

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 11 of 2024

1. Sri Manoranjan Sharma, son of late Umesh Ch. Sharma, resident of Pukuria Lunga, Nagichhara, P.S. Srinagar, District: West Tripura.

.....Appellant

-VERSUS-

1. The State of Tripura.

..... Respondent.

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

For Appellant(s)	:	Mr. Ratan Datta, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	27.05.2025
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, JJ]

Heard Mr. Ratan Datta, learned counsel appearing for the appellant and Mr. R. Saha, learned Addl. Public Prosecutor, appearing for the respondent-State.

[2] The present appeal has been filed under Section-374(2) of Cr. P.C. against the impugned judgment and order of conviction and sentence dated 12.04.2021 passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Special (POCSO) 31 of 2018 whereby and whereunder, the appellant has been convicted under Section-376(2) (f) of IPC and Section-6 of the POCSO Act and thereby sentenced him to suffer RI for life and order to pay a fine of Rs.50,000/- and in default, he shall suffer SI for a term of 5 months.

[3] The Prosecution case in brief is that on 29.07.2017, in the evening at about 6.30 PM, the appellant asked the victim to massage his

head and body and subsequently, started talking with her with sexually explicit languages. Owing that situation, the victim stated to have tried to get away from the side of her father, but he did not allow her to go away and further asked her mother to leave the room. The accused allegedly threatened the victim's mother to give dao blows if she interrupts or raises objection and being frightened with the same, mother of the victim stated to have left the room, whereafter, the accused started applying force upon her and also asked her to open her wearing apparels. As the victim resisted against his wish, it is stated that the accused slapped her very hard as a result of which she suffered pain.

[4] In the ejahar, the victim alleged that subsequently, the accused forcefully removed the wearing apparels of the victim and started touching her private parts. It is stated that as the victim tried to resist again, the accused assaulted her and subsequently, compelled her to touch his own private parts. It is alleged that the accused then forcefully grabbed the victim and committed misdeed with her and after fulfilling his lust upto his satisfaction, he relieved the victim. The victim further alleged that on the next day, the accused again tried to commit the similar misdeed with her when her mother raised objection and as they both got involved in an altercation, the victim ran away from the house and took shelter in a nearby jungle, where-after she took the course of Law with the help of her neighbors. It is further pleaded by the victim that the accused regularly tortures her mother physically and mentally and further threatened to kill them, if they divulge the incidents to anybody.

[5] Based on the written complaint of victim-informant, a Case was registered at Srinagar PS vide No. 2017/SRN/019 on 31.07.2017, under Sections-376(2)(f)(i)/323/498A/323 of the IPC. During trial, upon consideration of the record and the documents submitted therewith and also hearing submission of both sides, charge was framed against the accused under Sections-376(2) (f)/323/506 of the IPC read with Section-6 of the POCSO Act and hearing the matter & contents of the same, he pleaded not guilty and claimed to be tried.

[6] In order to prove the case the prosecution has examined as many as Witnesses. At the time of examination under Section-313 of Cr. PC the accused denied all the incriminating materials which appeared in the prosecution evidences and adduced himself as DW1 in his favor. After hearing of both the parties Ld. Court below convicted the appellant Under Section 376(2) (f) of IPC and Section 6 of POCSO Act and thereby sentenced him to suffer RI for life and to pay a fine of Rs 50,000/- only in default of payment he shall suffer simple imprisonment for 05(five) months.

[7] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

“21. In the result, I firmly hold that the prosecution has succeeded in proving the charge against the accused Manoranjan Sharma U/Ss-376(2)(f) of the IPC and Sec-6 of the POCSO Act, beyond all reasonable doubts. At the time same, I also find and hold that the prosecution has failed to confirm and prove the charge against the accused U/Ss-323/506 of IPC and accordingly, the accused stands acquitted from the same.

The accused having been found guilty for commission of the offences punishable U/S-376(2) (f) of the IPC and Sec-6 of the POCSO Act, is hereby convicted for the same and thus found liable to be punished.

