In so far as conviction of the offence said to have been committed under Section 6 of the Protection of Children from Sexual Offences Act, 2012 is concerned, the Court below has convicted the accused-appellant herein to suffer R.I. for ten years. The evidence of P.W.2 who is said to be an eyewitness to the offence has not categorically explained the manner in which the rape has been committed. The forensic and medical evidence wherein the Doctors who have examined the victim girl have categorically stated in their report which is exhibited as ‘Exbt-4’ and ‘Exbt-5’, that there is no indication of any injuries on the private parts of the victim girl and no sign of committing any rape. The swab samples

which have been collected for analysis do not prove any rape. The expert comments in the said 'Exbt-4' and 'Exbt-5' are reproduced herein-under:-

"Exbt-4. "No any injury on the body".

"No any injury, stain, sign of STD & discharge

"There is no sign of forceful sexual activity or penis size object"

"The girl here mentioned to be victim is a teenage girl and above findings mentioned does goes in favour of no virginity loss. Exbt-5. (i) No seminal stain/spermatozoa/blood stain of human origin could be detected in the exhibits marked as A and B."

28. P.W.2 who is the eye witness has categorically stated in her statement made under Section 164 of Cr.P.C. as well as deposed before the Court below in her examination-in-chief and at her cross-examination that she saw the accused-person i.e. the convict appellant herein and the victim girl in naked position and the accused-person kept the victim girl in his lap. This Court feels that the evidence of P.W.2 has not shaken and she had stuck to her statement.

30. In view of the above discussion, the sentence passed by the Court below in Special (POCSO)08 of 2016 dated 21.11.2019 is modified by holding the accused person herein guilty of offence punishable under Section 8 of the POCSO Act. The accused-person herein Anil Debnath is sentenced to suffer rigorous imprisonment for five years. Accordingly, the 10 (ten) years imprisonment as passed by the Court below is reduced to 5(five) years. However the period of detention undergone by the convict-appellant herein, during the investigation, trial and sentence passed vide impugned judgment dated 21.11.2019 be set off from the period of the sentence as passed herein-above.

[19] He has relied on another decision the Gauhati High Court in ***Balai Natta v. State of Tripura***, wherein, it has been held thus:

"15. PW12, Dr. Samar Das, is a vital witness of the case who also examined the victim prosecutrix aged about 4 1/2 years on 23.6.2006, i.e. the following day of the incident. During examination he found no external on the body of the prosecutrix including her private parts. He also stated that her hymen was intact and no injury was detected in anal part. He also collected the vaginal swab and the same was sent to the I.G.M. Hospital for examination and that was accordingly examined. No spermatozoa was found in the swab. In his opinion, there is no evidence of penetration into her vagina but according to him chance of rape cannot be ruled out.

17. Further, referring to the medical report, Mr. Bhowmik has categorically submitted that medical evidence belied such offence of rape as the doctor PW10 who examined the vaginal swab specifically stated that on microscopic examination of vaginal swab of victim, prosecutrix, she did not find spermatozoa and the doctor PW12 who examined the victim prosecutrix (PW2) has also stated in his deposition that he did not find any external injury on her person including her private parts and no fording hair has been detected and her hymen was intact. There was no evidence of penetration into the vagina of the prosecutrix. In such a circumstance, the order of conviction and sentence passed by the learned

