

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

Crl. A(J) No. 57 of 2024

Sajal Bhumij, son of late Lal Babu Bhumij, resident of village-
Pearacherra, P.S. Kadamtala, District: North Tripura.

.....Appellant

-V E R S U S-

The State of Tripura.

..... Respondent.

**B_E_F_O_R_E
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

For Appellant(s)	:	Mr. P. Majumder, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	04.02.2026
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

[Dr. T. Amarnath Goud, JJ]

Heard Mr. P. Majumder, learned counsel appearing for the
appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the
respondent-State.

[2] This is an appeal filed under Section-374(2) of Cr. P.C. against
the judgment dated 30.11.2021, passed by the learned Special Judge
(POCSO), North Tripura District, in connection with case No. Special
(POCSO) 50 of 2019 sentencing the accused appellant to suffer rigorous
imprisonment for life for the commission of offence punishable under
Section-376(1) of the Indian Penal Code and also to pay a fine of
Rs.10,000/- for the said offence and in default, to undergo further rigorous
imprisonment for a period of one year.

[3] The factual backdrop of the case is that the victim (real name is
withheld) lodged an oral "Ejhar" with the Officer-in-Charge, Kadamtala P.S.
which was reduced in writing by Sub-Inspector Rita Debnath of Kadamtala

P.S. to the effect that on 09.09.2019 at about 09.30 A.M. her mother went to the house of a Panchayet Member of their village to pursue the matter of monthly allowance under a scheme of the Government, keeping the victim alone in their house. Taking advantage of the absence of her mother, her step father Sajal Bhumij suddenly caught hold of the victim and forcibly removed her wearing apparels and the accused also made himself naked removing his wearing apparels and thereafter he forcibly committed rape upon the victim. It is also alleged that while the victim raised alarm, accused appellant increased the volume of the sound system of their house so that none could hear her cry. Thereafter the accused threatened the victim not to divulge anything about the incident to anybody and left the house. Subsequently, while her mother returned home after 1½ hours, she narrated the entire incident to her mother.

[4] upon receipt of the aforesaid "Ejhar", the Officer-in-Charge of Kadamtala PS registered Kadamtala PS case No. 2019 KDL 054 for the commission of offences punishable under SectionS-376(3)/506 of IPC read with Section-4 of the POCSO Act, 2012 against accused person and endorsed the case to Sub-Inspector Rita Debnath for investigation. That during investigation the Investigating Officer Sub-Inspector Rita Debnath on 09.09.2019 arrested appellant and immediately took the accused to Kadamtala CHC with a prayer for his medical examination and accordingly, a Medical Officer of Kadamtala CHC examined the accused. She also collected the medical examination report of the accused for the purpose of investigation.

[5] Sub-Inspector Rita Debnath also took the victim to Kadamtala hospital to get her examined for the purpose of investigation and accordingly, on the basis of her prayer, a Medical Officer of Kadamtala CHC medically examined the victim and collected the blood sample both in dry gauge cloth and in a vial, blood smear in glass slide, urine sample in a container, high and low vaginal swab, high and low vaginal smear, vulval swab, anal swab, anal smear, buccal mucosa swab and smear, pubic hair and renal smear of the victim and handed over the samples to the Investigating

Officer who seized the personal samples of the victim under a proper seizure list as produced by the Medical Officer Dr. Sournali Nath during examination of the victim at Kadamtala CHC.

[6] On that day, the Investigating Officer visited the place of occurrence and prepared the hand sketch map and separate index of the place of occurrence in separate sheets of paper. On 10.09.2019 Sub-Inspector Rita Debnath also seized the wearing apparels i.e. panty of the victim as produced by the victim under a proper seizure list. On that day she also seized the birth certificate of the victim as produced by the mother of the victim, Smt. Manjula Bhakta.

