

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.8 of 2024

Sri Samrat Satnami

S/o Late Panchu Satnami, of-Meglipara,
P.S.-Ranirbazar, Dist.- West Tripura

---Convict-Appellant

Versus

The State of Tripura

---Respondent

For the Appellant(s)	:	Ms. Rajasree Purkayastha, Advocate
For the Respondent(s)	:	Mr. Raju Datta, PP
Date of hearing & delivery of Judgment & Order	:	28.04.2025
Whether fit for reporting	:	Yes

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

The appeal arises from the impugned judgment and order of conviction and sentence dated 09.06.2022, passed by learned Special Judge(POCSO), West Tripura, Agartala in connection with Case No. Special(POCSO) 42 of 2018 whereby the appellant was convicted under Section 376(2)(i) of Indian Penal Code (for short, 'IPC') or alternatively under Section 4 of the POCSO Act and was sentenced to suffer rigorous imprisonment for 10(ten) years and to pay fine of Rs.1,000/- under Section 376(2)(i) of IPC after taking into consideration of Section 42 of POCSO Act.

2. The gravamen in the FIR lodged by the father of the victim (PW.1) is that on 21.09.2017 at about 11:30 am when his

minor daughter aged about 15 years went to the southern side of the Meglipara Tea Garden office to catch fishes in a drain, the appellant forcibly took his daughter inside the tea plantation and raped her. At that time he was returning home and hearing outcry of her daughter, when he reached to the spot, the appellant fled away. The Ranirbazar Police Authority registered the FIR as 2017/RNB/040 under Sections 341, 376(2)(i) of IPC and Section 4 of POCSO Act and proceeded with the investigation, which ultimately resulted in the submission of charge-sheet bearing No.24/2018, dated 12.09.2018, under Sections 341/376(2)(i) of the IPC and Section 4 of POCSO Act. Charge was also framed under the abovesaid provisions of law to which the appellant pleaded his innocence.

3. Prosecution, thereafter, examined 17 witnesses, out of which PW.1 and PW.3 are the parents of the victim and PW.2 is the victim herself. The Medical Officer who examined the victim after the alleged incident adduced his evidence as PW.6 and the Scientific Officer was examined as PW.8. Two neighbours were also examined as PW.9 and PW.14. The concerned BDO of Jirania R.D. Block as PW.13 proved the birth certificate of the victim to establish that date of birth of the victim was 26.09.2004. There is no dispute about the age of the victim. If the evidence of PW.13 is taken into consideration, the age of the victim appears to be 12 years 11 months and 25 days at the time of alleged offence.

4. Ms. Rajasree Purkayastha, learned Legal Aid counsel appearing for the appellant strenuously argues that there were certain serious defects in the prosecution case, as the potency test of the appellant was not done and moreover, if the evidence of PW.9 is considered, it appears that the victim was a consenting party, and already she has married another boy. Learned counsel also submits that no semen was detected during the forensic examination in the vaginal swab of the victim which further indicates that there was no penetration in the private part of the victim.

5. Mr. Raju Datta, learned PP appearing for the State-respondent, on the other hand, seriously objected to the contention of Ms. Purkayastha, learned legal aid counsel submitting that consent of the minor is irrelevant in the case of charge under Sections 376(2)(i) of IPC and Section 4 of POCSO Act and moreover the evidence of the victim and her parents were consistent and trustworthy and even based on the sole testimony of the victim, the accused can be convicted. Learned PP also refers to the evidence of PW.14, Sri Chana Orang who appeared on the spot just after the incident and found the appellant in a compromising position with the victim. According to learned PP, absence of seminal stain or spermatozoa in the vaginal swab of the victim cannot be a ground to acquit the appellant. Finally, learned PP relies on a decision of Hon'ble Supreme Court in the case of ***Independent Thought vs. Union***

of India and Anr. reported in **(2017) 10 SCC 800** wherein dealing with the issue of marital rape, the Apex Court observed that exception 2 to Section 375 of IPC in so far as the girl below the age of 18 years is concerned, is liable to be struck down on the ground that it was arbitrary, capricious, whimsical and violative of right of the girl child and not fair, just and reasonable and therefore, violative of Articles 14, 15 and 21 of the Constitution of India and is inconsistent with the provision of the POCSO Act. The decision of the Apex Court in that case was based on the logic that sexual intercourse with a girl below 18 years of age is rape, regardless of whether she is married or not and the exception carved out in the Indian Penal Code as indicated above creates an unnecessary and artificial distinction between the married girl child and the unmarried girl child and such a restriction was arbitrary and discriminatory.

6. We have given our anxious consideration to the submissions of both the sides.

7. PW.2, the victim, categorically stated that on the above said date and time, she went near a drain at a considerable distance from their house at Meglipara Tea Garden for catching snails and fishes and suddenly the appellant appeared there, dragged her into the jungle of the tea garden and forcibly committed rape upon her by removing her wearing apparels and by pressing a piece of cloth on her mouth. However, when she shouted, her father was passing through that

area and he appeared there and then the appellant absconded. The victim also identified the appellant in the court. In her cross-examination, she stated that apart from her father, none appeared on the spot after hearing her outcry and at the time of alleged incident she was wearing a yellow green kamij (frock) and one blue colour leggings (long pant).

