

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.18 OF 2023**

Sri Pranjit Baidya
S/o- Sri Hiralal Baidya,
Resident of West Pilak, Datta Para,
P.S.- Baikhora, District-South Tripura

..... Appellant(s)

Versus

The State of Tripura

.....Respondent(s)

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

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

Date of hearing and delivery of
Judgment & Order : 16.07.2024

Whether fit for reporting : NO.

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

J U D G M E N T & O R D E R (O R A L)

(T. AMARNATH GOUD,J)

Heard Mr. A. Acharjee, learned counsel along with
Ms. M. Chakraborty, learned counsel appearing for the appellant as
well as Mr. Raju Datta, learned P.P., appearing for the State-
respondent.

2. The present appeal has been filed aggrieved by the
order dated 14.03.2023 passed by the learned Special Judge, South
Tripura, Belonia in case No. Special No.29(POCSO) of 2021 whereby

and whereunder the appellant has been convicted under Section 6 of POCSO Act and sentenced to suffer R.I. for 20 (twenty) years and to pay a fine of Rs.10,000/-(ten thousand) for the said offence, with default stipulation.

3. The case of the prosecution is that P.W.-6, the 1st wife of the accused person i.e., the appellant herein filed a complaint before the concerned SHO indicating that her husband has married a minor girl and he is staying with her. Apart from this, other allegations were also leveled against the accused person. In pursuant thereof, the police took up the investigation and found the accused person along with P.W.-2, in a house and noticed that P.W.-2, the minor girl was pregnant. Thereafter, they followed the counseling procedure with the counselor and other methods as required. Subsequently, the final charge sheet was filed and the matter was tried before the Court below by framing charges which are as follows:-

CHARGE

Firstly:- That you, on several dates and times and lastly on 25.04.2020 at anytime in your house situated at Ramraibari (Saha Pathar) under Baikhora police station voluntarily caused hurt to your wife Smt. Susmita Majumder (Baidya) and thereby committed an offence punishable under section 323 of the Indian Penal Code and within the cognizance of this Court.

Secondly: That you, on any day in the month of June, 2021 at any time kidnapped or abducted the victim girl (name is withheld) from her house situated at Ramraibari (Majumder Para) under Baikhora police station, with the intent that she will be compelled to marry against her will or she will be forced or seduced to illicit intercourse and thereby committed an offence punishable under section 366 of the Indian Penal Code and within the cognizance of this Court of Sessions.

Thirdly: That you, on any day, at any time in the year 2021 at Ramraibari under Baikhora police station having a wife to wit, Smt. Susmita Majumder (Baidya) living, married again the minor victim girl (name is withheld) and such marriage being void by reason of its taking place during the life time of the said wife and thereby committed an offence punishable under section 494 of the Indian Penal Code and within the cognizance of this Court.

Fourthly: That you, on several dates and times in the house of the victim girl situated at Ramraibari (Majumder Para) under Baikhora police station committed rape repeatedly upon the victim girl, under sixteen years of age, and in consequence of your such rape the victim girl became pregnant and thereby committed an offence punishable under section 376(3) of the Indian Penal Code and within the cognizance of this Court.

Fifthly:- That you, on several dates and times in the house of the victim child situated at Ramraibari (Majumder Para) under Baikhora police station committed aggravated penetrative sexual assault repeatedly upon the victim child, who is below sixteen years of age and thereby committed an offence within the meaning of section 5(1) of POCSO Act, 2012 which is punishable under section 6 of POCSO Act, 2012 and within the cognizance of this Court.

Lastly:-That you, being a male adult contracted and performed a child Marriage marriage with a child on any day in the year 2021 in a Kali temple situated at Ramraibari under Baikhora police station in contravention of section 9 and 10 of Prohibition of Child Marriage Act, 2006 and thereby committed an offence punishable under section 9 and 10 of Prohibition of Child Marriage Act, 2006 and within the cognizance of this Court."

