

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A(J)No.26 of 2023

Suptan Marak @ Suptam,
Son of Shri Tilip Marak,
Resident of village: Natintilla,
P.S. R.K. Pur, District: Gomati Tripura,
(present address- C/O Sri Tubi Marak,
Resident of Jarmanjoy Para, Balaram,
P.S. Ambassa, District: Dhalai, Tripura

---- **Appellant(s)**

Versus

The State of Tripura

----**Respondent(s)**

For Appellant(s)	:	Mr. S. Bhattacharjee, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing and date of delivery of Judgment and Order	:	16.07.2024
Whether fit for Reporting	:	YES/NO

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

Judgment & Order (Oral)

[Amarnath Goud, J]

This present appeal is directed challenging the judgement and order of conviction of sentence dated 13.12.2022 delivered by Learned Special Judge (POCSO), Dhalai Judicial District, Ambassa in connection with Case No. Special (POCSO) 11 of 2021 whereby the appellant was sentenced to suffer RI for one year under Section 342 of IPC and to pay a fine of Rs.1000/- in default to suffer RI for a further period of one month and the appellant-convict was

further sentenced to suffer RI for one year for the commission of offence punishable under Section 323 of IPC and to pay fine of Rs.1000/- in default to suffer RI for a further period of one month. The convict-appellant was further sentenced to suffer RI for life for the commission of offence punishable under Section 4 of POCSO Act and to pay fine of Rs.20,000/- in default to suffer RI for a further period of 2 years and it was further ordered that all the sentences shall run concurrently.

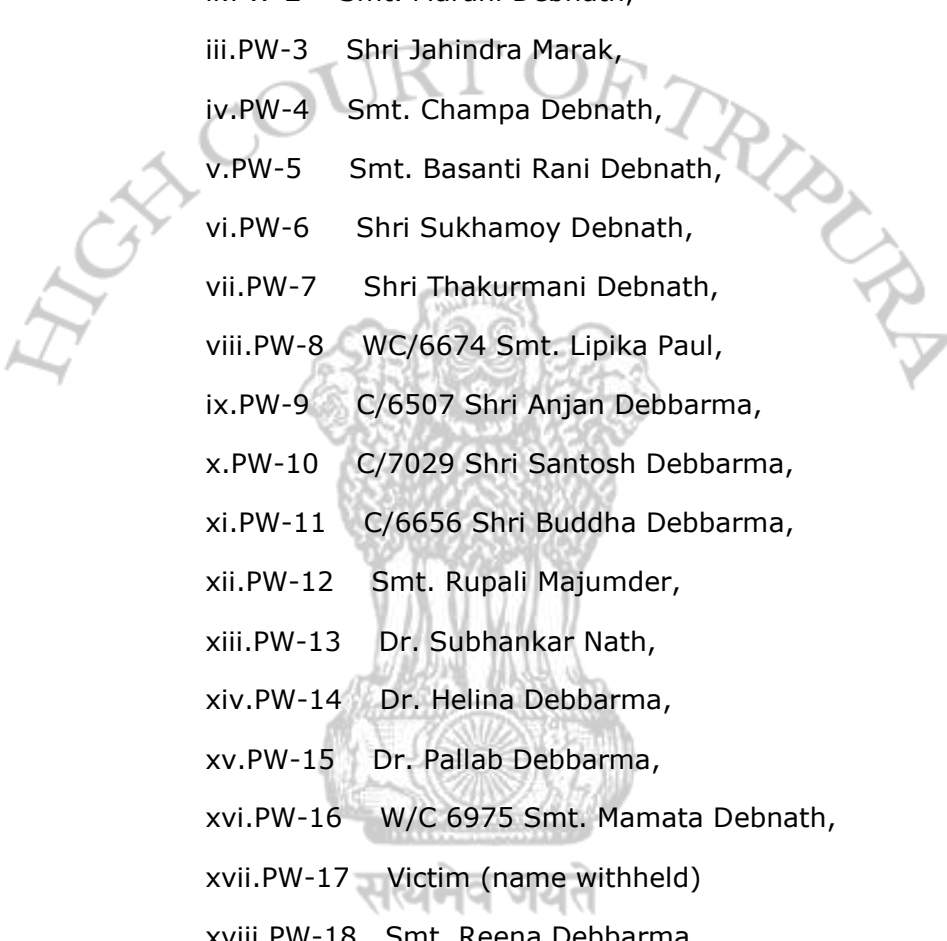
Heard Mr. S. Bhattacharjee, Learned counsel appearing for the appellant and Mr. Raju Datta, Learned P.P. appearing for the State.

02. Now before coming to the conclusion of this appeal let us discuss about the subject matter of the prosecution laid before the Trial court. In this case the prosecution was set into motion on the basis of an FIR laid by one Sri Ramesh Debnath, son of Late Manoranjan Debnath, Balaram Bazar under PS Ambassa, Dhalai district to OC Ambassa PS alleging inter alia that on 26.10.2021 at about 1600 hours the middle daughter of the informant Miss Champa Debnath went outside home to bring the cattle from a nearby land of their locality and after some time when she returned back to home along with her mentally challenged elder sister i.e. the victim and the victim was having serious bleeding injury in her private parts. Being asked said Champa Debnath reported that she heard the cry