[7] On 16.09.2019 the victim was again produced before the Medical Officer Dr. Soumali Nath of Kadamtala CHC and she was again medically examined and during examination the Medical Officer further collected personal samples of the victim i.e. high vaginal swab, low vaginal swab in different containers, low and high vaginal smear in different slides, pubic hair in a container, rectal swab of the victim in another container and rectal smear in glass slide and handed over the same to Sub-Inspector, Rita Debnath who seized the same under a separate seizure list.

[8] The personal samples of the victim and the accused were sent to the forensic laboratory by the IO and the reports thereof were collected subsequently, during the part of the investigation done by the second and subsequent IO. Sub-Inspector Rita Debnath examined the victim and a few other witnesses inclusive of her parents and recorded their statements under Section-161 of Cr. P.C. Victim was produced before this Court on 10.09.2019 by Sub-Inspector Rita Debnath with a prayer to record her statement under Section-164(5) of Cr. P.C. Accordingly, the victim was produced before a Judicial Magistrate and her voluntary statement was recorded by the learned Magistrate.

[9] Subsequently, on 14.10.2019 took up the investigation while the earlier IO went on maternity leave. During the part of investigation perused and verified the previous investigation report and on 20.11.2019

seized the school certificate of the victim from Satsangam High School and the school certificate was issued by Sri Kapil Chakraborty, Teacher-in-charge of the school.

[10] On completion of the investigation, the IO submitted the charge sheet against the accused person for the commission of the offences punishable under Sections-376(3)/506 of IPC read with Section-4 of the POCSO Act, 2012. Upon hearing both sides on the point of framing of charge being prima-facie satisfied charges under Section-376 of the IPC read with Section-4 of the POCSO Act, in two heads were framed against the accused person and the contents of the charges were read over and explained to the accused person in Bengali to which he pleaded not guilty and claimed to be tried.

[11] To prove the case, prosecution has examined as many as 22 (twenty-two) witnesses and also exhibited some documents. After prosecution evidence, the accused person was examined under Section-313(1)(b) of Cr. P.C. with reference to the incriminating circumstances which were elicited from the evidence on record and the incriminating evidence were read over and explained to the accused person to which he denied the truth of the prosecution evidence. Though the appellant initially expressed his willingness to adduce evidence on his behalf but at the later stage he denied to adduce evidence on his behalf.

[12] 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:

“In the light of the aforesaid discussion, this Court arrived in a conclusion that accused Sajal Bhumij on 09.09.2019 at about 09.30 am at Ranibari, Ward No.02 under Kadamtala Police Station raped the victim (name withheld), who is his step daughter and thereby committed penetrative sexual assault upon the victim.

On the basis of the facts and circumstances as discussed above and on the basis of evidence of the prosecution witness, this Court viewed that the prosecution case is proved beyond all reasonable shadow of doubt against accused Sajal Bhumij. Accordingly, the point for determination is decided in affirmative against the accused.

Hence, accused Sri Sajal Bhumij, son of late Lalbabu Bhumij, of Pearacherra, P.S. Kadamtala, North Tripura District is found guilty for the commission of offences punishable under section 376(1) of the Indian Penal Code under section 4 of the Protection of Children from Sexual Offence Act, 2012 and accordingly he is convicted for the commission of the said offences. The convict is already in custody. Sentence will be pronounce after hearing the convict on the point of sentence.

**** Accordingly, considering all the aspects in the given case this court hereby sentences convict Sri Sajal Bhumij, son of late Lalbabu Bhumij, of Pearacherra, P.S. Kadamtala, North Tripura District to suffer rigorous imprisonment for life for the commission of offence punishable under Section 376(1) of the Indian Penal Code and also to pay a fine of Rs.10,000/- (Rupees ten thousand) for the said offence and in default of payment of such fine to undergo further rigorous imprisonment for a period of 01 (one) year.

Section 42 of the Protection of Children from Sexual Offences Act, 2012 provides that "Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, 376E or section 509 of the Indian Penal, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment under Act or under the Indian Penal Code as provides for punishment which is greater in degree". As the convict is sentenced under section 376 (1) of the Indian Penal Code which is greater in degree, as such the convict is not sentenced under section 4 of the POCSO Act.