22. At this stage, I have also considered the applicability of the Probation of Offenders Act to the convict, as Sec-4 of the Act provides for the same. It is a common thinking of any prudent man that a person, if found guilty of committing an offence, shall be punished. Graver the offences, more severe should be the punishments. Thinking of this notion with the provisions of the Probation of Offenders Act, I do not think that the facts of the present case, does in any way or manner, fit properly towards giving benefit to the convict under this Law. Simple reason behind is that the convict, in this case, has not only crossed the balance of nature's most sacred relationship, but has also maligned the family as a social and divine institution. Most importantly, the degree of breach of trust that he has committed, is unexplainable which cannot be compensated in any existing earthly form.

Thus, I believe that it would be just and reasonable not to extend the benefits of the Probation of Offenders Act to the present convict and his punishment is deemed to be necessary.

23. At this stage, hearing the convict extensively on the point of his sentence is found necessary and hence, pronouncement of the judgment is kept reserved for the next date.

24. The convict is accordingly taken into custody and sent to J.C. till 13.04.2021. On production of the convict tomorrow, judgment shall be pronounced after hearing him on the question of his sentence.”

[8] The appellant herein, being aggrieved by and dissatisfied with the impugned judgment and order of conviction dated 12.04.2021, has preferred this present appeal for ends of justice.

[9] Mr. Ratan Datta, learned counsel appearing for the appellant has submitted that the findings as arrived at by the learned Court below is perverse and unwarranted in law. The learned Court below held the convict appellant to be guilty of alleged offences on the basis of no evidence in as much as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence. The alleged participation of the appellant in the commission of the alleged offence are absolutely doubtful and on the basis of such evidence the appellant could not be legally convicted for the alleged offence.

[10] It has been contended that on the basis of the improved versions of all the PWs, convicted and sentenced the appellant only on surmise and conjecture. On the following day of alleged incident police visited the house of the victim but they did not divulge the alleged incident and there is a delay of lodging the FIR, which place fatal for the prosecution but the learned Court below fails to appreciate that.

[11] As per the medical report of PW-23 Dr. Chinmoy Das, there was no injury on her private part at the time of the alleged incident. Further the report clearly reveals that hymen of the victim girl was torn earlier. So the statement of PW-2 that she was raped by the accused on the 27.07.2017 does not corroborate with the version of the expert evidence that is PW-23 as her hymen was found to be torn much earlier than the date of the alleged incident which clearly highlight that the deposition of PW-2 are contradictory and not believable in the eye of law.

[12] Pursuant to the deposition of PW-4, Dr. S. Nath and as per the forensic report there were no seminal stain/Spermatozoa or blood stain in the vaginal swab of the victim meaning thereby there is no conclusive proof that rape was committed by the accused upon the victim. As per the deposition PW-23 Dr. Chinmoy Das there is no specific and precise observation of recent sexual intercourse with the victim by the accused person. The learned

Court below did not consider the above mentioned facts and circumstances of the case and as such the order passed by the learned Court below is erroneous and not sustainable.

[13] The learned Court below has failed to appreciate that the accused is serving as TSR since 2000 and has been discharging his duties with utmost dedication. The wife of the accused i.e. PW-1 did not perform her matrimonial duties and obligations and was never interested to reside with the accused. Further, PW-1 often used to inflict mental and physical torture upon the accused. PW-1 often used to invite unknown persons for leading immoral life taking the advantage that the victim was posted at various places across the nation owing to his professional commitment. Finding no other alternative the accused and PW-1 filed a divorce petition bearing case No. 266/2017 but, in order to drag the accused out of his house and to seek undue benefit, PW-1 often used to raise slanderous allegation against the accused and hence forth putting her daughter in the driving seat. PW-1 and PW-2 had conspired and levelled allegation of rape by the accused which untenable in the eye of law.

[14] PW-2 raised no objection during the alleged incident even though she being an able bodied woman ought to have raised objection if such heinous offence would have been committed upon her daughter i.e. PW-2 by her husband i.e. the accused. So, it is clearly evident that the deposition made by PW-2 is hypothetical and does not stand in the eye of Law. Also there is sheer mismatch of the depositions made by the PW-2 under Section-161 and 164 of Cr. PC.