of the victim from the dwelling hut of accused Suptan Marak @ Suptam when said Champa Debnath entered into the dwelling hut of accused and found the victim lying on the bed of accused any crying with serious bleeding injury to her private parts and thereafter she brought the victim back to home. She brought the victim to home and the informant also found severe bleeding from the private part of the victim and on his query the victim stated that the accused who is the son-in-law of Tubi Marak. The accused after getting the victim in front of their house forcefully dragged her inside the dwelling hut and confining her inside a room of the dwelling hut and forcibly committed rape upon the victim in his dwelling hut resulting which the victim received severe bleeding injury in her private part. Hence he laid the FIR. Upon received of FIR OC, Ambassa police station registered Ambassa Police Station Case No.2021 ABS 058 under Section 342/376(2)(i)(I) of IPC and Section 4 of POCSO Act against the accused Suptan Marak @ Suptam and the case was endorsed to SI Sova Rani Teli, Women Sub-Inspector for investigation who after completion of investigation laid chargesheet against the accused appellant before the competent court. Cognizance of offence was taken and the learned court below thereafter framed charge against the appellant under Section 342/376(2)(i)(I) of IPC read with Section 4 of POCSO Act and the same was explained to fail to which he pleaded not guilty and claimed to be tried. During trial to substantiate the charge the

prosecution in total adduced 20 numbers of witnesses and the prosecution also relied upon some documents which were marked exhibits in this case which are as follows:

That during trial the prosecution examined as many as 20 (twenty) witnesses. They are as follows:-

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- i. PW-1 Shri Ramesh Debnath,
 - ii. PW-2 Smt. Marani Debnath,
 - iii. PW-3 Shri Jahindra Marak,
 - iv. PW-4 Smt. Champa Debnath,
 - v. PW-5 Smt. Basanti Rani Debnath,
 - vi. PW-6 Shri Sukhamoy Debnath,
 - vii. PW-7 Shri Thakurmani Debnath,
 - viii. PW-8 WC/6674 Smt. Lipika Paul,
 - ix. PW-9 C/6507 Shri Anjan Debbarma,
 - x. PW-10 C/7029 Shri Santosh Debbarma,
 - xi. PW-11 C/6656 Shri Buddha Debbarma,
 - xii. PW-12 Smt. Rupali Majumder,
 - xiii. PW-13 Dr. Subhankar Nath,
 - xiv. PW-14 Dr. Helina Debbarma,
 - xv. PW-15 Dr. Pallab Debbarma,
 - xvi. PW-16 W/C 6975 Smt. Mamata Debnath,
 - xvii. PW-17 Victim (name withheld)
 - xviii. PW-18 Smt. Reena Debbarma,
 - xix. PW-19 Smt. Shova Rani Teli,
 - xx. PW-20 Dr. Juthika Debbarma,

List of Exhibits on behalf of the prosecution:-

- (i) Exhibit P-1:- Signature of PW-1 on the written ejahar,
- (ii) Exhibit P-1/1:- Written ejahar,
- (iii) Exhibit P-1/2:- Endorsement of PW-19 on the written ejahar,
- (iv) Exhibit P-1/3:- Registration endorsement of Inspector Himadri Sarkar on the written ejahar,
- (v) Exhibit P-2 & P-2/1:- Signature of PW-1 on the statement recorded by the Magistrate,

- (vi) Exhibit P-3:- Signature of PW-1 on the consent letter,
- (vii) Exhibit P-4:- Signature of PW-1 on the seizure list,
- (viii) Exhibit P-4/1:- Signature of PW-2 on the seizure list,
- (ix) Exhibit P-4/2:- Signature of PW-7 on the seizure list,
- (x) Exhibit P-4/3:- Seizure list prepared by PW-19,
- (xi) Exhibit P-4/4:- Signature of PW-19 on the seizure list,
- (xii) Exhibit P-5:- Birth certificate of victim,
- (xiii) Exhibit P-6:- Disability certificate of victim,
- (xiv) Exhibit P-7:- Signature of PW-8 on the seizure list,
- (xv) Exhibit P-7/1:- Signature of PW-14 on the seizure list,
- (xvi) Exhibit P-7/2:- Signature of PW-16 on the seizure list,
- (xvii) Exhibit P-7/3:- Seizure list prepared by PW-19,
- (xviii) Exhibit P-7/4:- Signature of PW-19 on the seizure list,
- (xix) Exhibit P-8:- Signature of PW-9 on the seizure list,
- (xx) Exhibit P-8/1:- Signature of PW-10 on the seizure list,
- (xxi) Exhibit P-8/2:- Signature of PW-15 on the seizure list,
- (xxii) Exhibit P-8/3:- Seizure list prepared by PW-19,
- (xxiii) Exhibit P-8/4:- Signature of PW-19 on the seizure list,
- (xxiv) Exhibit P-9:- Signature of PW-9 on the seizure list,
- (xxv) Exhibit P-9/1:- Signature of PW-11 on the seizure list,
- (xxvi) Exhibit P-9/2:- Seizure list prepared by PW-19,
- (xxvii) Exhibit P-9/3:- Signature of PW-19 on the seizure list,
- (xxviii) Exhibit P-10:- SFSL report prepared by PW-12,
- (xxix) Exhibit P-10/1 to P-10/3:- Signatures of PW-11 on the SFSL report,
- (xxx) Exhibit P-11:- SFSL report prepared by PW-13,
- (xxxi) Exhibit P-11/1 to P-11/5:- Signatures of PW-13 on the SFSL report,
- (xxxii) Exhibit P-12:- Allelic distribution table of DNA profiling of Exhibit- H, J1 and J2,
- (xxxiii) Exhibit P-12/1:- Signature of PW-13 on the Allelic distribution table of DNA profiling of Exhibit- H, J1 and J2,
- (xxxiv) Exhibit P-13:- Allelic distribution table of DNA profiling of Exhibit- L, K1 and K2,
- (xxxv) Exhibit P-13/1:- Signature of PW-13 on the Allelic distribution table of DNA profiling of Exhibit- L, K1 and K2,
- (xxxvi) Exhibit P-14:- Information given by PW-14,
- (xxxvii) Exhibit P-15:- Signature of PW-14 on the Information,
- xxxviii) Exhibit P-16: Medical examination report prepared by PW-14,
- (xxxix) Exhibit P-16/1:- Signature of PW-14 on the Medical examination report,

