

HIGH COURT OF TRIPURA
AGARTALA

Crl. A(J) No.53 of 2023

Sri Neikhupman Halam

S/o: Sri Imluilian Halam,
R/o: Vallukcherra, Ward No.03,
District: North Tripura.

On behalf of:-

Sri Neikhupring Halam @ Ringa

S/o- Sri Imluilian Halam,
Of Vallukcherra, Ward No.03,
District:- North Tripura.

..... Appellant(s).

Versus

The State of Tripura

.....Respondent(s).

For Appellant(s)	:	Mr. B. Deb, Advocate.
	:	Mr. V. Ghosh, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	01.08.2024
Date of Judgment	:	29/11/2024
Whether fit for reporting	:	No

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

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The appeal arises out of the judgment dated 14/08/2023 passed by Ld. Special Judge (POCSO), North Tripura, Dharmanagar, in Case No. Special (POCSO) 38 of 2019 whereby the appellant was convicted under Section 354 of Indian Penal Code (for short-IPC) and under Section 8 of the POCSO Act and was sentenced to suffer Rigorous Imprisonment for 4(four) years and to pay a fine of Rs.1,000/- respectively, under both the counts.

[2] The victim lodged the FIR in writing on 25.03.2019 alleging *inter alia* that on 16.03.2019 she went to the house of one Neikhupjui Halam (Sister of the appellant) to enjoy TV and thereafter she slept with her in her room. In the dawn, at about 4:00 AM Neikhupjui Halam left the bed and taking the chance thereof, the

appellant pressed her breast to do illicit act. When she woke up, he fled away. It was further alleged that earlier once also the appellant did this type of filthy act with her. In the morning thereafter, she came to her house and disclosed the matter to her mother. As the locals tried to mitigate the matter, there was a delay in lodging the FIR. The police authority registered the FIR as Panisagar PS Case No.17 of 2019 under Section 354(A) of IPC and Section 8 of POCSO Act, 2012 and PW-11 SI Biswajit Debbarma after completion of the investigation submitted the charge sheet under above said provisions of law against the appellant. The appellant denied the charges framed by Special Judge (POCSO) under above said provisions of Section 354(A) of IPC and Section 8 of POCSO Act, 2012 and claimed to be tried.

[3] The prosecution examined total 11 witnesses in the case and the appellant also examined 3 witnesses on his behalf. Finally, Ld. Special Judge ultimately held the appellant guilty of commission of offences under section 354, IPC and Sec.8 of POCSO Act.

[4] At the time of hearing learned counsel Mr. Bhaskar Deb for the appellant strenuously argued that there was 9 days delay in lodging the FIR without any explanation and that all the material witnesses were close relatives of the victim and the initiation of prosecution was due to previous enmity between the parties. According to Mr. Deb, Ld. Counsel, the father of the victim himself did not support the victim but despite the same he was convicted. While taking to the notice of the court the evidences placed on the record, learned counsel argued that no neighbouring people or any local club member or villager was examined in the case, rather PW-5, one aunt of the victim, whose house was situated 3 km away from the place of occurrence, was examined. Learned counsel also argued that the victim, as per her version, went to enjoy TV in the house of appellant but no TV was seized by the police. The last point, as raised by learned counsel was that from the side of

defence, 3 witnesses were examined whose version fully corroborated with each other but learned trial court wrongly ignored their evidences.

[5] Mr. S. Ghosh, learned Addl. P.P. referring to a portion of cross-examination of the victim, where she admitted that she had earlier stated to the police, scribe and the Magistrate that she agreed to go to the house of Neikhupjui Halam after her persistent request and the appellant while touching her breast, body and other parts pulled of her wearing apparel upward, submitted that by this portion of cross-examination itself the charge was proved beyond reasonable doubt as it was substantive piece of evidence without recording of any omission in this regard with reference to her previous statement. Mr. Ghosh, learned Addl. PP, further submitted that the statement of both the mother and the victim had corroborated with each other and what they had stated was also reflected in the FIR and, therefore, there was no reason to disbelieve both the same witnesses. According to him, the victim appeared to be a trustworthy witness, there was no necessity to examine any other local witnesses and just because the father of the victim did not support her, there was no reason to brush aside the entire evidence of the victim and her mother.

