

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J)NO.29 OF 2024**

Sri Babul Das,
S/o:- Lt. Hamamta Das,
Resident of NC Nagar, near Ambedkar School,
PS.- Bishalgarh, District:- Sepahijala, Tripura.
..... **Appellant(s)**

Versus

1. State of Tripura,
.....**Respondent(s)**

For the Appellant(s) :	Mr. R. Datta, Advocate. Ms. S. Nag, Advocate. Mr. A. Baidya, Advocate. Mr. S. Danuk, Advocate.
For the Respondent(s) :	Mr. Raju Datta, Public Prosecutor. Mr. R. Saha, Addl. P.P.
Date of hearing :	25.11.2025.
Date of delivery of Judgment & Order :	05.12.2025.
Whether fit for reporting :	YES.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
J U D G M E N T & O R D E R**

(T. AMARNATH GOUD,J)

1. This appeal under Section 374(2) of Cr.P.C. is filed against the impugned judgment and order of conviction and sentence dated 25.01.2024, passed by the Ld. Special Judge (POCSO), Sepahijala Tripura, Bishalgarh in Case No. Special (POCSO) 13 of 2020, whereby the appellant has been convicted under Section 376AB of the Indian Penal Code (IPC) and thereby sentenced to suffer rigorous imprisonment for 20 years and to pay a fine of Rs. 2,00,000/- only; in default of payment of the fine, he shall suffer R.I. for a

further 2 years. He was also further convicted under Section 506 of IPC and thereby sentenced to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Rs. 5,000/- (Rupees five thousand only); in default of payment of the same, he shall suffer rigorous imprisonment for a term of 6 (six) months, and both sentences shall run concurrently.

2. The brief facts of this case are that Smt. Basanti Kal, mother of the alleged victim girl, lodged an FIR stating, *inter alia*, that on 17.09.2020, the appellant Babul Das took her daughter to his residence forcibly, brought her into his room, closed the door, opened the victim's panty, touched her private part by hand, and thereafter opened his own pant and cohabited with the alleged victim girl. On 19.09.2020, at 2:25 p.m., she lodged an FIR before the Bishalgarh Women Police Station, and the Officer-in-Charge of the station registered a case vide 2020 BLGW 025 dated 19.09.2020 under Sections 376A/376B of IPC and Section 4 of the POCSO Act against the convict appellant. The case was endorsed to WSI Jhuma Das for investigation.

3. WSI Jhuma Das of Bishalgarh Women PS took up the investigation of the case as per the endorsement made by the O/C, PS, and after the conclusion of the investigation, a charge sheet was filed in this case against the convict appellant, namely Babul Das, under Sections 376AB/506 of IPC read with Section 4 of the POCSO Act.

4. After receiving the case record, copies were supplied to the convict appellant, and thereafter, charges under Sections 376AB/506 of IPC & 6 of the POCSO Act were framed against the appellant, read over, and explained to him, to which he pleaded not guilty and claimed to be tried.

5. In order to prove the charge, the prosecution adduced evidence of as many as 13 PWs and also exhibited some documents vide Exhibits P-1 to P-13. After the closure of the prosecution evidence, the convict was examined under Section 313 of Cr.P.C., wherein the appellant stated that the prosecution case is false and declined to adduce any defense evidence but exhibited some portions of the statement of the victim recorded under Section

161 of Cr.P.C. as Exhibit A and some portions of the statement of the victim recorded under Section 164(5) of Cr.P.C.

6. After hearing both parties, the learned Court below convicted the appellant as mentioned hereinabove.

7. Being aggrieved by and dissatisfied with the impugned judgment of conviction and sentence dated 25.01.2024 passed by the learned Special Judge (POCSO), Sepahijala Tripura, Bishalgarh in Case No. Special (POCSO) 13 of 2020, the appellant has preferred this appeal to set aside the said impugned judgment and conviction.

8. Heard Mr. Ratan Datta, learned counsel, assisted by Ms. S. Nag, Mr. A. Baidya, and Mr. S. Dhanuk, learned counsel appearing for the appellant, as well as Mr. R. Datta, learned P.P., appearing for the respondent.

9. Mr. Datta, learned counsel appearing for the appellant, contended that the prosecution case is riddled with material contradictions and inconsistencies, thereby rendering the conviction wholly unsustainable. It is submitted that the testimonies of PW-1 (mother), PW-2 (alleged victim), and PW-3 (father) suffer from substantial contradictions with respect to the date of occurrence, the presence of family members in the house, and the sequence of events immediately following the alleged incident. While PW-1 stated that the incident occurred on 17.09.2020 and the FIR was lodged on 19.09.2020, PW-2, during her medical examination on 19.09.2020, stated that the incident took place on 08.09.2020. Further, whereas PW-1 claims that she visited the house of the accused the next morning along with her daughter, PW-2 asserts that they went there on the night of the incident itself; PW-3, in contrast, states that they went after 2–3 days. The non-examination of other family members, who admittedly resided in the same house and are the natural witnesses, further weakens the prosecution case.

