

HIGH COURT OF TRIPURA
AGARTALA

Crl.A.(J) 14 of 2024

Sri Khokan Debnath

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant(s)	:	Mr. S. Sarkar, Sr. Advocate. Ms. Ayesha Saha Hirawat, Advocate. Mr. Arpan Jamatia, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	27.05.2025.
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

(T.Amarnath Goud, J)

Heard Mr. S. Sarkar, learned counsel assisted by Ms. Ayesha Saha Hirawat, learned counsel appearing for the appellant also heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of Cr. P.C against the judgment and conviction of order of sentence dated 01.02.2024 passed by the Ld. Special Judge, (POCSO), Sepahijala District, Bishalgarh in connection with Case No.Special (POCSO) 01 of 2020 convicting the appellant to suffer rigorous imprisonment (R.I) for a period of 10(ten) years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) only in default to suffer R.I for 1(one) year for the commission of the offence punishable under Section 6 of POCSO Act.

[3] The prosecution case in brief is that on 02.08.2019 at about 1500 hrs the minor daughter of the informant went to the house of their neighbour Smt. Laxmi Debnath i.e. the mother of the accused Khokan Debnath. About 30

minutes she stayed in the house of Laxmi Debnath and from there she went to the house of the brother in law of the informant. Therefrom, niece of the complainant Manti Debnath sent the victim to her house. At home, the victim told to the informant that Khokan bhai has done something with her and after that informant saw blood in the under garments (panty) of the victim and the victim informed that she was raped by Khokan and after that the informant informed the matter to the local villagers and the informant lodged the FIR against the accused person.

[4] On the basis of the written ejahar SI Ashalata Debnath of Bishalgarh PS registered Bishalgarh Women PS case No. 2019 BLG W018 dated 03.08.2019 against the accused person u/s 376(2)(i) of IPC and 6 of POCSO Act.

[5] SI Ashalata Debnath of Bishalgarh Women PS took up the investigation of the case as per endorsement made by the O/C Bishalgarh Women PS and after conclusion of investigation charge sheet vide no. 27 of 2019 dated 13.11.2019 was filed in this case against the accused person, namely, Khokan Debnath u/s 376(2)(i) of IPC & U/S 6/10 of the POCSO Act, 2012.

[6] After receiving the case record, accused copy was supplied and thereafter charge u/s 376(2)(i) of IPC & u/s 6 of the POCSO Act, 2012 was framed against the accused person and it was read over and explained to him to which he pleaded not guilty and claimed to be tried.

[7] To prove the charge, the Prosecution adduced evidence of as many as 20 witnesses and after closure of the Prosecution evidence the accused person was examined u/s 313 of Cr.P.C. by this Court wherein the accused stated that the prosecution case was false and he declined to adduce any defence evidence from his side.

[8] After hearing both sides, the learned Court below delivered the judgment and conviction of order of sentence dated 01.02.2024 in the following manner:

Order

In the result, the convict namely, Khokan Debnath is sentenced to suffer Rigorous Imprisonment for 10(Ten) years and to pay a fine of Rs.1,00,000/- (Rupees One Lakh) only in default of payment of fine he shall suffer R.I. for further one year for commission of offence punishable U/S 6 of POCSO Act.

[9] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[10] It is contended by the counsel for the appellant that as per the medical report there was no injury in the private part of the victim and if there was no injury it is very difficult to digest that the victim girl was subjected to penetrative assault causing bleeding injury but this fact was not at all considered by the Ld. Trial Court below. He further states that there was no sexual assault, no injury could be detected by the Medical officer this fact was not at all considered by the Ld. Trial Court below.

[11] He further contended that there are material discrepancies between the statements of the witnesses, yet this fact was not at all considered by the Ld. Trial Court. He further submitted that as per the evidence of the victim she did not agree to show her female organ to Doctor since her mother told her not to show it to the Doctor and accordingly she refused to allow the Doctor to go for per vaginal test and so adverse inference must be taken against the prosecution that if she would allow the Doctor to conduct per vaginal test the report would go against the victim.

[12] In course of his argument, he further submitted that it is important to specify that the prosecution story has not been supported by medical evidence as nothing is available against the accused in medical report of the victim nor in

the SFSL report in respect of the seized pant sent to determine the presence of blood stain and so in absence of any medical evidence the prosecution story cannot be relied upon. The Ld. Trial court did not consider aspect while convicting the appellant.

[13] According to him, the Ld. Trial Court below also ought to have appreciated and considered the judgment relied upon from the side of the convict appellant, which was passed by the Hon'ble Apex Court, but the Ld. Trial Court below did not take the said judgment into consideration at the time of passing the impugned judgment and order of sentence.