- (xL) Exhibit P-17:- Letter issued by PW-14,
- (xLi) Exhibit P-17/1:- Signature of PW-14 on the letter,
- (xLii) Exhibit P-18 (as a whole):- Final opinion of PW- 14,
- (xLiii) Exhibit P-19:- Medical examination report of accused prepared by PW-15,
- (xLiv) Exhibit P-19/1:- Signature of PW-15 on the Medical examination report of accused,
- (xLv) Exhibit P-20 (as a whole):- Handing over memo with signature of PW-15,
- (xLvi) Exhibit P-21 (as a whole):- Statement under Section 164(5) of the victim with signature of PW-18,
- (xLvii) Exhibit P-22:- Printed FIR,
- (xLviii) Exhibit P-22/1:- Signature of Inspector Himadri Sarkar on the printed FIR,
- (xLix) Exhibit P-23:- Computer generated FIR,
- (L) Exhibit P-23/1:- Signature of Inspector Himadri Sarkar on the computer generated FIR,
- (Li) Exhibit P-24 (as a whole):- Hand sketch map of the place of occurrence,
- (Lii) Exhibit P-25 (as a whole):- Index of the hand sketch map,
- (Liii) Exhibit P-26:- Report prepared by PW-20,
- Liv) Exhibit P-26/1:- Signature of PW-20 on the report,
- (Lv) Exhibit P-26/2:- RTI of victim on the report prepared by PW-20,
- (Lvi) Exhibit P-26/3 (as a whole):- Final opinion with signature of PW-20,
- (Lvii) Exhibit MO-I:- Pink colour top T-shirt of victim,
- (Lviii) Exhibit MO-II:- Blue skirt of victim,
- (Lix) Exhibit MO-III:- Blue colour long pant,
- (Lx) Exhibit MO-IV:- T-shirt
- Defence Exhibit- Nil

03. After recording evidence of the prosecution in course of examination under Section 313 of Cr.P.C. the appellant pleaded his innocence also denied to adduce any witness in support of his defence. Finally on conclusion of trial court below found the appellant to be guilty and imposed sentence upon him for which this present appeal is filed. Now let us discuss the evidence on record of the prosecution.

04. PW-1 Ramesh Debnath deposed that the victim is her elder daughter and Miss Champa Debnath is his younger daughter. The victim is a bit mentally challenged having disability certificate. On 26.10.2021 he returned in the late evening owing to some personal affairs in the market. He returned home at about 3.00 p.m. and when he reached in his house that time none of his daughter was found present in the house and he could know from his wife that his younger daughter Champa went to a nearby paddy field to take back their domestic cow and his elder daughter also followed her. He further stated that the accused appellant was a resident of their locality and his house is situated at a little distance from his house and one of his relative is his next door neighbour and so the accused used to visit his relative's house frequently. On that day his elder daughter when returned home with his younger daughter they could notice that his elder daughter was pulled with blood and there was profused bleeding from her private part. On his query his daughters stated to him that his elder daughter was beaten by the accused Suptan @ Suptam. Being perplexed he asked his wife to enquire the matter to his daughters separately and came to know from them that while they were going to bring their domestic cow that time accused Suptan Marak @ Suptam forcibly dragged his elder daughter in a nearby place and committed forcefully sexual intercourse with her. Thus she received severe injury on her genital organ and there was profuse bleeding. Immediately

she was taken to Dhalai District Hospital at Kulai and his daughter was medically examined by a Medical Officer. He narrated the entire episode to the Medical Officer and thereby the Medical Officer reported the incident to the Police. Immediately Police came and considering the precarious condition of his daughter she was referred to AGMC & GBP Hospital, Agartala for better treatment and management. Police recorded his oral ejahar at Dhalai District Hospital as per his version and identified his signature on the bottom of the ejahar marked Exbt.P/1. Later on 06.11.2021 police produced him before a Magistrate and his statement was recorded and his signatures were obtained. He identified his signature and statement which were marked as Exbt.P-2 and Exbt.P-2/1. He further stated that during examination of his daughter at AGMC & GBP Hospital, Agartala his consent was taken before medical examination of his daughter. He identified the consent letter and his signature which were marked as Exbt.P-3. He further stated that during examination police seized original birth certificate of his elder daughter and her original mental disability certificate and the witness identified the signature on the seizure list which was marked as Exbt.P-4. He identified the birth certificate and disability certificate marked as Exbt.P-5 and Exbt.P-6.

During cross-examination he stated that he did not stated in his oral ejahar recorded by police or in course

of recording his statement that he came to know the misdeed of accused from his elder daughter through his wife. He further stated that his wife also came to know from her daughter that the incident took place nearby from his house under a tamarind tree situated adjacent to their house. He further admitted that in between the tamarind tree and the house of the accused there was narrow stream. Nothing more came out relevant.

