

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 56 of 2023

Md. Sohel Miah

.....**Appellant(s)**

Versus

State of Tripura

.....**Respondent(s)**

For the Appellant(s) : Mr. Subrata Sarkar, Sr. Advocate.
Ms. P. Chakraborty, Advocate.
Ms. A.S. Hirawat, Advocate.

For the Respondent(s) : Mr. R. Saha, Addl. PP

Date of hearing & delivery
of Judgment & order : 03.12.2024.

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, JJ]

Heard Mr. S. Sarkar, learned senior counsel assisted by
Ms. P. Chakraborty, learned counsel for the appellant. Also heard
Mr. R. Saha, learned Addl. PP appearing for the State-respondent.

[2] This present appeal is filed under Section 374 of the
Code of Criminal Procedure, 1973 against the judgment & order of
conviction and sentence dated 13.09.2023 passed by the learned
Special Judge, (POCSO), West Tripura, Agartala in connection with
Case No. Special (POCSO) 39 of 2019 convicting the appellant to

suffer imprisonment for 10 (ten) years and fine of Rs 20,000/- (Twenty thousand only) for the offence punishable under Section 376(2)(n) of IPC, in default of payment of fine to suffer Simple Imprisonment (SI) for two months.

[3] The brief facts of the case that the persecution alleged that on 21.07.2019, in the early morning at about 5:00 am, the victim girl aged about 16 years went out of her dwelling hut saying that she would go to Master Chowmohani to attend her tuition class but did not return in due time. Accordingly, they started searching to trace out the victim but did not find her whereabouts. Subsequently, collecting more information about victim-daughter of the informant, they could know in the afternoon at about 4:00 PM that the accused herein by enticing her took away from Master Chowmohani area. Accordingly, thereafter, the informant went to the house of the accused and taking information, the informant confirmed that the accused Soheli Miah kidnapped his victim-daughter. According to the informant, accused Soheli Miah is a married person and he has got two children, still the accused took away the victim only to spoil her life.

[4] The learned Court below sentenced the accused to suffer imprisonment for 10 (ten) years and fine of Rs 20,000/- (Twenty thousand only) for the offence punishable under Section 376(2)(n) of IPC, in default of payment of fine to suffer Simple Imprisonment (SI) for 2 months. Since the convict is sentenced under section

376(2)(n) of IPC, no sentence has been passed under Section 4 of the POCSO Act. However, the accused person Soheli Miah is acquitted from the charge leveled against him under Section 366 of IPC by the learned Court below.

[5] Mr. S. Sarkar, learned senior counsel assisted by Ms. P. Chakraborty, learned counsel for the appellant contends that the victim stated that she knew Soheli Miah, the accused as once she had received a wrong call from his mobile. Subsequently, they had regular conversations and love affair developed between them. In her cross examination, the victim stated that she had stated the police, as well as, before the Magistrate that Soheli took her to various houses of his relatives and he regularly committed sexual intercourse with her in spite of her repeated refusal. Learned senior counsel argues that in both her statements under Section 161 of Cr.PC recorded by the I.O and the statement recorded under Section 164(5) of Cr.PC, the same allegation was not made.

[6] It is further contended by Mr. Sarkar, learned senior counsel for the accused that as per the statement of PW-12, the doctor who examined the victim of the instant case, no external or internal injury was detected from the examination of the victim and the same had been reflected in the report of the witness. According to the said witness, the hymen of the victim was found intact on her examination and there was no bodily injury present on the body of the victim during the said examination. This fact was not at all

considered by the learned Trial Court below. He, further submits that a compromise petition being IA 02 of 2024 in CrI. A(J) 56 of 2023 has been filed on behalf of the accused along with an affidavit made by the victim, wherein, it has been mentioned that the victim is not desirous for punishment of the convict appellant and she has forgiven the convict for his past act. He, therefore, urges this Court to set aside the impugned order dated 13.09.2023 passed by the learned Court below.

[7] On the contrary, Mr. R. Saha, learned Addl. PP appearing for the State opposes the submission made on behalf of the appellants. He contends that the order dated 13.09.2023 passed by the learned Court below should not be interfered with and the instant appeal filed by the appellant be dismissed.

[8] Heard the submissions made at the Bar. Perused the material evidence on record.

[9] It is seen from record that on 29.07.2019, the statement of the victim was recorded under Section 164(5) of Cr.PC by the learned Judicial Magistrate 1st Class, Agartala, West Tripura. The English version of the said deposition exhibited as Exhibit-7 is extracted hereunder:

"I know Sohel Miah for the last one and half years. I had love relationship with him. The house of Sohel is at Sachindralal. On 21.7.2019, I fled with Sohel at my own wish. Later I came to know that Sohel was married and he had a child also. We fled away and stayed in the sister's house of Sohel at Charilam."

From the above quoted statement of the girl, it reveals that she fled with the accused at her own wish and it was not a case of kidnapping/abducting. Accordingly, the learned Court below opined that the accused person cannot be brought within the ambit of Section 366 of IPC to warrant conviction.

[10] It is also seen from record that the original birth certificate of the victim girl was not seized or produced by the prosecution side. The I.O. seized the school certificate issued in the name of the victim girl. A compromise petition being IA 02 of 2024 in the present appeal i.e. Crl. A(J) 56 of 2023 has been filed on behalf of the accused along with an affidavit dated 07.11.2024 signed by the victim, wherein, a statement was made by her as under:

".....5. That, now I am married for the past few years. I have decided to forgo the past incident as I am well settled in life and informant (my father herein) is also inclined to support me.

6. That, I am not desirous for accused's punishment. And I am ready to forgive the accused for the past act and I have also forgiven the accused for the same.

7. That, the accused is a married person and have two children. Looking into the family structure and condition I shall have no grievance if this Hon'ble Court acquits him....."

Hence, in the absence of any original birth certificate of the victim and in view of the above quoted submission made by the victim in the affidavit dated 07.11.2024 that she has been married

for past few years, it cannot be decided whether she was minor or major at the time of alleged incident.

[11] The prosecution witness, PW-12, the Doctor who conducted the medical examination of the victim deposed before the learned Court below that on medical examination, he had submitted his preliminary opinion dated, 28.07.2019 and finally, he had submitted his final opinion in his final report dated 04.09.2019 reflecting that *"even though there was no genital/anal and physical injury and also swab analysis report is negative for seminal fluid/spermatozoa-sexual assault cannot be ruled out"*.

From the above deposition of PW-12, this Court has observed that prosecution was failed to prove rape or sexual assault on the girl and the learned Court below has committed manifest error while passing the impugned judgment dated 13.09.2023 convicting the appellant to suffer imprisonment for 10 (ten) years and fine of Rs 20,000/- (Twenty thousand only) for the offence punishable under Section 376(2)(n) of IPC, in default of payment of fine to suffer Simple Imprisonment (SI) for two months.

[12] With the above observation, this Court is of the view that the impugned order dated 13.09.2023 passed by the learned Court below be set aside and according the same is quashed. The accused is hereby acquitted from the charge leveled against him under Section 376(2)(n) of IPC by the learned Court below. Thus, the

present appeal stands allowed and accordingly the same is disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J



सत्यमेव जयते

Sabyasachi G.

SABYASACHI GHOSH Digitally signed by SABYASACHI GHOSH
Date: 2024.12.05 16:30:02 +05'30'