4. The Court below examined as many as 15 witnesses and also examined several documents i.e. Exbt. No.P.1 to P.27. On the strength of the evidence, the Court below convicted the accused person toward imprisonment of 20 years and to pay a fine of Rs.10,000/-(ten thousand) for the said offence, with default stipulation.

5. Aggrieved thereby, the present appeal has been filed seeking to set aside the impugned Judgment and Order of conviction dated 14.03.2023.

6. Mr. A. Acharjee, learned counsel appearing for the appellant-accused person in support of his pleading contended that P.W.-2 who is said to be a victim is not the complainant and the father of P.W.-2, i.e., the minor girl and all others have turned hostile. There was also sought of compromise entered amongst them and it is not a case under the POCSO Act. Further, learned counsel tried to strengthen his argument by stating the evidence of P.W.-2 wherein, she has categorically stated that her age is 19 in the year 2022 and the cause of action has arisen in the year 2021. So, at the relevant point in time, when the cause of action arose, she was 18 years old i.e., major, and not 15 years. P.W.-2, in her cross-examination further deposed that the father of the minor child is Haradhan Das and not the appellant-accused person herein.

7. Mr. Acharjee, learned counsel further relied upon ***paras-41, 42, 43, 44 and 45*** of the Judgment of the ***Hon'ble High Court of Himachal Pradesh, titled as Ranjeet Kumar Vs. State of H.P. an ors*** vide case No.***Cr.MMO No.648 of 2023*** dated 08.12.2023, wherein, the learned High Court has given consideration in respect of the rape coupled with marriage even in POCSO cases, and put a quietus to the litigation by granting acquittal to the accused person. The same is also produced here-in-under:-

"41. Adverting to the facts of the present case, no doubt, the accused has been charged for the offences punishable under Sections 366, 376, 212 and 120-B IPC and Section 4 of the POCSO Act, but then it cannot be ignored that the prosecution was set into motion only because the victim happens to be a child but otherwise she was in love with the accused. It is also not in dispute that the accused was interested to solemnise marriage with the child victim and has, in fact, solemnised marriage on 09.03.2023 and thereafter has also entered into a compromise on 17.04.2023. In such circumstances, even while bearing in mind the pertinent observations of the Hon'ble Supreme Court in Alakh Alok Srivastava and Dr. Maroti's cases (supra), the Court could still quash the FIR after satisfying itself that the child victim and her family members had settled the dispute and the victim got married and was leading a peaceful life and, therefore, allowing the prosecution to continue in such case would only result in disturbance in their happy family life and ends of justice in such circumstances would demand that the parties be allowed to compromise. However, before doing so, the Court must ensure that the marriage is not a camouflage to escape punishment and the consent given by the victim for compromise is voluntarily. The Court must also be satisfied after considering all the facts and circumstances of the case that quashing the proceedings would promote justice for the victim and continuance of the proceedings would cause injustice.

42. Therefore, in such circumstances, compounding of the offence, in our considered opinion would enable both the parties to lead life of respect and dignity in the society. Once, there is no dispute between them, then obviously the law cannot be so harsh so as to stand as wall between the parties, because the law has to secure the future of the parties, and continuation of criminal proceedings in such circumstances, would only cause an irreparable harassment and hardship and may even tarnish and spoil the reputation of the victim. The Court proceedings cannot be permitted to de-generate into a weapon of harassment and persecution. The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C. or any other such curtailment can whittle down the power of the High Court under Section 482 Cr.P.C. to do complete justice.

43. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social amity and reduces friction, then it truly is "finest hour of justice".