8. The father of the victim, PW.1, corroborating her similarly stated that on the relevant date and time of the said incident, he was returning to his home and on hearing shouting of his daughter he rushed to the place and found the appellant was absconding seeing him. He also stated that at that relevant time, her daughter went near a drain situated at a distance of five minutes walking to catch fishes and thereafter the appellant forcibly took her to nearby jungle of tea garden and committed rape upon her. The portion of his evidence that the appellant had forcibly dragged the victim inside the jungle was omitted in his previous statement recorded under Section 161 of Cr.P.C., but such omission does not appear to have much significance. In his cross-examination, he confirmed that after hearing the outcry of his daughter when he arrived there, he found the accused was forcibly committing sexual penetration on his daughter, and on seeing him, the appellant fled away. However, at that time his daughter was not tied with any rope or napkin. He also stated that at the relevant point of time, there was no tea garden worker present in that place.

9. PW.3, mother of the victim, also stated similar facts in her evidence like PW.1. According to her, she heard the said incident from her daughter. In her cross-examination, she stated that her daughter was married at the time of her deposition. She also admitted that during the negotiation at the village level, they had asked for monetary compensation from the appellant.

10. PW.14, Sri Chana Orang stated that in the month of September, 2017, at around 11:00 am, he heard hue and cry coming from the jungle and thereafter he rushed to the spot and found the appellant and the victim there, and the victim stated to him that the appellant had committed rape upon her. In his evidence, he stated that he heard the cry of the victim when he was proceeding towards his workplace whereas in his previous statement recorded under Section 161 Cr.P.C he stated that he heard the same when he was proceeding towards his house. This variation is a minor variation and for such variation, his entire evidence cannot be doubted. In his cross-examination, he confirmed that he found the victim without any wearing apparel on her person. He also further stated that after one week of the alleged incident, the victim was given marriage.

11. PW.9, another co-villager, namely Sri Bishu Munda stated that at around 11:30 am on the date of incident he found the appellant and the victim in a compromising position not having their clothes, nearby a stream of water and also found the father of the victim to be present there to catch hold of them,

and at that time the appellant fled away and the victim returned back home crying after being rebuked by the informant. There was no cross-examination of this witness barring a few denials. His evidence also completely corroborates with the evidences of the victim and her father.

12. PW.6, the medical officer, namely, Santanu Paul examined the victim and stated that on examination of the victim on the date of the incident itself he did not find any external injury on her person but on examination of her private part, slight blood stain was found in the vagina and hymen was also found torn which was fresh in nature. After taking note of the forensic examination report, he finally opined that there was sign and suggestion of penetration of the vagina by penis or penis-like object. According to him, the history of rape was given to him while he was examining the victim.

13. PW.8, Dr. Sabyasachi Nath, Sr. Scientific Officer of State Forensic Science Laboratory, stated that on 28.06.2018 they received one sealed parcel containing vaginal swab, cervical swab, blood and urine sample of the victim and also the panty, leggings, kamiz and dupatta of the victim along with the blood sample of the appellant, but on examination they did not find seminal stain/spermatozoa of human origin in those items. However, scanty blood stain was detected in the vaginal swab and cervical swab of the victim.

14. On consideration of the above said evidence of both PW.6 and PW.8, it appears that the medical examination report completely corroborates the history of rape as stated by the victim. Learned counsel for the appellant, Ms. Purkayastha though argues that seminal stain/spermatozoa of human origin was not found in the vaginal swab of the victim and therefore, the history of rape became doubtful, but, we are not convinced with such submission as the absence of any spermatozoa in the vaginal swab cannot alone belie the prosecution story of rape. Nothing is found from the evidences of above-mentioned witnesses to raise a presumption that the victim was a consenting party, and moreover, the consent of a minor is irrelevant in such cases. Even the potency test of the appellant is also not essential to prove the charge of penetrative sexual assault or rape, more particularly when there are other overwhelming evidences in support of charge of rape and there is also no claim from the appellant that he was incapable physically of doing sexual intercourse.

15. There are sufficient evidences against the appellant, which attracts both the provision under Section 376(2)(i) IPC and Section 4 of POCSO Act and therefore, according to us, the learned Trial Court rightly convicted the appellant under above said provisions of law. Though learned counsel for the appellant, Ms. Purkayastha finally submits that as the victim was already married, some lenient view may be taken in the matter of

sentence of the appellant, but, it appears that the minimum prescribed punishment was imposed upon the appellant by the learned Trial Court. Therefore, no further interference in this regard is also called for.

16. In view of above discussion, we do not find any merit in the appeal, and accordingly, the instant appeal stands dismissed.

17. Communicate a copy of this judgment to the learned Trial Court.

Also re-consign the Trial Court Records.

Interlocutory application(s), if any, also stand disposed of.

(S.D. PURKAYASTHA), J **(APARESH KUMAR SINGH), CJ**

Rohit

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