[14] To support his case, learned counsel for the appellant has placed his reliance on a judgment of the High Court of Bombay in **Vishal versus State of Maharashtra**, judgment dated 11.04.2023 passed in Criminal Appeal No.589 of 2022 where the said court has observed as follows:

34. The Hon'ble Supreme Court of India in the case of Aman Kumar Vs. State of Haryana, (2004) 4 SCC 379, has held thus:

"7. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, are the injuries on labia majora. These, viz. labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the females for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Partial penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable under Sec. 376 IPC."

[15] On the other side, Mr. Raju Datta, learned PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[16] To support his case, learned PP has placed his reliance on a judgment of the apex court in ***Phool Singh versus State of Madhya Pradesh***, reported in (2002) 2 SCC 74 where the apex court has observed in the following manner:

10. In the case of *Sham Singh v. State of Haryana*, (2018) 18 SCC 34, it is observed that testimony of the victim is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paragraphs 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See *State of Punjab v. Gurmit Singh* [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384] (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such

cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635].”

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reason to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

[17] Let us now scrutinize the statement made by the mother of the victim girl. She deposed before the she has filed the case since an incident of rape was occurred on my said daughter on 02.08.19 at about 3 p.m. Prior to the alleged incident my daughter told me that she was going to the house of Laxmi Jemma (elder aunt). Laxmi Debnath is the mother of accused Khokan Debnath. After some times when my daughter went to the house of my elder brother in law, Manti Debnath who is daughter of my elder brother in law, saw some blood stain on the place where my daughter had sat. Then Manti asked her about what happened to her. My daughter then told Manti that Khokan Bhayu (brother) had inserted his private part in the private part of my daughter. Immediately Manti sent my daughter to our house. My daughter then told me that the same incident to me. On undressing the pant I noticed blood stain on her pant and also some blood on her private part. Then I called my sister in law Tapashi Debnath and showed her the condition of my daughter. Tapashi Debnath then called the mother of Khokan Debnath to our house. Upon hearing about the incident the mother of Khokan Debnath i.e. Laxmi Debnath remained sitting there being perplexed. Thereafter we took my daughter to Bishalgarh Hospital but they did not treat her there and immediately we took her to IGM Hospital. But the Doctor at IGM Hospital was not willing to examine my daughter as it was a Police case

matter and then we were sent to Agartala Women PS. My oral ejahar was reduced into writing by a person of PS and then was taken after the contents of the ejahar read over to me and the same were written as per my version.

[18] It transpires from the deposition of the victim's mother that no one was present at the time of the alleged incident of rape. Therefore, reliance on her statement alone to arrive at a conclusion in the present case is untenable, particularly when the occurrence of the alleged rape itself is subject to determination based on the medical evidence.

[19] In light of the foregoing discussion, this Court holds that, apart from the statement of the victim girl, there exists no other corroborative evidence supporting her version of events. The deposition of the victim's mother appears to be an attempt solely to support her daughter, lacking independent evidentiary value. The evidence adduced by the prosecution fails to substantiate the core of its case. A plain reading of the SFSL report reveals that the blood samples collected from the victim and the accused do not match, nor does the report establish any conclusive proof of penetrative sexual assault committed by the accused upon the victim. Moreover, the cross-examination of the victim casts serious doubt on the credibility of her testimony. For illustrative purposes, a relevant excerpt from her cross-examination is reproduced below:

Q.15: Did your mother instruct you today, on your way to court, regarding what to say or what you have already said?
A: Yes.

[20] This response indicates that the testimony may have been influenced, thereby affecting its reliability. It is a settled principle that a conviction cannot rest solely on the uncorroborated testimony of the victim, particularly when the evidence on record raises reasonable doubt. The Court is

duty-bound to scrutinize the merits of the case and assess the sequence of events objectively.

[21] The judgment cited by the learned Public Prosecutor is distinguishable on facts and inapplicable to the present case. Although the judgment relied upon by the learned counsel for the appellant also does not directly apply, this Court finds merit in the arguments advanced by the defence. In the absence of credible and corroborative evidence supporting the prosecution's version, this Court is of the considered view that the accused is entitled to the benefit of doubt. Accordingly, the accused is acquitted and set at liberty.

[22] In view of the above discussion, the present appeal stands allowed setting aside the judgment and conviction of order of sentence dated 01.02.2024 passed by the Ld. Special Judge, (POCSO), Sepahijala District, Bishalgarh in connection with Case No.Special (POCSO) 01 of 2020.

[23] A copy of this order be marked to the Superintendent, Kendriya Sansodhanagar Tripura, Bishalgarh at the earliest.

B.Palit, J

T. Amarnath Goud, J

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