44. As observed by the Hon'ble Supreme Court in Mrs. Shakuntala Sawhney vs. Mrs. Kaushalya Sawhney and others, 1980 (1) SCC 63, while summing up the essence of compromise, it observed as under:-

"....The finest hour of justice arrives propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

45. In the given facts and circumstances, we are persuaded to uphold the view taken by the learned Single Judge(s) in Sahil and Sakshi's cases (supra) and conclude that the High Court in a case of instant kind where the victim had earlier alleged that she had been subjected to sexual assault but then has later on settled the dispute and has got married to the accused and is leading a peaceful life. Invariably, in such like cases, the Court after being satisfied would not allow the prosecution to continue, which would only result in disturbances of their happy family life."

8. On the same point, Mr. Acharjee, learned counsel also referred to **paras 50, 51, 52, and 58** of the Hon'ble Apex Court Judgment reported in **(2012) 10 SCC 3030** titled as **Gian Singh Vs. State of Punjab and anr.** The same is given here-in-under:-

"50. A three-Judge Bench of the Bombay High Court in [Abasaheb Yadav Honmane v. State of Maharashtra](#) dealt with the inherent power of the High Court under Section 482 of the Code vis-à-vis the express bar for compounding of the non-compoundable offences in Section 320(9) of the Code. The High Court referred to various decisions of this Court and also the decisions of the various High Courts and then stated as follows :

"The power of compounding on one hand and quashing of criminal proceedings in exercise of inherent powers on the other, are incapable of being treated as synonymous or even interchangeable in law. The conditions precedent and satisfaction of criteria in each of these cases are distinct and different. May be, the only aspect where they have any commonality is the result of exercise of such power in favour of the accused, as acquittal is the end result in both these cases. Both these powers are to be exercised for valid grounds and with some element of objectivity. Particularly, the power of quashing the FIR or criminal proceedings by the Court by taking recourse to inherent powers is expected to be used sparingly and that too without losing sight of impact of such order on the criminal justice delivery system. It may be obligatory upon the Court to strike a balance between the nature of the offence and the need to pass an order in exercise of inherent powers, as the object of criminal law is protection of public by maintenance of law and order."

51. Section 320 of the Code articulates public policy with regard to the compounding of offences. It catalogues the offences punishable under [IPC](#) which may be compounded by the parties without permission of the Court and the composition of certain offences with the permission of the court. The offences punishable under the special statutes are not covered by Section 320. When an offence is compoundable under Section 320, abatement of such offence or an

attempt to commit such offence or where the accused is liable under Section 34 or 149 of the [IPC](#) can also be compounded in the same manner. A person who is under 18 years of age or is an idiot or a lunatic is not competent to contract compounding of offence but the same can be done on his behalf with the permission of the court. If a person is otherwise competent to compound an offence is dead, his legal representatives may also compound the offence with the permission of the court. Where the accused has been committed for trial or he has been convicted and the appeal is pending, composition can only be done with the leave of the court to which he has been committed or with the leave of the appeal court, as the case may be. The revisional court is also competent to allow any person to compound any offence who is competent to compound. The consequence of the composition of an offence is acquittal of the accused. Sub-section (9) of Section 320 mandates that no offence shall be compounded except as provided by this Section. Obviously, in view thereof the composition of an offence has to be in accord with Section 320 and in no other manner.

52. The question is with regard to the inherent power of the High Court in quashing the criminal proceedings against an offender who has settled his dispute with the victim of the crime but the crime in which he is allegedly involved is not compoundable under Section 320 of the Code.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under [IPC](#) or offences of moral turpitude under special statutes, like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.

9. Pre contra, Mr. R. Datta, learned P.P., appearing for the State-respondent contended that there is enough evidence to confirm the conviction of the accused-appellant herein. He relied on the evidence of the P.W.-6 complainant, P.W.-10 and Exbt-14, the forensic report, wherein, it is indicated that as per the DNA report, the biological parents of the minor child are P.W.-2 and Sri Pranjit Baidya.