10. Learned counsel further argued that the sole testimony of the victim cannot be relied upon in the present case, as her versions in the FIR, in

her statements made under Sections 161 and 164 of Cr.P.C., in her deposition before the Court, and in the medical history recorded, are inconsistent and mutually contradictory. Serious doubts are also raised on the medical evidence. The victim, who is 137 cm tall, allegedly had sexual intercourse in a standing position with the accused, who is 5'7", which the defence contends is practically improbable. It is also argued that the medical opinion records alleged ejaculation inside the vagina, whereas medical jurisprudence suggests that penetration by an adult male organ is highly unlikely in a minor girl of such tender age with a small hymenal opening. It is further contended that the age of the victim was determined only on the basis of an Anganwadi record prepared on the mother's oral statement, with no birth certificate or ossification test conducted to conclusively determine her age. It is next submitted that the incident allegedly took place during the strict COVID-19 lockdown of 2020, when all family members were indoors, making the prosecution version, particularly regarding the absence of all persons in both houses, highly improbable. The defence has also emphasised that on 17.09.2020, the accused, being a TSR driver, was on sanctioned leave to perform Viswakarma Puja at his residence, a significant festival for persons of his profession, rendering the allegation of the offence on that date doubtful. Reference is made to prior enmity between the two families, as reflected from the depositions of PW-1 and PW-3 and the accused's statement under Section 313 Cr.P.C., suggesting a motive for false implication.

11. In the written augments submitted by the learned counsel for the appellant, on the point that trustworthiness of the witness statement, the appellant-side relied upon the ***para-9-13*** of the Hon'ble Apex Court Judgment titled as (***GNCT of Delhi Vs. Vipin@ lalla*** reported in ***2025 SCCONLINE SC 78***). The same is produced here:-

"...9. We have gone through the order of the Trial Court as well as the High Court. The only worthwhile evidence which has been produced before the Court by the prosecution is the deposition of the prosecutrix herself. Although the age of the prosecutrix is 16 years and four months which has not been seriously disputed (accused was about 20 years of age at the time of the incident). Nevertheless the fact remains that the medical

examination which was conducted on 18.09.2014 revealed that no injuries were detected on the body of the prosecutrix. Though it was stated in the medical report that her hymen was torn. Definitely the prosecutrix in her examination-in-chief as well as in cross-examination has stuck to the fact that she was raped by the accused but the fact remains that she has contradicted her statement at more than one place.

Moreover she has said in her statement under Section 164 CrPC she had hit the accused on her head by Danda whereas in her examination-in-chief she stated that she hit the accused on his foot. When the accused had surrendered on 10.10.2014 none of these injuries were noticed on the body of the accused.

10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire confidence of the Court.

The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.

11. It is not believable that when the prosecutrix was caught by the accused who is known to the prosecutrix, she went with him quite a distance in the Bazaar and then to a shop, she never raised any alarm. The only reason she gave is that there was a knife with accused and he had threatened her that if she raises an alarm her brother and father would be killed.

12. In any case as we have already stated above that the testimony of the prosecutrix does not inspire confidence, under these circumstances, we are not inclined to interfere with the well considered order of the Trial Court and the High Court..."

12. On the point that the accused cannot be convicted on the sole basis of the testimony of the victim, appellant-side relied upon paras 5.5. to 6 of the Judgment of the Hon'ble Apex Court tiled as Santosh Prasad @ Santosh Kumar Vs. State of Bihar titled as 2020(3) SCC 443. The same is produced here-in-under:-

"...5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the

examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PWI and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5-prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix - PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt...".

13. Stating the above fact, learned counsel appearing for the appellant urged this Court to allow this appeal by setting aside the impugned judgment and order of conviction.

14. On the other hand, learned P.P., appearing for the State-respondent, submits that the evidence of the victim is not shaken, and she has given the same version in her statement under Section 161 and 164 of Cr.P.C., wherein, she stated that the accused-appellant herein committed rape upon her. Her age is also proved as minor by the mother and father, who are the best persons to know the age of their daughter. Both the mother and father are also illiterate persons, so contradictions can occur. In the medical evidence, it is also stated that the possibility of recent sexual intercourse cannot be ruled out.