Addl. Sessions judge in the impugned judgment and order is liable to be interfered with by this Court of appeal. He also contended that when there is a difference between the ocular evidence and the medical evidence in a rape case, the court has to give more weight to the medical evidence when particularly the evidence of prosecutrix is belied by medical evidence. In support of his aforesaid contention he placed reliance on a decision of the Apex Court in the case of *Yerumalla Latchaiah v. State of A.P.* (2006) 9 SCC 713 wherein the Apex Court set aside the order of conviction and sentence stating, inter alia, "In the medical report, it has been stated that vaginal smears collected and examined under the microscope but no sperm detected. The evidence of the prosecutrix is belied by the medical evidence. In our view in the facts and circumstances of the present case, the High Court was not justified in upholding the conviction". He also relied the judgment of this Court in the case of *Md. Jamiruddin v. State of Assam* 2008 Cri. I 586 particularly paras 12, 13, and 14 wherein this Court discussed regarding the evidence of the doctor of that case. He also contended that in a rape case penetration is must and in absence of penetration there cannot be any rape and penetration means act of inserting penis into the female organ which is totally absent in the instant case as per the evidence of the PW12 and the opinion of PW12 that chances of rape cannot be ruled out is not a firm opinion, rather PW12 is also in doubt regarding the rape and whenever there is a doubt, accused is entitled to get the benefit of that doubt. In support of his aforesaid contention relating to penetration, he relied upon the decision of the Bombay High Court in the case of *Vishnu s/o Parmeshwar Yadav and Ors. v. State of Maharashtra* 1997 CrL. LJ 1724 particularly paras 27 and 28 wherein the learned Single Judge of the Bombay High Court taking into all the evidences of the prosecutrix, medical officer as well as the medical report of the prosecutrix, exhibit 34 of that case, it is noted that, "In the said report. It is suggested that there were no signs of external injuries on any part of her body. There were no seminal or blood stains found on the body. Her hymen was found to be intact. Her pubic hair, vaginal swab, vaginal smear and blood samples were obtained and sent for further investigation. It was opined further that the girl was capable of sexual intercourse, and whether she was raped or not, could not be said. Now, unfortunately, there is no explanation given by the prosecuting agency as to what happened to the questionnaire which was sent to the Medical Officer vide Exhibit 24, which questionnaire was sent by P.S.I. Dadaji Kapadnis, the Investigating Officer.... In fact it was for the prosecuting agency to examine the doctor and to bring all the evidence on record which would have gone long way to suggest as to whether there really was sexual intercourse with the prosecutrix or not. On the back drop of the medical certificate of the prosecutrix which was gleefully admitted by the defence, it is certain that the hymen of the girl was intact and that there no outward signs of injuries or violence or anything suggesting that the prosecutrix had taken part in the sexual intercourse. If the hymen was intact then the claim of the prosecutrix that there was a physical contact 3 or 4 times in the two days at Patna becomes really suspicious. In this, the tender age of the prosecutrix will have also to be taken into consideration as to whether she knew what the sexual intercourse was. If the hymen was intact and if the doctor in her certificate could not state as to whether there was rape or not, it would be highly doubtful as to whether any sexual intercourse had taken place between the accused No. 1 and the prosecutrix (emphasis

supplied). It will be seen from the evidence of the prosecutrix that the Public prosecutor also did not get it clarified in the examination-in-chief of the prosecutrix what she meant by physical contact. In order to bring home the offence of rape, the prosecuting agency should have brought on record the clinching evidence of penetration which is conspicuously absent." It is also noted by the learned Single Judge of the Bombay High Court, as to when sexual intercourse can be considered as highly doubtful. According to him, the following factors therefore, render the theory of sexual intercourse highly doubtful.

22. Before discussion on the submission of the learned Counsel for the parties, it would be proper for this Court to reproduce the relevant paragraphs of Md. Jamiruddin Ahmed (supra) as relied upon by Mr. Bhowmik. Accordingly, the paragraphs 12 to 16 are quoted herein under:

12. To justify such a claim of commission of offence of rape for which she suffered pain for such penetration, let us examine the meted evidence as deposed by Dr. PW5. As per medical evidence of PW5 on examination found as follows:

Height 3' x 11", weight 25 kgs. Teeth 12/3 (four lower milk teeth had fallen). Breast not well developed, valve and vagina not well developed, Hymen were found present.

No spermatozoa was seen on examination of labial smear.

X-ray of the left elbow and wrist joint showed that epiphyseal plates of both the joints did not fuse with the corresponding shafts.

The injury was (not) found on any part of the body including genitalia and breasts.

13. The Doctor in his opinion clearly stated that the girl was about 7 years but below 11 years of age. He did not find any symptom of sexual intercourse or any sexual assault on the girl. On cross-examination he explained that it was a fact that if a girl of less than 12 years was subjected sexual intercourse by an adult boy, there was bound to rupture of four chetty and abrasion of labia majora and minora and there was every possibility of tearing of hymen.

14. On bare perusal of the medical evidence it would be clear that there was no element of offence of rape on PW4 and the girl did not suffer any injury on any part of her body as claimed by the prosecutrix in her deposition as PW4.

16. Having meticulously considered the testimony of PWs 4 and 5 and also having regard to the judicial pronouncement referred to in Yerumalla Latchiah's case (supra) as well as upon hearing the learned Counsel for the parties, we are of the considered opinion that in the facts and circumstances of the case in its totality, the testimony of PW4 cannot be accepted as the same has been totally impeached by medical evidence.