10. Learned P.P., to strengthen his argument placed his reliance upon **paras-36, 37, 75, and 76** of the Judgment of the Hon'ble Supreme reported in **(2017) 10 SCC 800** titled as **Independent Thought Vs. Union of India and anrs.** The same is produced herein under:-

"36. One of the more important legislations on the subject of protective rights of children is the [Prohibition of Child Marriage Act, 2006](#) (for short 'the PCMA'). For the purposes of the PCMA, a 'child' is a male who has not completed 21 years of age and a female who has not completed 18 years of age and a 'child marriage' means a marriage to which either contracting party is a child.

37. [Section 3](#) of the PCMA provides that a child marriage is voidable at the option of any one of the parties to the child marriage – a child marriage is not void, but only voidable. Interestingly, and notwithstanding the fact that a child marriage is only voidable, Parliament has made a child marriage an offence and has provided punishments for contracting a child marriage. For instance, [Section 9](#) of the PCMA provides that any male adult above 18 years of age marrying a child shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. Therefore regardless of his age, a male is penalized under this section if he marries a girl child. [Section 10](#) of the PCMA provides that whoever performs, conducts, directs or abets any child W.P. (C) No. 382 of 2013 marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees; [Section 11](#) of the PCMA provides punishment for promoting or permitting solemnization of a child marriage; and finally [Section 13](#) of the PCMA provides that the jurisdictional judicial officer may injunct the performance of a child marriage while [Section 14](#) of the

PCMA provides that any child marriage solemnized in violation of an injunction under [Section 13](#) shall be void.

73. On a combined reading of [C.R. v. UK](#) and *Eisenstadt v. Baird* it is quite clear that a rapist remains a rapist and marriage with the victim does not convert him into a non-rapist. Similarly, a rape is a rape whether it is described as such or is described as penetrative sexual assault or aggravated penetrative sexual assault. A rape that actually occurs cannot legislatively be simply wished away or legislatively denied as non-existent.

Harmonizing the IPC, the POCSO Act, the JJ Act and the PCMA

74. There is an apparent conflict or incongruity between the provisions of the IPC and the POCSO Act. The rape of a married girl child (a girl child between 15 and 18 years of age) is not rape under the [IPC](#) and therefore not an offence in view of Exception 2 to Section 375 thereof but it is an offence of aggravated penetrative sexual assault under [Section 5\(n\)](#) of the POCSO Act and punishable under [Section 6](#) of that Act. This conflict or incongruity needs to be resolved in the best interest of the girl child and the provisions of various complementary statutes need to be harmonized and read purposively to present an articulate whole."

11. Learned P.P. also relied upon **para-17** of the Hon'ble Apex Court Judgment reported in **(2015) 7 SCC 681** titled as **State of Madhya Pradesh Vs. Madanlal**. The same is produced here-in-under:-

"17. In this context, it is profitable to reproduce a passage from [Shimbu and Another v. State of Haryana](#) wherein, a three-Judge Bench has ruled thus:-

"Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle. Since the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent, there is every chance that she might have been pressurised by the convicts or the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, accepting this proposition will put an additional burden on the victim. The accused may use all his influence to pressurise her for a compromise. So, in the interest of justice and to avoid unnecessary pressure/harassment to the victim, it would not be safe in considering the compromise arrived at [pic]between the parties in rape cases to be a ground for the Court to exercise the discretionary power under the proviso of [Section 376\(2\)](#) IPC."

12. Heard both sides and perused the evidence on record.

13. The point which falls for consideration before this Court is the examination of evidence of P.W.-6 coupled with P.W.-2.

14. Though the deposition of P.W.-2 was declared hostile on the prayer of the prosecution, but, it is stated in her witness that on the day of deposition i.e. on the 18th day of February, 2022, she was 19 years of age. Thereafter, the attention of the witness was drawn to the statement made under Section 161 of Cr.P.C.

Thereafter, the said witness was again re-examined on 3rd November 2022, wherein, she stated that the name of her son is Deep Pritam Majumder and the name of her husband is Haradhan Das. Haradhan Das is the father of her son Deep Pritam Majumder. She does not know any Pranjit Baidya.