[6] While taking into consideration the submissions and counter-submissions of both the parties and on perusal of the record it appears that out of total 11 prosecution witnesses, PW-1, PW-2, PW-4, PW-5 and PW-9 are the most relevant witnesses of the prosecution and, therefore, their evidence are required to be considered first.

[7] PW-1 (mother of the victim) stated in the court that both the appellant and her sister, Neikhupjui Halam were the children of sister of her husband and about two years ago, one day the victim went to stay with Neikhupjui Halam in her house for the night which was situated at a distance of 50 cubits away. On the following morning, the victim came to the house crying and divulged that when she was sleeping with Neikhupjui Halam, due to abdomen pain Neikhupjui changed the

bed and went to sleep in another room leaving the victim alone in her bedroom and at that time, the appellant woke up and came near the bed of the victim and touched her person and also pressed her breast and other portion of her body. He also hugged and kissed her and tried to have physical intercourse with her but somehow, the victim managed to rescue herself from the grip of the appellant and rushed to her house and reported the matter to her (mother) and her husband. She further stated that initially, they did not inform the matter to anybody out of shame but subsequently, informed it to the local people and to the club member of their locality. In her cross-examination, it came out that Multamani Halam, Neijarning Halam and Raidongnir Halam were their next-door neighbours and her parents-in-law would also reside close to their bedroom. In fact, none of the above said witnesses were examined by the prosecution. The witness further stated that there were two bedrooms and one kitchen in the house of the appellant and the dwelling house of PW-1 was situated within the land of the father of the appellant and earlier, they had a dispute with the appellant and his father. She further stated that in the house of the appellant, his parents would also reside in the adjacent bedroom of Neikhupjui Halam. She further stated that in the morning of the incident itself, they reported the matter to the police.

[8] PW-2 stated that the victim was his niece and one day, the victim went to stay in the house of Neikhupjui Halam to stay with her for a night. He further stated that due to abdomen pain while Neikhupjui went to the nearby bedroom, the appellant came to the bedroom of Neikhupjui and tried to have physical relations with the victim but the victim somehow rescued herself and fled away. In his cross-examination, he stated that the appellant is a married person having two children. He also admitted that he was not a witness to this occurrence.

[9] PW-4 i.e. the Victim also similarly stated that in the month of March, 2019, on persuasion by Neikhupjui Halam she went to her house and had dinner

with her. There she watched TV in the bedroom of her elder brother, i.e. the appellant and thereafter she slept with Neikhupjui Halam in said room. She also stated that when they were watching TV the appellant slept on his bed and she along with Neikhupjui slept on the ground after watching TV. In the early morning, Neikhupjui went out of the bedroom leaving her alone, and suddenly, the appellant caught hold of her and by pulling her wearing apparels upwards, touched her breast, belly and other portion of her body and also kissed her in different portions of her body. She caught hold of his hand and could understand that it was the appellant. Somehow she went out of the bedroom, and rushed to her house and reported the matter to her parents. She also stated that local people and the village headman tried to address the issue for which delay was caused in lodging the FIR.

[10] In her cross-examination, she stated that she went to Panisagar PS accompanied by her parents. She also stated in her cross-examination, as indicated earlier, that she had told the police, scribe and the Magistrate that she agreed to go to the house of Neikhupjui Halam after her persistent request and the accused while touching her breast, body and other portions of her body pulling her wearing apparels upwards, she caught hold of his hand and could recognise him. Learned Addl. PP laid much emphasis on that portion of the evidence. The defence with reference to that portion later on gave a denial of above said facts.

[11] PW-5 also stated similar facts that to enjoy TV the victim went to the house of the appellant and stayed there for the night but in the early night when Neikhupjui Halam went out of the bedroom, the appellant suddenly caught hold of the victim and touched different portion of body by pulling her wearing apparels upwards. In her cross-examination, she stated that her house was situated at a distance of 3 k.m. from the house of the victim. She did not divulge as to how she had learnt said facts.