On the point of contradiction, learned P.P., has referred to *paras-19,20, 21 and 25* of the Hon'ble Apex Court Judgment reported in *2023 SCC Online SC 1396* dated *30th October, 2023* titled as *Birbal Nath Vs. State of Rajasthan and others*. The same is produced here-in-under:-

"19. Statement given to police during investigation under Section 161 cannot be read as an "evidence". It has a limited applicability in a

Court of Law as prescribed under Section 1622 of the Code of Criminal Procedure (Cr.P.C.).

20. No doubt statement given before police during investigation under Section 161 are “previous statements” under Section 145 of the Evidence Act and therefore can be used to cross examine a witness. But this is only for a limited purpose, to “contradict” such a witness. Even if the defence is successful in contradicting a witness, it would not always mean that the contradiction in her two statements would result in totally discrediting this witness. It is here that we feel that the learned judges of the High Court have gone wrong.

*20. The contractions in the two statements may or may not be sufficient to discredit a witness. Section 145 read with Section 155 of the Evidence Act, have to be carefully applied in a given case. One cannot lose sight of the fact that PW-2 Rami is an injured eye witness, and being the wife of the deceased her presence in their agricultural field on the fateful day is natural. Her statement in her examination in chief gives detail of the incident and the precise role assigned to each of the assailants. This witness was put to a lengthy cross examination by the defence. Some discrepancies invariably occur in such cases when we take into account the fact that this witness is a woman who resides in a village and is the wife of a farmer who tills his land and raises crops by his own hands. In other words, they are not big farmers. The rural setting, the degree of articulation of such a witness in a Court of Law are relevant considerations while evaluating the credibility of such a witness. Moreover, the lengthy cross examination of a witness may invariably result in contradictions. But these contradictions are not always sufficient to discredit a witness. In *Rammi v. State of M.P. (1999) 8 SCC 649*, this Court had held as under: -*

“24. When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally nondiscrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny.”

15. On the point that solely based on the testimony of the victim, the accused can be punish, the learned P.P., referred to *paras-3, 10 and 11* of the Hon’ble Supreme Court Judgment reported in *(2022) 2 SCC 74* dated 1st December, 2021 titled as *Phool Singh Vs. State of Madhya Pradesh:-*

“3. The prosecutrix sent the information to her parental house. Thereafter, her uncle and others came to her matrimonial house and the prosecutrix told them about the incident. They took her to parental house. Thereafter, an FIR was lodged on 12.08.1999. She was sent for medical examination. After completion of the investigation, charge-sheet was filed against the accused for the offence punishable under Section 376 IPC. The case was committed to the learned Court of

Sessions. Accused pleaded not guilty and therefore he came to be tried for the aforesaid offence.

3.1. In order to prove the charge against the accused, prosecution examined six witnesses including the doctor who examined the prosecutrix on 12.08.1999, prosecutrix-PW3 and the Investigating Officer-PW6. One of the witnesses Rajaram-PW2 did not support the prosecution story and he was declared hostile. The accused took the plea of alibi and according to him he had gone to Indore on the day of incident and he was not in the village on that day. He examined the defence witness as DW1. The learned trial Court did not believe the plea of alibi and DW1 by giving cogent reasons. That thereafter after appreciating the evidence on record, by judgment and order dated 31.07.2000, the learned trial Court convicted the accused for the offence under Section 376 IPC and sentenced the appellant as mentioned hereinabove.

3.2. Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, the appellant herein-accused preferred an appeal before the High Court. By the impugned judgment and order, the High Court has dismissed the said appeal. Hence, the present appeal is at the instance of the accused.

10. 5.4 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.

16. Stating thus, learned P.P., urged this Court to quash his appeal and affirm the Judgment and Order of conviction as passed by the Court below.

17. Heard and perused the evidence on record.

18. Before delving into the conclusion of the case, let us now examine some important witnesses and evidences.

19. P.W.-1, the mother of the victim in her statement stated that she works as a day labourer and that on 17.09.2020 she left home for work at around 7 a.m. and returned at about 5 p.m. After returning home, her daughter informed her that the accused, whom she addressed as “Dadu”, had allegedly taken her to his house, undressed her, and subjected her to sexual acts. PW-1 stated that she informed her husband the same night, and the next morning they visited the accused’s house, where the accused’s wife abused them. She lodged the FIR two days later.

In cross-examination, PW-1 admitted that the FIR did not explain the two-day delay. She confirmed that her house shares a boundary with the accused’s house and that several other occupied houses are located nearby.