15. P.W.-6, in her deposition, stated that on 28.07.2014 her marriage was solemnized with the accused Pranjit Baidya and subsequently within one month of the marriage, she became pregnant. Her in-laws started to torture her when she was pregnant for two and a half months. Due to their assault, her child

was aborted. Her parents came to her matrimonial home and they tried to convince her in-laws. Thereafter, her husband along with in-laws did not torture her. But after three/four months again her in-laws and her husband started to torture her. Her husband on each and every issue used to slap her. She also deposed that she came to know in the year 2019 from her neighbours about the illegal relationship of her husband. Her husband became habitual to come in late at night. On query, he used to tell her that because of drinking, he was lying on the road and after getting well he returned to the house. In the year 2019, during Durga Puja, at about 3/3.30 am she noticed a call in the mobile of her husband. She picked up the phone and asked who was speaking from the other side. The lady from the other side told her name i.e. P.W.-2 and asked that who was 'she' and she asked about the identity of that girl. She told her that it is better to ask her husband about her. She also abused her. After cutting the call, she saw in the mobile of her husband photos of her husband with P.W.-2 in compromising condition. When she asked her husband about P.W.-2 her husband told her that he would kill her and marry P.W.-2. He also pressed her neck. She went to the house of P.W.-2 and she asked her parents. Her parents misbehaved with her and asked her if she was just spreading rumour against P.W.-2. She further deposed that in the year 2020, she was assaulted by her husband, her father-in-

law, and her mother-in-law. Anyhow she escaped herself and went to her parents' house. Anyhow she managed to call over the phone and she went to Jolaibari outpost, from where her parents came and took her to her father's house. Her husband was called to the Family Counselling Centre, Santirbazar where he assured her that he would not maintain his relationship with P.W.-2. However, he did not leave his relationship with P.W.-2. Her husband expelled her from his house and has kept P.W.-2 in his house as his wife and he also has one son from P.W.-2. According to her, she resides in the house of her father with her six-year-old son.

In the cross, the witness has admitted that she has not mentioned in her ejahar that one day she received one phone from P.W.-2 in the mobile of her husband and she abused her. That, she saw the photos of P.W.-2 with her husband in a compromising position and that she went to the house of P.W.-2 where her parents misbehaved with her. She admitted that she informed her about the torture of her husband and in-laws to her neighbours near the house of her matrimonial home and also informed Malina Bhowmik. She also admitted that she was examined by I.O. after registration of her FIR and she was examined by doctor after assault and the certificate was given to the police.

16. P.W.2 being the 2nd wife and the victim under the POCSO Act is not the complainant, but, however, to examine the

case in its entirety, since the charges are framed, it is seen from the record that P.W.-2 has categorically deposed before the Court that her husband is Haradhan Das and her age is 19 years. In a given case, in our Indian Society, where there is a lot of respect and value, it cannot be believed that P.W.2, the wife approached the Court of law and gave wrong deposition stating that Haradhan Das is her husband and her age is 19 years at the time of her deposition i.e., in the year 2022. There is no specific averment of P.W.-6 before the Court below stating that her husband i.e., the accused-person herein married P.W.-2. There is also no evidence placed on record to say that Pranjit Baidya her husband married P.W.-2 as his 2nd wife and no particular have been elicited in this regard.

17. In view of the same, this Court feels that considering the evidence of P.W.-2, the benefit of the doubt needs to be extended to the accused person and accordingly, the appeal is allowed and the impugned Judgment and Order of Conviction dated 14.03.2023 is set aside and quashed. Further, it is not a case of determination of childbirth as to who are the parents and credence to P.W.-10 i.e. the medial witness and Exhibit-14, the DNA report need not be considered. Accordingly, the appellant herein be released forthwith if not already released and wanted in any other cases.

18. As a sequel, stay if any stands vacated, pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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