Upon realization of fine, the same may be remitted to the victim in a fixed Savings Bank Account of the victim as a token of compensation. She may also apply for victim compensation from the Legal Services Authority as per rules.

The record reveals that convict Sajal Bhumij was in custody from 10-09-2019 to 30-11-2021 i.e. 810 days during investigation and trial of this case so, this period of his detention will be set off against the sentence of imprisonment as per provision of section 428 of the Code of Criminal Procedure.

Upon satisfaction of the sentence, in compliance to the provision under the Code of Criminal Procedure, 1973 the convict shall be discharged.

Seized birth certificate and school certificate of the victim be handed over to the Natural/legal guardian of the victim after the expiry of the appeal period.....”

[13] Being aggrieved by and dissatisfied with the same, the present appeal has been preferred before this Court for ends of justice.

[14] Mr. P. Majumder, learned counsel appearing for the appellant has submitted that the evidences as adduced by the prosecution do not constitute any offence punishable under Section-376 (2)(n) IPC and *prima facie* charge could have been framed against the accused-appellant and as

such, the order of conviction and sentence passed by the learned Court below is liable to be set aside.

[15] PW-1, victim of the case in her deposition stated that the appellant forcibly removed her wearing apparels and laying in the ground and some untoward incident happened against her will and the victim also tried to raise alarms. But due to sound box accelerated the sound of the music system, none could hear her shouting and the victim also stated that the appellant is my step father. But, during the cross-examination the victim stated that after death of her father, PW-2 mother of the victim married again to the present appellant and from the date of marriage of her mother, the appellant and her mother living in the same house and her mother also drawing widow pension and the PW-1 also admitted in her statement that her step father was having a dispute with her mother (PW-2) as to why the mother of the victim drawing widow pension. PW-1 also stated that on the date of incident her step brother was present in the house. But during the investigation of the case, the I.O. of the case did not seize the sound system in any time as alleged by the victim (PW-1) and the statement made by the victim before the court is concocted.

[16] PW-2, mother of the victim in her deposition stated that during morning hours of the date of incident, her daughter (victim, PW-1) weeping in her dwelling hut and stated that the appellant who is the step father of PW-1 forcibly removing her wearing apparels and also some acts done against her will, but as per conduct of the victim, it is very much evident that the present case was instituted for extort money from the present appellant and also harassed him in the society without any valid ground and PW-2 in her cross examination stated that the present appellant is the second husband and without obtaining any divorce from the first husband, she got married with the present appellant and the PW-2 also admitted that she draws widow pension whereas both the husband are alive and it is also admitted by the PW-2 that the present appellant warned him not to draw widow pension illegally and for that, severe quarrel happened with the present appellant and the witness admitted that she was driven out the present appellant from her

house keeping the son of the appellant with him and the witness, PW-2 in her cross-examination also admitted that whenever the present appellant came to see his minor son, she warned him repeatedly not to visit again and also warned that if he visit the house of the witness in any further time, the appellant will have to face severe consequence. By this conduct it is very much evident that due to severe dispute and differences between the appellant and the present witness (PW-2), the case was institute by using false facts and circumstances and for that, the present appellant be acquitted from the charge leveled against him.

[17] It has been further contended that PW-3, PW-4 & PW-5, not supported the case of the prosecution only hearsay and false story was made out by the witnesses in support of the case and it is also admitted by the witnesses that the mother of the victim have disputes with the present appellant and both are used to quarrel on different affairs including drawing of widow pension despite both the husband of the mother of the victim were alive and as such, the appellant should be acquitted from the charge leveled against him.

[18] PW-6, 7, 8 & 9 and PW-13 not supported the case of the prosecution. And PW-7 & 13 is the related witness as a Teacher in Charge and Cluster resource person of Satsangam High School and during the stage of investigation, the IO seized the school certificate from the school, but the IO not seized the admission register of the school and also not examine the witness who recorded an entry the date of birth of the victim in the school admission register and for that the investigation of the case in regard to actual date of birth of the victim not proved as per law as the actual date of birth of the victim recorded by the present who are not examined and also not called for by the learned Court to prove the document during the trial.