[15] The testimony of the prosecution witness 1 and 2 do not corroborate with each other as per deposition of PW-2 during the alleged incident of rape, her mother i.e. PW-1 was in the kitchen and when she came inside the room, the accused threatened to kill her by dao blows and compelled her mother to go out of the room whereas as per the deposition of the PW-1 there was neither any whisper regarding the threat imposed upon the PW-1 nor there was any objection raised by the PW-1 during the alleged incident of rape. Rather PW-1 shockingly deposed that after her returned from her kitchen PW-2 inform that the accused raped her. So there is a clear

contradiction among the versions of PWs-1 & 2 and as such, the depositions stated by PWs-1 & 2 is hypothetical, not believable in the eye of law.

[16] Apart from the prosecution witness 1 and 2 almost all the prosecution witnesses are hearsay witnesses and as such the testimony of the hearsay witnesses is not reliable as per Section-60 of the Indian Evidence Act. ON behalf of the appellant, he himself was examined as DW-1 who categorically stated that he has been falsely implicated the instant case. He further highlighted that there was a long standing dispute between the appellant and his wife and ultimately he was compelled to file a divorce suit. He further stated that his wife and daughter used to lead immoral life and he protested against their activities hence, he has been falsely implicated in the instant case. On the alleged date and time no such occurrence took place at all.

[17] Mr. Datta, learned counsel appearing for the appellant has placed reliance on a judgment of Division Bench of this Court in ***Crl. A(J) No.34 of 2024, titled as Sri Dipak Debnath v. The State of Tripura***, wherein, the Court has observed as under:

“[19] There has been delay of four days in lodging the FIR. As per the printed form of FIR, the distance of the place of occurrence from the police station was only about 9 km. Though in the FIR and also in the evidence, PW-1 tried to give some explanation that as her daughter was a physically challenged girl there was some delay in lodging the same but such explanation is not convincing and acceptable. Such alleged disability cannot be a ground of causing delay in lodging the FIR unless she was prevented for other certain probable reasons from lodging the FIR in all promptitudes. Rather it appears that despite the advice of the Pradhan to take shelter of law, she caused further delay of two days in lodging the FIR. In *Thulia Kali vs. The State of Tamil Nadu*; AIR 1973 SC 501 it is held by the Hon’ble Supreme Court that delay in lodging first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is therefore essential that delay in lodging of FIR should be satisfactorily explained. It is also observed by the Apex Court in *Ramdas and others vs. State of Maharashtra*, AIR 2007 SC 155, that mere delay in lodging the first information is not necessarily fatal to the case of the prosecution, however, the fact that the report was lodged belatedly is a relevant fact of which the court must take notice and this fact has to be considered in the light of other facts and circumstances of the case. In the instant case in hand, we are not satisfied with the explanation offered by the informant for the reasons as discussed above.

[20] The next vital point as raised is that Dr. Subhankar Nath (PW-11) was the Deputy Director of DNA Typing Division at State Forensic Science Laboratory, Narsingarh who examined a portion of dried blood sample of the victim girl (marked as Exbt.A in the Laboratory) and dried blood sample of appellant (marked as Exbt.E) and also a portion of semen stained cloth i.e. black/blue colour panty of the victim (marked as Exbt.G), for DNA isolation by organic extraction method and he deposed that he examined the same from 29.06.2020 to 20.07.2020 in the Laboratory and finally came to conclusion that the semen stain which was detected in the panty of the victim did not originate from the dried blood sample of the appellant. His said report was proved by the prosecution as Exbt.P-10. Such report when relied on by the prosecution itself without any dispute, give rise to a serious suspicion of presence of semen of somebody else than the appellant in the panty of the victim. When the prosecution did not make any attempt to discard said evidence of PW-11 and his said report, learned Trial Court committed serious error in discarding it without any valid reason. Just because the evidence of PW-11 was of advisory nature, learned Trial Court was not at all justified to ignore the same without finding any fault with it. Such observation of learned Trial Court appears to be highly irrational. Learned Trial Court relied on many decisions of the Apex Court in the impugned judgment to support the conviction but without much discussion on the evidence actually available in the case. Making of reference of different decisions of higher courts cannot strengthen a case of prosecution nor can cure inherent defects inbuilt in the evidence and also in the decision making process of the Court.”