05. PW-2 Marani Debnath deposed that few months back one day in the evening while her elder brother followed by her younger sister Champa Debnath went to take back their domestic cow from a nearby place that time accused forcefully dragged her to a nearby place under a tamarind tree in a house of Mog community and assaulted her. He also committed sexual intercourse with her daughter. Her daughters returned home and they could notice profused bleeding from the private part of the victim. She further stated the victim is a mentally challenged girl but she narrated the entire episode correctly in presence of her younger daughter, husband and others. Later on, her daughter was taken to Dhalai District Hospital at Kulai when her husband informed the matter to the Medical Officer and the Medical Officer informed the police and police came to the hospital. After preliminary treatment his daughter was taken to AGMC & GBP Hospital Agartala for better treatment and management. She further stated that during

investigation police seized the birth certificate of her elder daughter and mental disability certificate from her husband and she identified her signature on the seizure list marked as Exbt.P-4/1 and also identified the birth certificate and disability certificate marked as Exbt.P-5 and Exbt.P-6.

During cross-examination she stated that she was unable to say the contents of documents on which her signature was taken by police and also stated both her daughters went to bring the domestic cow from a nearby paddy field. She stated to police that the alleged incident took place in the house of accused Suptan as reported by her daughter.

06. PW-3, Jahindra Marak deposed that on 26.10.2021 in the evening Ramesh Debnath called him to go to his house and accordingly he accompanied him when said Ramesh Debnath reported that Suptan Marak forcefully had sexual intercourse with his daughter. He had seen the daughter of Ramesh Debnath and found her in a precarious condition and there was continuous bleeding in the genital organ of the victim and being perplexed and also being frightened he advised Ramesh Debnath to remove his daughter immediately to the Hospital for better treatment.

During cross-examination he stated that at about 2-00/2.30 pm he had been called by Ramesh Debnath and he was examined by police and his statement was recorded. But he did not say to police that Ramesh Debnath told him

that accused-appellant had committed forceful sexual intercourse with the victim. Nothing more came out relevant.

07. PW-4, Champa Debnath deposed that she was a student of class-VIII of Balaram High School under Balaram Bazar Para. The victim was her elder sister and she was a mentally challenged girl by birth but she is able to express her feelings and desires and she is also able to interact to some extent. On 26.10.2021 in the evening at about 4 pm she went to bring out domestic cow from a place at a little distance of their house and while she was returning home and reached in front of the house of Suptan Marak she could hear that her elder sister was crying inside his house and keeping their domestic cow over the village road she went inside the house of Suptan Marak and took entry into the dwelling hut of the accused from where she heard the sound of her sister. She found that her sister was lying on a bed and her lower portion was pulled with blood. Accused was not found at that material point of time in his house. However, she removed her sister to their house and thereafter keeping her in their dwelling hut she went to bring their cow again. On her query her sister stated that the accused committed rape upon her in the dwelling hut. She also stated that when her sister following her from her back, that time accused forcibly dragged her inside his house and committed the crime. Subsequently her parents

talked with her sister and came to know the incident and thereafter her father called the neighbouring persons and came to know the incident and immediately thereafter her sister was taken to Dhalai District Hospital at Kulai by her parents from where she was finally taken to AGMC & GBP Hospital, Agartala and her father lodged the case.

During cross-examination she stated that sometimes her sister is inconsistent in expressing her feelings and expression. She also stated to police that on query of her parents her sister stated to them that the accused repeatedly committed rape upon her forcibly dragging her inside his house in his dwelling hut. She further stated that the accused is a resident of the locality and his house is situated at a little distance from their house. She also stated the accused had visiting terms with their family and visited their house on many occasions prior to the incident. She further stated that after the incident 15/20 numbers of villagers visited their house. Nothing more came out relevant.

08. PW-5, Basanti Rani Debnath deposed that she was living with his younger son in a separate house with his wife and her grand-daughter. Ramesh is his second son. He is living with his family consisting of his wife and two daughters including of the victim who is a mentally challenged girl. She stated that one day about six months back on the date of the incident when she went to bring

their domestic animal from a nearby place of their house that time she could hear some sound from the house of her another son Ramesh Debnath which is situated at a little distance of their house and while she went to the house of his son Ramesh that time she saw her grand-daughter was in injured condition and her lower par was pulled with blood. On query she stated to her that accused-appellant Suptan Marak committed rape upon her under a tamarind tree in his house of their locality and thereby she received severe injury on her private part and there was profuse bleeding from her private part. Few persons of their locality came to the house of her son when the victim was taken to hospital and after that she left the home.

During cross-examination she stated to police that on her query her grand-daughter stated to her that the accused repeatedly committed sexual intercourse with her under a tamarind tree in his dwelling hut. Nothing more came out relevant.

09. PW-6 Sukhamoy Debnath deposed that Ramesh Debnath is his elder brother. They resides separately with their family in the same locality. He stated that few months back in the evening he came to know from his brother Ramesh Debnath over telephone that his daughter was raped by the accused Suptan Marak. Accordingly he rushed to the house of his brother Ramesh Debnath and found huge quantity of blood lying on the ground in the house of

his brother and came to know that his niece was taken to Dhalai District Hospital, Kulai for treatment and later on she was taken to AGMC & GBP Hospital, Agartala for better treatment.

During cross-examination he was confronted with the statement that he stated to I.O. that his brother informed him over telephone that the accused committed rape upon his daughter but on drawing attention the same statement was not found to the statement of the witness recorded by I.O. He was further confronted with the statement that when he came to the residence of his brother that time he found huge quantity of blood on the ground in the house. But that portion of statement was not found in the statement of witness recorded by I.O.