There is no doubt that for rape full penetration is not required, as stated by Mr. Sarkar, but some sort of penetration is called for which is also absent in the evidence of prosecution before the learned Court below though the

prosecutrix in her 164 statement stated about penetration. We may now see the statement of prosecutrix under Section-164 of the Code recorded by the learned Magistrate after testing the intelligentsia of the prosecutrix, as relied upon by Mr. Sarkar.

25. It is the admitted position that the alleged occurrence occurred on 22.6.2006 and the 164 statement of the prosecutrix was recorded on 7.7.2006, i.e., after 15 days of the alleged occurrence and in the meantime she was with her parents. And it also appears that in her 164 statement she stated that the accused had taken her to the jungle and there he spread his gamcha (napkin) on the earth and got her laid down and thereafter accused had penetrated his penis into her vagina and done ita ita'. Ita ita' means firstly inserting the penis and thereafter taking it (penis) slightly out, which she did not even state before the court at the time of trial. Therefore, it cannot be ruled out that between these 15 days the prosecutrix might be tutored either by her parents or by others and it would not be proper for the court to convict the accused person on the basis of such a statement. And so far as PWS, former Gao Pradhan is concerned, she is a witness who heard the story from the parents of the prosecutrix. Therefore, her statement will in no way help the prosecution case.

26. This Court has gone through the decision in the case of Dharkole (supra) as relied upon by Mr. Sarkar. The fact of that case is different than the case in hand. The case of Dharkole (supra) is relating to a murder and the trial court convicted the accused Kamal Singh, Manni and Dharkole and the court considering the fact of that case noted that, "It would be erroneous to accord undue primacy to the hypothetical answers of medical witnesses to exclude the eye-witnesses account which had to be tested independently and not treated as the Variable' keeping the medical evidence as the constant." Opinion in a murder case by a medical officer and opinion in a rape case by a medical officer has different footings as in a rape case a prosecutrix may implicate a person falsely but to test her evidence except the medical evidence there is no other way, when there is no eye witness. In this situation, it would not be proper for the court to discard the medical evidence and also to rely upon the ocular evidence. In the instant case, when there is a specific statement by the doctor PW12 that there was no external injury in the body of the prosecutrix including her private parts and even no injury was detected in her anal part and there was no evidence of penetration into her vagina it cannot be said that the prosecutrix was raped by the accused.

28. This Court is really shocked on going through the prosecution story as the allegation is relating to rape on a child of 4 1/2 years but there is no other way before the court except to decide the matter in accordance with law, i.e., evidences available. More so, when the golden thread in criminal jurisprudence is that nine guilty may escape but one innocent should not suffer but at the same time it is the duty of the court also to see that no guilty should escape unpunished once the guilt has been proved to the hilt. In the instant case, having meticulous examination of the testimony of PW1, PW2, PW10 and PW12 and also having regard to the judicial pronouncement as referred supra as well as the submission of the learned Counsel for the parties, this Court is of the considered opinion that in the facts and circumstances in its totality the statement of PW2

cannot be accepted as the same has been impeached by medical evidence. As there is a doubt in the mind of this Court, this Court initially considered it would be proper to remit the matter again before the trial court for re-examination of the accused, under Section 313, Cr.PC of the Code so that the accused can make his defence against the evidence of the prosecution. But as the prosecution totally fails to make out its case for conviction on the evidence as its, even if the case is remanded to the trial court for examination under Section 313, Cr.PC of the Code then also the prosecution case will not improve and the accused/appellant cannot be convicted. Therefore, this Court is refrained, from remitting the case to the trial court for examination under Section 313, Cr.PC of the Code.

29. In the result, the conviction and sentence of the appellant under Section 376(2)(f) IPC is hereby set aside and quashed and the accused/appellant is acquitted from the alleged charges. Appellant be set at liberty forthwith, if he is not wanted in connection with any other case. LCR be sent down forthwith.”

[20] Mr. R. Datta, learned P.P. appearing for the respondent-State in support of his case has submitted that all the witnesses have supported the case of the prosecution. The informant and other material witnesses have fully supported the prosecution case and they corroborated each other. Another eye witness of the case i.e. PW-4 has also supported the case and the medical officer who examined the victim has given opinion in affirmative. He has further submitted that the prosecution has completely prove the case beyond any reasonable doubt and the accused must be convicted for giving message in the society that which type of crime he has committed and what is the consequence thereof.