She stated that although COVID-19 restrictions were in force in September 2020, she and her husband continued to go out for work. She admitted that she did not inform police where she went to work on the date of the incident, and further admitted her earlier 161 Cr.P.C. statement mentioning that the accused had called her daughter a few days earlier. She stated that they wanted to construct a cacha latrine on the side of their boundary but the accused had told not to construct such latrine on that side because they had their dwelling hut nearby. She also stated that Panchayet Pradhan as well as the amin had come to their house. She stated that her mother and two sons (aged 18 and 13) live in the same house, and does not goes to school.

20. P.W.2, the victim in her evidence stated that the accused committed the sexual act upon her as stated in the fact of the case. In the cross examination, to a question that after how many days of the incident did she tell about the incident to her mother, to it she replied that after about one week. Further, contradicting the statement of P.W.-1, the said witness stated that after revealing the incident to her parent, in the night itself, her mother went to the house of the accused along with her.

21. P.W.-3, the father of the victim stated that FIR was lodged by his wife. Accused is their neighbour and TSR personnel. He stated that on the day of the incident after, he returned from the work in the evening his wife told him about the incident that occurred with his daughter. After 2/3 days he went to the house of the accused with the daughter. The wife of accused-Babul Das had abused them with filthy language. Thereafter they lodged the case in the P.S.

During the cross examination, he stated that at the relevant time in school and colleges were remained closed for COVID-19 restrictions. At that time, COVID 19 restrictions were imposed restricting the movement of people for going to other house, works etc and people used to remain confined to their houses. His 2(two) sons were engaged in education but at that time their schools were closed. He also stated that following the day of digging out of a

pit in their house complex for making catch latrine, member/pradhan came to his house as Babul Das had objection.

22. P.W.-11, Dr. Ranita Ghosh, who examined the victim stated that as per vaginal examination of the victim hymen was found partially torn(old) discoloration of the area. She also opined that the incident occurred 11 days back.

In the cross examination, she told that partially torn(old) of the hymen meant that there was no active bleeding at the time of examination. The evidence of vaginal penetration was “concluded based on the partially torn condition of hymen. By recent sexual intercourse, she told it meant that within 7 to 10 days. She also stated that there was no reddish discoloration of the area.

23. In the examination report of the victim, it is stated that vaginal swab and smears were not collected since the incident was about 11 days old incident. It is also opined that there is evidence of vaginal penetration and recent sexual intercourse cannot be ruled out.

24. It is evident from the evidence on record that there exist material contradictions and inconsistencies in the testimonies of the prosecution witnesses. Significant contradictions are noted in the accounts of PW-1 (mother), PW-2 (victim), and PW-3 (father), which undermine the credibility of the prosecution's case. The sequence of events following the alleged incident is inconsistent, PW-1 states that she and her husband confronted the accused the next morning, PW-2 contends that it happened the same night, while PW-3 asserts it occurred 2–3 days later.

25. The medical evidence fails to corroborate the prosecution's narrative. The alleged age of the injury (11–12 days) conflicts with the date of the alleged crime (17.09.2020) and the date of medical examination (19.09.2020), raising substantial doubt regarding the timeline. Additionally, doubts are raised about the physical possibility of the alleged act due to the height difference between the accused and the victim. The non-examination of

other natural witnesses, namely the victim's two brothers and grandmother residing in the same house, further weakens the prosecution's case. Moreover, the admitted prior enmity between the families over a boundary dispute provides a plausible motive for false implication.

26. Considering the cumulative effect of these factors, material contradictions in witness statements, the unreliability of the sole testimony of the victim, the lack of corroborative medical evidence, inconsistencies in the alleged timeline, non-examination of natural witnesses, and the motive for false implication, a reasonable doubt arises in the prosecution's case. In a criminal trial, such doubt must be resolved in favor of the accused.

27. Upon a careful and comprehensive appraisal of the entire evidence, this Court finds that the prosecution's case suffers from fatal infirmities, making a conviction unsafe. The inconsistencies in the testimonies of PW-1, PW-2, and PW-3, combined with the improbabilities in the narrative, render the victim's solitary, uncorroborated testimony insufficient to sustain a conviction. Consequently, the benefit of doubt is extended to the accused. Further the Judgments as cited by the learned P.P., herein is not relevant to the fact of this case.

28. In view of the above, the appeal is allowed. The impugned order of conviction and sentence is set aside, and the accused-appellant is acquitted of all charges. He shall be released forthwith, if not required in connection with any other case.

29. As a sequel, stay if any stands vacated. Pending application, if any also stands closed.

S. DATTA PURKAYSTHA, J

DR. T. AMARNATH GOUD, J

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