[12] Now, if whole stock of the evidences as reflected are considered, it appears that there has been a delay of 9 days in lodging the FIR. Though the victim stated that local people and village headman had tried to solve the issue for which there was a delay in lodging the same, but none of the villagers was examined to corroborate that portion of evidence. It is fact that just because there was a delay in lodging the FIR, entire prosecution version cannot be disbelieved; however, such delay creates a passage of exaggeration or even false implication of the accused-appellant in a criminal trial if such a delay is not properly explained.

[13] The Apex Court in ***State of H.P. v. Gian Chand*, (2001) 6 SCC 71** held thus:

“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case....”

[14] Admitted position is also that the victim and her family members were residing on a land that belonged to the father of the appellant and prior to the alleged incident there was a dispute between both the parties on that issue. Therefore, evidences of witnesses are required to be appreciated more cautiously. The mother of the victim, (PW-1) stated that there were two bedrooms and one kitchen in the house of the appellant. According to the victim, the parents of the appellant would reside in the adjacent room. It has also come out in the evidence that the appellant is a married person having two children and, therefore, necessary inference would be that in another bedroom where the victim slept in the alleged night of incident, the wife of the appellant and her children were also there with the appellant. There is also no evidence that on the alleged date of incident the wife and the children of the appellant were not available in the house. Thus, it would create a serious doubt as to

how the appellant had committed such misdeeds in presence of others in the said room. Though according to the victim and her mother, the villagers and local club members were informed, but none of them was examined. Another surprising fact is that the father of the victim (PW-9) in his evidence stated that he would know nothing about the background of the case as to why the same was lodged against the appellant, as his wife and daughter did not divulge it to him. In his cross-examination, he stated that later on he came to know that his wife had lodged the case against the appellant on false pretext out of previous rivalry. He further admitted that few days prior to the said alleged incident, the appellant had quarrelled with his (PW.9) wife with regard to their homestead land. This witness was not declared hostile by the prosecution, and nothing came out in the evidence to show any probable reason as to why he was deposing against the prosecution version. But learned trial court while convicting the appellant missed to take into consideration all these odds in prosecution case.

[15] The sister of the appellant, namely Miss Neikhupjui Halam, was examined as DW-1 who categorically stated that concerning land dispute there was a hot altercation between the parties as the appellant on that day asked the parents of the victim to vacate their land and at that time, the parents of the victim had threatened the appellant to teach him a lesson. She also stated that they had no visiting terms with the family of the victim for last four to five years on that issue and even there was no TV set in their house and she never invited the victim to come to their house to enjoy TV. Her cross-examination simply consists of denials except one fact that concerning the said alleged incident of outraging the modesty of the victim there was no village meeting held. Even, no denial was also given as to the assertion of the said witness that there was no TV set in their house and that she never invited the victim to watch TV in their house.

[16] DW-2, Smt. Huijonchin Halam a co-villager, stated that she knew both the parties and she had visiting terms with both the parties. She further stated that there was a longstanding land dispute between both the families. In her cross-examination, she stated that she did not know as to why police had arrested the appellant. Rests were only denials.

[17] DW-3, Sri Emluilian Halam is the father of the appellant who also stated about the said quarrel between his son and the parents of the victim and that during such quarrel, the parents of the victim had warned the appellant to teach him a lesson and later on he came to learn that the appellant was falsely implicated in a criminal case. In his cross-examination, he stated that he did not file any civil suit against the parents of the victim concerning the land dispute and the rests were the denials. When both the victim and her mother were admitting about such dispute, such cross-examination of non-institution of any civil suit does not have much bearing on it.

[18] The prosecution proved the birth certificate as well as school leaving certificate of the victim to prove her minority. However, as her age is not in dispute, no further desertion is required on this issue. Anyway, considering the above said lapses in the evidence of the prosecution read together with the evidence of DWs there creates serious doubt about the veracity of the prosecution case and, therefore, the conviction and sentence as awarded by learned trial court are liable to be set aside.

[19] In view of above said discussions, the appeal is allowed. The impugned judgment and sentence are set aside. The appellant is set at liberty.

The bail bond liability of the surety stands discharged.

Return the LCRs forthwith.

Accordingly this appeal is disposed of.

Interim application(s), if any, also stands disposed of.

JUDGE

SUJAY GHOSH

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