[21] In support of his contentions, he has placed his reliance in a case *Satish Kumar Jayanti Lal Dabgar*, reported in (2015) 7 SCC 359, wherein, it has been observed as under:

“14) First thing which is to be borne in mind is that the prosecutrix was less than 16 years of age. On this fact, clause sixthly of Section-375 of the IPC would get attracted making her consent for **sexual intercourse** as immaterial and inconsequential. It reads as follows:

"375. Rape-A man is said to commit "rape" who, except in the case hereinafter excepted, has **sexual intercourse** with a woman under circumstances falling under any of the six following descriptions:-

Sixthly - With or without her consent, when she is under sixteen years of age.

Explanation.-Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

15) The Legislature has introduced the aforesaid provision with sound rationale and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the **sexual** act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.

16. Once we put the things in right perspective in the manner stated above, we have to treat it as a case where the appellant has committed rape of a minor girl which is regarded as a heinous crime. Such an act of sexual assault has to be abhorred. If the consent of minor is treated as a mitigating circumstance, it may lead to disastrous consequences. This view of ours gets strengthened when we keep in mind the letter and spirit behind the Protection of Children from Sexual Assault Act, 2012."

[22] Mr. Datta, learned P.P. has further placed his reliance in a case of *Phool Singh v. State of Madhya Pradesh*, reported in (2022) 2 SCC 74, wherein the Court has observed as follows:

"9. In Pankaj Chaudhary it is observed and held that as a general rule, if credible, conviction of accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of prosecutrix should not be doubted by court merely on basis of assumptions and surmises. In paragraph 29, it is observed and held as under:

"29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu v. State of Maharashtra [Vishnu v. State of Maharashtra, (2006) 1 SCC 283]. It is well-settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the "probabilities factor" does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the

circumstances of the case, medical evidence can be expected to be forthcoming.

10. In *Sham Singh v. State of Haryana*, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab v. Gurmit Singh*].

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See *Ranjit Hazarika v. State of Assam*).

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any

further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

[23] According to the learned Public Prosecutor another case may be cited in this present case i.e. in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra***, reported in (2012) 4 SCC 37, wherein the Court held thus:

“26. From the report of the experts, it is clear that there is no direct evidence connecting the appellant to the commission of the crime but it is not the case of the defence that the FSL report was in the negative. Merely because the report was inconclusive, it is not necessary that the irresistible conclusion is only one that the accused is not guilty, particularly where the prosecution has been able to establish its case on circumstantial evidence as also by direct oral evidence.

27. It is a settled principle of law that the evidence has to be read in its entirety. If, upon reading the evidence as such, there are serious loopholes or lacking in the case of the prosecution and they do not prove that the accused is guilty, then the Court would be justified in giving the benefit of doubt to the accused on the strength of a weak FSL report. The FSL report, Ext.P-77 had clearly established that the blood of Group-O was found on the clothes of the deceased and that was her blood group. The prosecution has been able to establish not only by substantial evidence but clearly by medical evidence as well, that the minor girl had suffered serious injuries on her private parts and there were bite marks on her chest.”

[24] In view of above and having gone through the material evidence on record, for a definite conclusion, let us revisit the evidence once again. PW-1 admits that when ejahar was scribed she was present there and she also admits that she is not the eye witness of the incident. She came to know about the incident from Kantiram Tripura (PW-4). She also admits that she did not mention in her ejahar that Kantiram Tripura had witnessed the incident. Distance of the house of Subin Kumar Tripura (PW-6) from her house would be about 5 minutes walking distance. In the ejahar she stated that her daughter went to the house of Subin Kumar Tripura and took lunch there. But she admits that there is no such statement in her ejahar. She mentioned in the ejahar that Khajana Tripura and Jaganmala Tripura accompanied her daughter. But on being drawn attention to the ejahar she admits that no such statement has been written in the ejahar. She further admits that, in the ejahar she

stated that her daughter was taken by the accused person by enticing her. When her attention was drawn to the ejahar she found similar word enticing in the manner which was written as "Prulobhan". She also admits that she did not know Chingsha Mog from earlier. Rest of her cross-examination is denial. Apart from these, in cross she admitted that she first took her victim daughter to the medical officer and then went to the police station. From the above statements it is evident that PW-1 was not the eye witnesses to the incident.