[19] Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State has submitted that the evidence of all the witnesses are synchronized and very much trustworthy and furthermore, there is no missing link in the series of act one after another from the very inception to the end. Defence failed to rebut the evidence of the prosecution witnesses and there is nothing

to disbelieve their evidence. The witnesses fully corroborated with each other and thus the accused should not be spared as the prosecution proved its case very nicely and the accused does not deserve any sympathy and he is not entitled to get any benefit under any beneficial legislation.

[20] In support of his case, has placed reliance on a decision of the Hon'ble Apex Court in **Karnel Singh v. State of M.P.**, reported in (1995) 5 SCC 518 wherein, it has been observed thus:

“5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'Chaddi'. That is the reason why we have said that the investigation was slip shod and defective.”

[21] Another case in **State of H.P. v. Lekh Raj and Another**, reported in (2000) 1 SCC 247, wherein, it has been held thus:

Modi in his Medical Jurisprudence and Toxicology has noted :

“The presence of spermatozoa in the vagina after intercourse has been reported by Pollak (1943) from 30 minutes to 17 days, and by Morrison (1972) upto 9 days in vagina and 12 days in the cervix. However, in the vagina of a dead woman, they persist for a longer period.”

It follows, therefore, that the presence of spermatozoa, dead or alive, would differ from person to person and its positive presence depend upon various circumstances. Otherwise also the presence or absence of spermatozoa is ascertained for the purposes of corroboration of the statement of the prosecutrix. If the prosecutrix is believed to be truthful witness, in her deposition no further corroboration may be insisted. Corroboration is admittedly only a rule of prudence, This Court in **State of Punjab v, Gurmeet Singh & Ors.**, [1996] 2 SCC 384 took note of the existing rate of crime against the woman and held:

“Of late, crime against women in general and rape in particular is on the increase. It is in irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim, A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The courts, therefore, 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 of insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If 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 trial court must be alive of its responsibility and be sensitive while dealing with cases involving sexual molestations.”

[22] In view of above and having heard the learned counsel appearing for the parties and the observations made by the learned Court below, for a definite conclusion, let us revisit the material evidence once again. It reveals from the evidence of PW-1 (victim), PW-2 (Smt. Manjula Bhakta), PW 4 (Smt. Sanaka Bhakta), PW-5 (Smt. Sonia Ghatwal) and PW-9 (Sri Nirod Kumar Das) that on the fateful date of the incident taking advantage of absence of the mother of the victim in the house, appellant Sajal Bhumij, who is the second husband of PW-2 (Smt. Manjula Bhakta), forcibly removed the wearing apparels of the victim and raped her.

[23] It also reveals from the evidence of PW-1 (victim), PW-5 (Smt. Sonia Ghatwal) and PW-6 (Sri Raghubir Bin) that accused Sajal Bhumij increased the volume of the sound system of their house so that none could hear the cry of the victim from the outside of the house and thereafter the accused gagged the mouth of the victim to restrain her from raising any alarm and forcibly had sexual intercourse with the victim and left the house. The accused threatened the victim not to divulge anything about the incident to anybody else otherwise consequence would be severe.

[24] It also reveals from the evidence of PW-1 (victim), PW-2 (Smt. Manjula Bhakta), PW-4 (Smt. Sanaka Bhakta), PW-5 (Smt. Sonia Ghatwal) and PW-6 (Sri Raghubir Bin) that subsequently while her mother returned home at 09.30 A.M. the victim informed the matter about the misdeed of the accused upon her to her mother and thereafter both of them went to Kadamtala Police Station and the victim lodged complaint against accused Sajal Bhumij, the step father of the victim. PW-1 (victim) has narrated the

entire episode to a police officer who reduced her oral complaint in writing and it was read over to her and she admitted the correctness of the contents of her complaint and put her signature on it.