10. PW-7, Thakurmani Debnath deposed that about 5/6 months back one day when he returned back to home in the late evening that time he could know that the victim was sexually harassed by the accused and he went to the house of his brother Ramesh Debnath when he could know that they went to the GBP Hospital, Agartala for treatment. He also noticed huge quantity of blood lying on the ground in the house of his brother and could know that his niece was taken to Dhalai District Hospital, Kulai for treatment and later on she was taken to AGMC & GBP Hospital, Agartala for better treatment. Police later on seized the birth certificate and disability certificate of his niece and he

identified his signature on the seizure list marked Exbt.P-4/2. He further confirmed Exbt.P-5 and Exbt.P-6.

During cross-examination he stated that his niece is a mentally challenged girl and he could know the incident from his mother while he returned home. He further stated that he did not say to I.O. that he heard the incident from her mother. Again he stated that he stated to the police that he noticed huge quantity of blood lying on the ground in the house of his brother. He also stated that on the fateful day of the incident his niece went to a place near their house for grazing of their domestic cow.

11. PW-8, Women Constable Lipika Paul deposed that on 26.10.2021 she was posted as a Constable of SDPO office, Ambassa. On that day the victim was taken to Dhalai District Hospital for medical examination on the prayer of I.O. Medical Officer examined the victim in his presence besides other female staff of the hospital and collected her biological samples and wearing apparels of the victim and she identified her signature on the seizure list marked as Exbt.P-7. She also identified the wearing apparels i.e. one pink colour top T-shirt and blue skirt which were marked as Exbt.MO-1 and Exbt.MO-II. Nothing came from cross-examination.

12. PW-9, Anjan Debbarma deposed that on 30.10.2021 he was posted as Constable of Ambassa PS. On that day accused Suptan Marak was produced before the

Medical Officer of Dhalai District Hospital, Kulai for his medical examination and collection of his biological samples and accordingly his biological samples were collected by the M.O. and which were seized by seizure list. The witness identified his signature on the seizure list marked as Exbt.P-8. He further stated that on that day I.O. seized the wearing apparels of the accused i.e. blue colour long pant, T-shirt, one white vest and a brief under a proper seizure list and the witness also identified his signature on the seizure list and he identified on the seized alamats which were marked as Exhibit MO-III, Exbt.MO-IV, Exbt.MO-V and Exbt.MO-VI and identified the accused. Nothing came out relevant from his cross-examination.

13. PW-10, Constable Santosh Debbarma also deposed in the same manner like PW-9 and he identified his signature on seizure list which was marked as Exbt.P-8/1 and identified the accused. Nothing came out from cross-examination.

14. PW-11, Constable Buddha Debbarma deposed that on 30.10.2021 the I.O. seized the wearing apparels of the accused i.e. blue colour long pant, T-shirt, one white vest and a brief under a seizure list and the witness identified the seizure list which was marked as Exbt.P-9/1. He further identified Exbt.MO-III, Exbt. Exbt.MO-IV, Exbt. MO-V and Exbt. MO-VI and identified the accused Suptan

Marak. Nothing came out relevant from his cross-examination.

15. PW-12, Rupali Majumder deposed that on 28.10.2021 and on 01.11.2021 she was posted as Scientific Officer-cum-Assistant Chemical Examiner of TSFSL, Narsingarh, Agartala and on that day she received following exhibits:

(1) Exhibit- A: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton, said to be dry vaginal swab of victim.

(ii) Exhibit- B: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton, wet in condition, said to be wet vaginal swab of victim.

(iii) Exhibit-C: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton, said to be oral swab of victim.

(iv) Exhibit-D: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton, said to be urethral swab of victim.

(v) Exhibit-E: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton, said to be anal swab of victim.

(vi) Exhibit- F: One glass vial wrapped with white sticking plaster bearing name of victim contained few black coloured strands, said to be pubic hair of victim.

(vii) Exhibit-G: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of cotton with dust like particles, said to be nail scrapping of victim.

(viii) Exhibit-H: One glass vial wrapped with white sticking plaster bearing name of victim contained a piece of gauge cloth with brownish stain, said to be blood sample of victim.

(ix) Exhibit-I: One glass vial wrapped with white sticking plaster bearing name of victim contained some straw coloured fluid, said to be urine sample of victim.

(x) Exhibit-J-1: One pink coloured T-shirt, said to be wearing apparel, one pink colour T-shirt/top of victim,

(xi) Exhibit-J-2: One blue coloured skirt, said to be wearing apparel, one blue coloured skirt of victim,

(xii) Exhibit-K-1: One sealed paper envelop bearing case reference and signature of seizure witnesses contained a blue coloured full pant, said to be one blue coloured long pant of Suptam Marak.

(xiii) Exhibit-K-2: One sealed paper envelop bearing case reference and signature of seizure witnesses contained a white coloured ganjee, said to be one brief of Suptam Marak.

(xiv) Exhibit-K-3: One sealed paper envelop bearing case reference and signature of seizure witnesses contained a blue and grey coloured T- shirt, said to be one light blue coloured T-shirt of Suptan Marak.

(xv) Exhibit-K-4: One sealed paper envelop bearing case reference and signature of seizure witnesses contained a light brown coloured vest, said to be one light blue coloured T-shirt of Suptam Marak.