[25] The victim in this case has been examined as PW-2 and she deposed that she is a student of Class-VII at Purba Pilak High School Incident took place on 29.11.2019 at about 4 pm. On that date she went to the house of Subin Kumar Tripura (PW-6) whom she used to address Chuchu (Dadu). Two female persons namely Khajana Tripura and Jaganmala Tripura accompanied her. In the house of Subin Kumar Tripura she took lunch. There Chingsha Mog called her and took her in a jungle and raped her. He committed rape after removing her dress and his own dress. One Kantiram Tripura (PW-4) witnessed the incident. She sustained pain on her breast and the part by which she urinate. She did not suffer any bleeding injury. Thereafter, Kantiram Tripura took her to her house. Thereafter, she was taken to Jolaibari hospital. She went to the hospital with her mother and her grandmother (father's mother). Medical officer examined her. Subsequently police took her to the court. She gave statement before the Magistrate. She put her signature in the deposition sheet before the Magistrate.

[26] PW-4, Sri Kantiram Tripura deposed that, on 29.11.2019 at about 4 pm he was proceeding towards his sister's house. He was alone. While he was proceeding near the house of Burbadhan Tripura (PW-5) in the jungle situated nearby the road, he has seen the victim girl, aged about 14 years in a naked condition and besides, she has also seen Chingsha Mog wearing of 'suit pant'. He detained them, then he took the victim girl and accused Chingsha Mog to the house of the victim girl and

she is the daughter of the informant (PW-1). Going there, he disclosed PW-1 that he found the victim in a naked condition and besides her, he has seen Chingsha Mog. Thereafter, they informed police. Police was informed by the members of that house over phone. When police came they handed over the accused Chingsha Mog to the police. He identified the accused in the court. He also deposed that, the house of Chingsha Mog is situated at Madhu Miog Para, Kalshi and number of times Chingsha Mog came to him. The house of Chingsha Mog is situated about 6/7 km, but he used to move to their area. So, he knows him. When he detained the girl and Chingsha Mog, the girl reported to him that Chingsha Mog raped her forcefully. He does not know who lodged the case.

[27] PW-14, Dr. Debasree Reang and PW-15, Dr. Kunal Das are the two medical officers who jointly examined the victim. PW-14 deposed that, on 30.11.2019 while she was posted at Baikhora PHC on production of the victim by police in connection with Baikhora PS case No. 209/BKR/108 dated 29.11.2019, she along with Dr. Kunal Das examined her at Baikhora PHC as a team based on police requisition. After examination of the victim, they found scratch skin present on dorsal aspect of lower one third of right forearm 1 cm in length and over right medial condyl. On examination of private parts, there was a rash present over labia minora, just above the urethral opening. Hymen was absent. Vaginal orifice was widely open.

[28] PW-16, Dr. Sabyasachi Nath is the Scientific Officer and he deposed that on 26.12.2019 he was posted as Senior Scientific Officer-cum-Asst. Chemical Examiner, TSFSL, Agartala and on that date, he received one sealed parcel and exhibits in connection with Baikhora PS case No.2019/BKR/108 being forwarded by SDPO., Santirbazar, South Tripura. His Director endorsed the case to him for examination and report. Accordingly, he conducted examination of the said twelve exhibits and he opined that point No.(1) seminal

stain/spermatozoa/blood stain of human origin could not be detected in the exhibits-P, Q, S, T and U, point No.(2) seminal stain/spermatozoa/epithelial cell/blood stain of human origin could not be detected in the exhibits-C, D, E and F and point No. (3) human hair could not be detected in the exhibits-F, T and U. He identified his report as exhibit-15 and the forwarding letter along with signature of Dr. H.K. Pratihari, Director-cum-Chemical Examiner as exhibit-15/1.

[29] PW-14 After receiving the SFSL report gave her final opinion that, though the lab investigation report are negative for presence of seminal stain or spermatozoa or blood stain of human origin in the cervical swab, vaginal swab, hair and nail, red colour half sleeve top with yellow brown colour print, navy blue colour skirt with sky blue red white yellow colour print. However, possibility of recent sexual intercourse cannot be ruled out.