[18] He has placed his reliance upon a judgment of the Hon’ble Apex Court in ***Rajoo & Others v. State of M.P.***, reported in ***AIR 2009 SC 858*** wherein, the Court has observed as under:

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as

the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

[19] Per-contra, Mr. R. Saha, learned Addl. P.P. has opposed the submission of the learned counsel appearing for the appellant and submitted that the prosecution case is well proved by the evidence of PWs and observation made by the learned Court below is just and proper. Learned Addl. P.P. has vehemently opposed the arguments advanced by the learned counsel appearing for the appellant and contended that the conviction as awarded by the learned Court below needs to be confirmed as the depositions of the prosecution are against the accused person and prayed to dismiss the appeal and confirm the conviction.

[20] In view of the submissions canvassed by the learned counsel appearing for the parties as reflected above, let us make a short survey of the evidence and material placed on records to justify the conviction and sentence declared against the accused-appellant.

[21] Mother of the victim deposed as PW-1 and stated that on 29.07.2017 in the evening at about 6/6.30 pm, she along with her daughter, son and husband were present in the house when her husband touched the body of her daughter which she protested. PW-1 stated that she went to the kitchen for food and after a while her daughter came and informed that the accused raped her. She stated that on the next day, i.e., on 30.07.2017 in the evening, the accused again told them that he would commit rape upon his daughter and earlier in the afternoon he had already physically assaulted the victim by a bamboo stick. On that evening the accused tried to assault PW1 when the victim left the house and could not be traced out after searching her. PW1 also stated that on that afternoon her elder daughter Rupa Sharma (Das) and son-in-law Pankaj came to her house when the victim also narrated the same to them. She further stated that on the same midnight at about 1 am police came to her house but she did not disclose them anything

out of fear of her husband and on the next morning the accused fled away, where-after, the victim lodged her complaint before the police narrating the entire incident. As per PW1 police seized the birth certificate of her daughter and she also confirmed her signature in the seizure list as Exhibit-1.

[22] During his cross-examination, PW-3 admitted that he had written the ejahar at Srinagar PS but he did not give any certificate in the ejahar stating that the same was written as per version of the victim or that she put her signature after admitting it to be correctly written. The witness denied the suggestion that he procured the signature of the victim on a blank paper or that he wrote the ejahar as per his own design. He also denied the fact that on 30.07.2017 on returning back home, his wife did not inform him that on the previous day the accused had asked the victim to give massage on his body after which he talked with her in sexually explicit languages and committed rape. He also denied the suggestion that with other persons of his locality namely, Badal, Bikram, Rajesh and Pradip, he purposefully concocted a false case against the accused to dispossess him from his house or that he deposed falsely.

[23] PW-2, the victim herein, in her deposition as submitted as under:

“The name of my father is Monoranjan Sharma and name of my mother is Gouri Sharma. On 29.07.2017, at about 6.30 pm, my father asked me to give message on his head, hands and legs. Thereafter, I gave message on his head. Thereafter, he started talking with me in sexually abusive languages. Thereafter, he removed my wearing apparels and raped me. Then I protested but he threatened me to kill me by dao blows. At the time of commission of rape, my mother was in the kitchen. When she came to my room, my father threatened her to kill her by dao blows and compelled her to go out of the room. Often, my father used to physically assault us after quarrel. On the following day, in the evening at about 7 pm, police arrived in my house but I cannot say for what purpose police went there. After return of the police from the house, my father started quarreling with my mother and then I left the house and took shelter in the house of my sister Rupa Sharma situated at Aravinda Colony. On that night, my father searched me in different places but could not trace out me. On that night, at about 1 am, husband of my sister Rupa namely Pankaj Das took me to the house of Advocate Shri Raghunath Mukherjee. Hearing the incident from me, perhaps Shri Raghunath Mukherjee informed the matter to the police and as per his asking, I went to the police station on the following morning. After my arrival in the police station, I lodged one ejahar against my father getting it written by my brother in law, Pankaj Das. The ejahar was written by him as per my dictation and being satisfied, I signed therein. This is the said ejahar lodged by me and on