(xvi) Exhibit-L: One glass vial wrapped with white sticking plaster bearing case reference contained some reddish coloured fluid, said to be blood of Suptam Marak.

(xvii) Exhibit- M: One glass vial wrapped with white sticking plaster bearing case reference contained a stick being wrapped with cotton, said to be penile swab/smear of glans penis of Suptam Marak.

(xviii) Exhibit-N: One glass vial wrapped with white sticking plaster bearing case reference contained a stick being wrapped with cotton, said to be penile swab/smear of body penis of Suptam Marak.

(xix) Exhibit-O: One glass vial wrapped with white sticking plaster bearing case reference contained few black coloured strands, said to be pubic hair a stick being wrapped with cotton, said to be urethral swab of Suptam Marak.

(xx) Exhibit-P: One glass vial wrapped with white sticking plaster bearing case reference contained few black coloured strands, said to be pubic hair of Suptam Marak.

(xxi) Exhibit-Q: One plastic container wrapped with white sticking plaster bearing case reference contained pieces of gauze cloth with brownish stain, said to be blood sample of Suptam Marak.

She also stated that she examined those exhibits to their laboratory and the examination was subjected visual examination under different light sources, chemical tests, gel-diffusion test, absorption-elution test and microscopic examination. The results based on the tests are:

(1) Seminal stain/spermatozoa of human origin could not be detected in the exhibits marked as A, B, C, D, E, G, I, J-1 and J-2.

(ii) Blood stains of human origin were detected in the exhibits marked as J-1, J-2, K-1 and K-4

(iii) Blood group of the exhibits marked as J-1, J-2 and H could be determined as B group.

iv) Blood group of the exhibits marked as B and L. could be determined as B group.

(v) Blood group of the exhibits marked as K-1 and K-4 could not be determined due to scanty amount of stain, hence forwarded to DNA Typing Division for generation of DNA profiling and matching.

(vi) Blood stain of human origin could not be detected in the exhibits marked as A, B, C, D, E, G, I, K-2 and K-3.

(vii) No epithelial cell could be detected in the exhibits marked as K-1, K-2, K-3, K-4, M, N, O and P.

(viii) No opinion could be given regarding presence of any foreign hair in the exhibits marked as F and P.

She further opined that since human blood stain detected in the exhibits marked as J1, J2, K1 and K4, portion of the same exhibits along with the sample of blood of victim and the accused has been forwarded to DNA Typing Division for generation of DNA Profiling and matching. Subsequently she prepared the report and she identified the report marked as Exbt.P-10 and the signature on the said report marked as Exbt.P-10/1, Exbt.P-10/2 and Exbt. P-10/3. During cross-examination nothing came out relevant.

16. PW-13, Dr. Subhankar Nath deposed that on 02.11.2021 he was posted at the Tripura State Forensic Science Laboratory, Narsingarh, Agartala as Deputy Director, DNA Typing Division and on that day he received seven numbers of exhibits from the Biology/Serology Division as forwarded by SDPO, Ambassa for examination and the report as per queries of the investigating agency in connection with Ambassa PS Case No.2021 ABS 058 dated 26.10.2021 which are as follows:

1. Exhibit- B: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 02-11-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- B, inside which four nos. small brown stained gauze pieces said to be the blood sample of Suptan Marak. The exhibit was not mentioned in the case exhibit forwarding note.

2. Exhibit-H: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 30-10-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- H, inside which one no. very small light brown stained gauze piece said to be the blood sample of victim.

3. Exhibit-J1: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 30-10-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- J1, inside which five nos. small pink colour cloth pieces having light stain, said to be the cloth pieces of one pink colour T- shirt/Top of victim.

4. Exhibit-J2: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 30-10-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- J2, inside which five nos. small blue colour cloth pieces having mud like stain, said to be the cloth pieces of one blue colour skirt of victim.

5. Exhibit- K1: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 02-11-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- K1, inside which two nos. very small blue colour cloth pieces without any blood like visible stain, said to be the cloth pieces of one blue colour long pant of Suptan Marak.

6. Exhibit- K4: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 02-11-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- K4, inside which two nos. small light yellow with black stripe cloth pieces without any blood like visible stain, said to be the cloth pieces of one while colour vest of Suptan Marak.

7. Exhibit- L: One white paper packet having two gala seals of SFSL BIO/SERO DIV, one signature dated 02-11-2021, one stamp impression of (Smt. Rupali Majumder), Scientific Officer-cum-A.C.E. (Biology/Serology Division), State Forensic Science Laboratory, Government of Tripura, labelled with case reference and exhibit mark- L, inside which three nos. small brown stain gauze pieces, said to be the blood of Suptan Marak (swab prepared in lab).

During cross-examination nothing came out relevant.