[30] During cross-examination PW-14 admits that possibility of fingering might be there. So in case of fingering, there may be any seminal stain or spermatozoa of human origin. As such, she opined that possibility of recent sexual intercourse could not be ruled out. In replied to the court question that, why PW-14 could not state specifically whether victim has any sexual experience or not when it was found that hymen of the victim was absent and rash present on labia minora? In reply PW-14 stated that sometime by birth also hymen might be absent. The witness also stated that, rashness of labia minora shows that something was inserted in her vagina. In the preliminary report, she committed a mistake mentioning that her every opinion regarding recent sexual intercourse was kept pending till receipt of forensic report. The final opinion could be given in the preliminary report also. During cross-examination PW-15 stated that on the basis of SPSL report, they cannot say that there was no rape since there is-possibility of rape and also may not be raped. So, in that circumstance, possibility of recent sexual

intercourse cannot be overruled. He also stated that, recent sexual intercourse means, intercourse may be taken within 24 hours.

[31] PW-15 after examining the victim has opined as under “After examining the victim we found that scratch skin present on dorsal aspect of lower one third of right forearm (length-5cm) and over right medial condyl. On examination of private parts there was a rash present over labia minora, just above the urethral opening. Hymen was absent. Vaginal orifice was widely open. UPT done which was negative. We collected vaginal swab, cervical swab blood in dry gauge cloth, nails, and samples were handed over to the police person for forensic examination. However opinion regarding recent sexual intercourse is kept pending till the receipt of forensic reports. For the purpose of reference, final opinion may be quoted hereunder:

“Though the lab investigation report are negative for presence of seminal stain/spermatozoa/blood stain of human origin in cervical swab, vaginal swab Hair and nail, red colour half sleeve top with yellow brown colour print, navy blue color skirt with sky blue red white yellow color print, however, possibility of recent sexual intercourse cannot be ruled out.”

[32] Nowhere in the evidence of PWs.1, 2 & 4 or the eye witness have stated that forcefully she was taken and he has committed rape. At least in basic terms no one has explained how this accused-person abused her and admittedly even as per the eye witness and the evidence of victim girl she was found naked in the company of the accused person but, as per the evidence of doctor in her private parts there was no sign of rape except the opinion like hymen of the victim was absent and rash present on labia minora just above the urethral opening. Hymen was absent. Vaginal orifice was widely open. UPT done which was negative. Vaginal swab, cervical swab blood in dry gauge cloth, nails, and samples were handed over to the police person for forensic examination. the lab investigation report are negative for presence of seminal stain/spermatozoa/blood stain of human origin.

[33] On the strength of the evidence of PWs.1 & 2, the victim girl and the eye witness, the allegation made by PW-2 is not shaken in her statement recorded under Section 161 of Cr. P.C. and the same is also supported by the medical evidence of PWs.14 & 15. In Exbt.13 it has been categorically stated with regard to the nature of injuries. Even in the statement recorded under Section-313 Cr. P.C. he has not stated anything to support his case. considering the situation of both sides, this Court feels that in the event as per statement of PW-2, the victim herein and the statement of PW-4, the victim did not raise any hue and cry or taken any steps to prevent the sexual assault as grumbled by her. In view of the same, this Court considers the crime under Section-7 and punishes the accused person under Section-8 of the POCSO Act.

[34] There is no reason to disbelieve as per the circumstantial evidence reasonable conclusion has to be drawn that though the intimacy between the accused person and the victim was consensual and there also no sign of taking her forcefully into the jungle and using physical power on her but still, the victim being a minor, according to this Court, POCSO attracts. In view of the evidence and the discussions hereinabove, since forceful penetration is not proved as the circumstance already dealt with, this Court finds that some sexual assault has been made thus, the conviction under Section-4 of the POCSO as awarded by the learned Court below is converted into Section-7 of the POCSO Act and holds the accused person liable for punishment under Section-8 of the POCSO Act i.e. for 5 years instead of 20 years.

[35] In view of the above discussion, the sentence passed by the Court below in Special (POCSO) 07 of 2020 dated 07.09.2021 is modified by holding the accused person herein guilty of offence punishable under Section-7 of the POCSO Act and punishes under Section-8 of the POCSO Act i.e. 5 years of imprisonment instead of 20 years under Section-4 of POCSO Act. The accused-person herein is sentenced to suffer imprisonment for five years. Accordingly, the 20

(twenty) years imprisonment as passed by the Court below is reduced to 5(five) years. However the period of detention undergone by the convict-appellant herein, during the investigation, trial and sentence passed vide impugned judgment dated 07.09.2021 be set off from the period of the sentence as passed herein-above.

[36] In the result, the appeal stands partly allowed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghosh

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Date: 2024.01.16
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