identification, same is marked as Exbt.3. This is my signature in the said ejahar and on identification, same is marked as Exbt.3/1. On that day, police produced me in Anandanagar Hospital where my medical examination was done. On the following day I was produced before the Magistrate at Bishalgarh Court where my statement was recorded by one Magistrate and I signed therein. This is my signature in the said statement and on identification, signature of the witness in her statement recorded U/S 164 Cr.P.C. is marked as Exbt.4. At this stage, face of the accused is shown to the witness through a cell phone display and accordingly, she identifies the accused Monoranjan Sharma as her father.”

[24] Similarly, the accused adduced himself as DW1 and stated that he has been falsely implicated in this Case. He deposed that he entered into service in the year 2000 as TSR and was given posting at Dhalai district. Because of the job, the accused stated that he could only visit his house once/twice a month and his family consisted to his wife, mother and two minor daughters. Initially, he stated that there was good relation amongst his family members, but gradually, it became bitter for which under compulsion, he shifted his family in a rented accommodation at his place of posting. But he observed that the situation did not change as his wife had always quarrelled with him and his old-aged mother. Again he shifted his family to his native place for peaceful life and better education of his children, but his wife forced his mother to leave the house for which a separate accommodation was made for his mother in a nearby village and that whenever he visited his house, he would find some unknown persons in drunken condition. DW1 stated that being depressed with the situation, he left his job in the year 2012 and also was compelled to leave his house and started to live separately at Nagichhara. The witness further stated that one day he went to his house and found that his wife and daughter were leading immoral life, where-after he filed one mutual divorce Case before the Family Court, West Tripura and number of the said Case is T.S. (Divorce) 266 of 2017. The accused also stated that on 29.07.2017, no such incident took place as alleged by his daughter and that she filed this false Case against him at the instigation of his wife with a view to compel him to leave his house, so that she can freely lead her immoral life.

[25] Dr. S. Nath (PW-4) stated to have examined 2 exhibits in the forensic science laboratory and reported to have found no seminal

stain/spermatozoa or blood stain in the vaginal swab of the victim. He identified his report as Exbt.6 and his signatures ad Exbt.6/1 series.

[26] Dr. Chinmoy Das (PW-23) stated to have examined the victim on 31.07.2017 at Anandanagar PHC and could find no injury on her person or private parts. However, her hymen was torn (old) and accordingly he gave his preliminary opinion that there was no injury over the private parts or any other part of the body. He stated that examination of the victim was done after 2 days of the alleged incident as she was undergoing period in normal course and act of recent sexual intercourse upon the victim could not be finalized due to want of forensic examination reports. PW-23 stated that on receipt of the forensic report he finally concluded by saying that there was evidence of vaginal penetration and though nothing came out in examination of the vaginal swab, recent sexual intercourse with the victim could not be ruled out.

[27] Before awarding conviction against accused, the Courts should be mindful of fact that there should be no room to suspect evidence of key prosecution witnesses based on whose evidence conviction is being awarded. As a general rule, while appreciating evidence in a criminal case, Court should bear in mind, that it is not quantity, but quality of evidence that is material. It is the duty of the Court to consider the trustworthiness of witness and evidence adduced on record and to assess the same in a prudent manner, whether the same inspires confidence, so as to accept and act upon, before convicting accused.

[28] It stands well settled that circumstances not put to an accused under Section-313Cr. P.C. cannot be used against him and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

[29] There is a contradiction on the part of the evidence of mother of the victim girl and the victim herself. The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[30] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently, the instant appeal stands allowed. Accordingly, the order of conviction and sentence dated 12.04.2021 passed by the learned Special Judge (POCSO), West Tripura Agartala, in Special (POCSO) 31 of 2018 is set aside. The appellant shall be released forthwith, if not wanted in connection with any other case.

[31] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

B. PALIT, J

T. AMARNATH GOUD, J

A.Ghash

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