17. PW-14, Dr. Helina Debbarma deposed that on 26.10.2021 she was posted as General Duty Medical Officer of Dhalai District Hospital and on that day the victim was examined by her and she could ascertain that it was a case

of penetrative sexual assault and she informed the matter in writing with an advice for her admission in AGMC & GBP Hospital, Agartala. She identified the information marked Exbt. P-14 and her signature Exbt.P-15. She further stated that the victim was admitted in the hospital as an indoor patient and intimated the matter to a Gynecologist of the Hospital and thereafter while police came submitted a requisition for medical examination of the victim. She examined the victim on that day at about 6.25 p.m. and during examination she collected biological samples of the victim and handed over the same to the I.O. and forwarded the same to the TSFSL for examination and report. During examination it could be ascertained that as the condition of the patient was precarious and she was complained of pain in vulva with excessive bleeding, repeated vomiting etc. and the victim was not in a condition to move even. During examination also it could be ascertained that excessive blood was oozing out through vaginal intorious and her hymen was freshly torn. Considering the symptoms she suggested for shifting the victim to AGMC & GBP Hospital and accordingly she referred the victim to AGMC & GBP, Hospital, Agartala. She identified the medical examination report of the victim in prescribed form which bears her signature and on identification the same was marked as Exbt. P-16 and the signature was marked as Exbt.P-16/1. Upon receipt of biological samples of the victim collected by her inclusive of her blood sample, wearing apparels etc. and

the I.O. seized those materials under a seizure list. The witness identified her signature on the seizure list which was marked as Exbt. P-7/1. She handed over the biological samples of the victim to O/C, Ambassa PS by a letter and on identification the letter was marked as Exbt.P-17 and the signature on it marked as Exbt.P-17/1. Finally upon receipt of FSL report she opined that there was no sign of struggling but there was definite sign of vaginal penetration but Spermatozoa was absent in the vaginal swab. On identification the final opinion with signature was marked as Exbt.P-18.

During cross-examination she stated that the parents of the victim never informed the name of the accused at the first instance while she examined the victim.

18. PW-15, Dr. Pallab Debbarma deposed that on 30.10.2021 he was posted as M.O. of Dhalai District Hospital, Kulai and on that day performed duty as Emergency Medical Officer. That day he received a prayer from the I.O. for medical examination of the accused and accordingly he examined the victim and after examination he opined that there was nothing to suggest that the accused was not capable of having intercourse in normal course and he identified the report marked Exbt. P-19/1. He further stated that during examination biological samples of the accused, i.e. blood sample in gauge cloth, penile swab of glan penis, penile swab and smear of body of the penis,

urethral swab, pubic hair were seized by I.O. in presence of witnesses and the witness identified his signature on the seizure list marked Exbt.P-8/2. He further stated that the biological samples were handed over to the I.O. for examination and report by Forensic Analyst and he identified the handed over memo and identified his signature marked Exbt.P-20. During cross-examination nothing came out relevant.

19. PW-16, Mamata Debnath is the seizure list witness in whose presence the biological samples were collected by I.O. by preparing seizure list and the witness identified her signature on the seizure list dated 26.10.2021 marked Exbt.P-7/2.

20. PW-17, is the victim girl. Learned Trial court before recording her statement in question answer form and from her evidence it appears that before the Learned Trial court she stated that the incident took place at about 1 pm in the house of the accused and the accused dashed her on the bed he removed her pant and thereafter he inserted his private part to her vagina for which she sustained injury in her vagina and blood came out. She identified the accused in the court in the dock.

During cross examination she admitted that she was tutored by his father.

20. PW-18 Reena Debbarma deposed that on 06.11.2021 I.O. produced the victim before the court for recording her statement and accordingly she recorded her statement and she gave rational answers. The witness identified the statement of the victim along with signature of the witness marked Exbt.P-21 as a whole. During cross nothing came out relevant.

20. PW-19 Shova Rani Teli is the I.O. who conducted the investigation of the case and laid chargesheet after completion of the investigation. She deposed that on 26.10.2021 she was posted at Ambassa Police Station as Sub-Inspector of Police and on that day Inspector Himadri Sarkar was the Officer-in-Charge of Ambassa Police Station. On that day upon receipt of an information given by the Emergency Medical Officer of Dhalai District Hospital at Kulai she went to Kulai Hospital and consulted with the father of the victim Ramesh Debnath and as per his version recorded the oral ejahar and thereafter handed over the contents to him. She identified the oral ejahar written by her in Bengali and on identification the same was marked as Exbt.P-1/1. She identified her endorsement on the margin of oral ejahar marked as Exbt.P-1/2. She further stated that she forwarded the oral ejahar to OC, Ambassa Police station and accordingly the case was registered. The endorsement on the margin of ejahar was marked as Exbt.P-1/3. She also filled up the printed FIR form and identified the same

marked Exbt.P-22 and the signature of Inspector Himadri Sarkar on the FIR marked Exbt P-22/1. She also filled up the computer generated FIR and the same was marked as Exbt. P-23 and the signature of Himadri Sarkar marked as Exbt.P-23/1. The hand-sketch map of the P.O. with index were marked as Exbt.P-24 as a whole and Exbt.P-25 as a whole. She further stated that on 26.10.2021 she made a prayer to EMO, Dhalai District Hospital for medical examination of the victim considering the seriousness and accordingly the victim was examined by the Medical Officer and she collected the medical examination report. She further stated that the Medical Officer handed over the biological samples of the victim to her and she seized those samples besides wearing apparels i.e. a pink top and a blue skirt of the victim under a seizure list and identified the seizure list marked Exbt.P-7/3 and the signature of the witness marked as Exbt.P-7/4. Seized wearing apparels were marked Exbt. MO-1 and Exbt. MO-2. She further stated on 30.10.2021 she caused arrest of the accused and produced him for his medical examination and potency test. She identified the medical examination report of the accused on the seizure list marked Exbt.P-8/3 and the signature on the seizure list marked Exbt.P-8/4. On 30.10.2021 she seized a blue long pant, a light-blue printed T-shirt, a white vest and brief of the accused by a seizure list and identified the same marked Exbt P-9/2 and Exbt.P-9/3. She further deposed that she further identified Exbt.