[25] During trial, defence failed to bring any contrary evidence to shake the credibility of the contents of the oral complaint lodged by the victim. It reveals from the evidence of PW-2 (Smt. Manjula Bhakta) and PW-4 (Smt. Sanaka Bhakta) that on the fateful date while PW-2 returned to her house from Panchayet Office at about 10.30 A.M., she found her daughter, the victim herein, crying in their dwelling hut but the accused Sajal Bhumij could not be traced in the house. It reveals from the evidence of PV-3 (Sri Hemanta Ghatwal) that while he went to the house of the victim, he found the victim crying and came to know that on the fateful date accused Sajal Bhumij forcibly raped the victim.

[26] PW-11 has deposed that on 09-09-2019 at about 03.00 P.M. the victim and PW-2 (Smt. Manjula Bhakta) coming to Ranibari SPO camp and reported that accused Sajal Bhumij forcibly raped the daughter of PW-2, the victim herein, against her will and PW-11 informed the matter to the Officer-in-charge of Kadamtala P.S. about the incident. PW-12, PW-17 and PW-20 submitted that on 09-09-2019 accused Sajal Bhumij was produced before PW-17 Medical Officer of Kadamtala CHC and after his medical examination personal samples of accused Sajal Bhumij i.e. pubic hair, smegma, urine sample in gauge cloth, saliva, urine in a vial, blood sample in gauge cloth (dried in air) and semen sample were collected and handed over to the police which were seized by the Investigating Officer in presence of the witnesses.

[27] PW-10 (Smt. Lovely Shil) also seized the birth certificate of the victim as produced by her mother. PW-7 being the Teacher-in-charge of Satsangam High School, Ranibari issued the school certificate of the victim which was seized by police. At the material time the victim was in class-VII and according to the admission register of the school her date of birth was 24.04.2006. No contrary evidence came out during trial with regard to the age of the victim. On 16.09.2019 PW-15 examined the victim and collected

high and low vaginal swab, high and low smear, rectal swab, pubic hair and rectal smear in glass vial of the victim and handed over the same to the police.

[28] It also reveals from the evidence of the doctor that the victim was 13 years of age as stated by the police during her medical examination and during her medical examination tenderness was found on her chest, abdomen and urethra. Her hymen was torn, erythematous and tendered. During medical examination the victim stated to the doctor that the accused appellant performed sexual intercourse with the victim on 09.09.2019. Observing the medical report it reveals that tenderness was found on her chest, abdomen and urethra, hymen was torn, erythematous and tenderness which suggest creditworthiness of the evidence of the victim and other witnesses with regard to the incident.

[29] From the cross-examination of the witnesses, nothing material could reveal to rebut the evidence of the prosecution witnesses except the denial of the prosecution evidence whereas denial is not an evidence and mere denial is not sufficient to discredit the evidence of the prosecution witness. In the given case, no evidence could be brought by the defence to discredit the evidence of the victim and other material witnesses. In the given case, the appellant was given an opportunity to adduce evidence on her behalf while he was examined under Section-313(1) (b) of Cr. P.C. but the accused did not adduce evidence on his behalf.

[30] A criminal trial is nothing but a process to find out the truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim and above all the societal interest for preservation of the rule of law. Neither the accused nor the victim can be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd.

[31] In view of above discussions and having gone through the observations as made out by the learned Court below, we are of the opinion

that the prosecution case is proved beyond all reasonable doubt against the appellant herein and needs no interference. Accordingly, the findings as arrived at by the learned Court below are just and proper. Thus, the present appeal stands dismissed. However, reliance as placed on the judgments by the learned counsel appearing for the appellant have no relevance in the facts and circumstances of the present case.

[32] Accordingly, the present appeal stands dismissed. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

S. DATTA PURKAYASTHA, J

DR.T. AMARNATH GOUD, J

A.Ghosh

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