MO-3, Exbt. MO-4, Exbt.MO-5 and Exbt.MO-6. She also deposed that on 03.11.2021 she seized original birth certificate and disability certificate of the victim under a proper seizure list and identified the seizure list marked Exbt.P-4/3 and the signature of witness on the seizure list marked Exbt.P-4/4. She also identified the birth certificate and the disability certificate which were marked as Exbt.P-5 and Exbt.P-6. She further stated that the victim was produced before the court after recording her statement. She examined witnesses and recorded under Section 161 of Cr.P.C. She sent the biological sample to the TSFSL, Narsingarh and on completion of investigation she laid chargesheet against the accused.

21. PW-20 Dr. Juthika Debbarma deposed that on 28.10.2021 she was posted as Associate Professor, Department of Forensic Medicine and Toxicology, AGMC & GBP Hospital, Agartala and on that day the victim was produced before her by the I.O. in connection with Ambassa Police Station Case No.2021 ABS 058 dated 26.10.2021 under Sections 342/376(2)(i)(1) of IPC read with Section 4 of POCSO Act. The victim was produced accompanied by her father and it was alleged that on 26.10.2021 she was raped by the accused and she was taken to Dhalai District Hospital at Kulai and thereafter she was referred to AGMC & GBP Hospital, Agartala. She examined the victim with the consent of her father and advised X-ray of right shoulder

joint, right elbow joint and right wrist joint and pelvis (AP view). She prepared the report in her own handwriting which bears her signature but final opinion was kept reserved till receipt of radiological examination. She identified the report marked as Exbt.P-26 and signature on the report marked as Exbt.P-26/1. She further stated that on the report the RTI of the victim was taken and identified the same marked as P-26/2. She further stated later on 08.11.2021 upon receipt of X-ray report of the victim as advised and on perusal of the same coupled with the dental examination she opined that the victim is more than 14 years of age but less than 15 years. The final report was marked as Exbt.P-26/3 as a whole. During cross-examination nothing came out relevant.

These are the sum and substance of the on the evidence on record of the prosecution in respect of determination of charge levelled by the prosecution against the appellant.

22. At the time of hearing of argument Learned counsel for the appellant submitted that the evidence of the prosecution suffers from various infirmities and on the face of the evidence on record there was no scope to convict the appellant by the Learned Trial court below and Learned counsel urged for allowing this appeal by setting aside the judgment and order of conviction and sentence awarded by Learned Trial court. It was further submitted that the age of

the victim could not be proved by the prosecution for drawing inference of offence punishable under the POCSO Act. Situated thus, according to Learned counsel for the appellant that the Learned court below without proper appreciation of the evidence on record found the appellant to be guilty and convicted him accordingly for which the interference of the court is required. It was further submitted by the Learned counsel that the appellant in the given case the prosecution could not prove the exact place of occurrence because the P.O. could not be identified by the prosecution properly whether it was inside the room or under the Tamarind tree and there was no explanation in this regard from the side of the prosecution which creates a doubt about the genuineness of the prosecution story. There is a discrepancy in respect of the so called "rape committed" and as per the statement of victim child and the statement of the Medical Officer (PW-14) it is in the house of the accused person in his bed room the same has taken place and as per the evidence of the mother of the victim child (PW-2) rape has been committed outside the house or beneath a tamarind tree in a house of Mog community repeatedly. So learned counsel finally urged for setting aside the judgment of the Learned Trial court.

22. On the other hand, Learned P.P. representing the State submitted that admittedly in this case the victim is a mentally challenged girl having disability certificate. The

prosecution in order to substantiate the charge has adduced in total 20 numbers of witnesses and all the witnesses of the prosecution were thoroughly cross-examined by the accused-appellant but their evidence could not in any manner shattered at length by the appellant and furthermore Learned P.P. submitted that the appellant could not make out any defence case to disbelieve the prosecution story. So he urged for dismissal of this appeal and prayed for upholding the judgment and order of conviction by the Learned court below.

23. We have heard the detailed argument of both the sides at length and gone through the record of the Learned court below very carefully the evidence on record. Admittedly in this case the victim girl is a mentally challenged girl having disability certificate. The prosecution in this case to substantiate the charge has adduced in total 20 numbers of witnesses. The evidence of PWs 1, 2, 4 and 5 are so trustworthy and convincing that the appellant by the trend of thorough cross-examination of those witnesses could not raise a single circumstance or cloud to disbelieve their evidence and furthermore the evidence of victim recorded by the Learned Trial court is so trustworthy that in no way her evidence can be disbelieved. Even the Magistrate recorded the statement of the victim girl also appeared and confirmed the statement of the victim girl that the appellant in course of defence failed to discredit the evidence of those material witnesses before the court. Even

from the report of Medical Officer it is crystal clear i.e. on the alleged day the accused forcefully committed rape upon the victim for which she sustained profuse bleeding injury to her private part. Thus from the evidence on record and after hearing both the sides it appears to us that the Learned Trial court below after appreciating the evidence on record rightly convicted the appellant in this case for which we do not find any scope to interfere with the judgment delivered by Learned court below. Hence the appeal filed by the appellant stands dismissed on contest being devoid of merit. The judgement and order of conviction of sentence dated 13.12.2022 delivered by Learned Special Judge (POCSO), Dhalai Judicial District, Ambassa in connection with Case No. Special (POCSO) 11 of 2021 is hereby upheld and accordingly it is affirmed.

Send down the LCRs along with a copy of this order.

JUDGE

JUDGE

**MOUMITA
DATTA**

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