

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.63 OF 2024**

Sri Tridip Chakma,
S/o Late Kartik Chakma,
R/o:- Vill-Lalcherra, P.S.- Chailengta,
Dist- Dhalai Tripura.

..... **Appellant(s)**

Versus

The State of Tripura.

.....**wife-Respondent(s)**

For the Appellant(s)	: Mr. Santanu Ghosh, Advocate. Mr. Debjit Biswas, Advocate. Ms. P. Chakraborty, Advocate.
----------------------	---

For the Respondent(s)	: Mr. R. Datta, P.P. Mr. R. Saha, Addl. P.P.
-----------------------	---

Date of hearing	: 04.02.2026
-----------------	--------------

Date of delivery of Judgment & Order	: 10/02/2026
---	--------------

<u>Whether fit for reporting</u>	: 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 present appeal has been filed under Section 374(2) of Cr.P.C, 1973 against the judgement and order of conviction and sentence dated 12.08.2024 passed by the learned Special Judge (POCSO), Dhalai Judicial District, Ambassa, in connection with the case No. Special (POCSO) 04 of 2022 convicting the appellant to suffer R.1 for 10 (Ten) years for the commission of offence punishable under section 376(2)(f) of the Indian Penal Code, 1860 and also liable to pay a fine of Rs- 10,000/-(Rupees Ten thousand)

only for the said offence, in default, of payment of such fine, the convict shall undergo further R.I for a period of 6(six) months. Further to suffer R.I for 02(Two) years for the commission of offence punishable under Section 506 of the Indian Penal Code, 1860 and also liable to pay a fine of Rs-5,000/-(Rupees five thousand) only for the said offence, in default of payment of such fine the convict shall undergo further R.I for a period of 3(three) months and also further to suffer R.I for 07(Seven) years for the commission of offence punishable under Section 4 of the POCSO Act, 2012 and also liable to pay a fine of Rs-10,000/-(Rupees ten thousand) only for the said offence, in default, of payment of such fine, the convict shall undergo further R.I for a period of 6(six) months.

2. The brief facts of this present matter are that a case has been registered on the basis of a written complaint of the complainant, Smt. Kalpana Chakma, W/o Sri Dharma Pratap Chakma of Laicharra (Faguram Para), P.S. Chailengta, LTV, Dhalai, Tripura, to the effect that on 21.06.2022 at about 15:00 hrs, her minor daughter went to visit the house of one Smt. Satyadevi Chakma (*aunt of the victim*) (Pishi). At that time, the husband of the said Satyadevi Chakma, namely Tridip Chakma, S/o Lt. Kartik Chakma, committed a serious sexual offence upon her in his dwelling hut and threatened her with dire consequences not to disclose the fact to anybody, otherwise he would kill her and her parents. Due to fear of the appellant, the victim did not disclose the incident to her mother or others.

3. On 22.06.2022, suddenly the daughter of the complainant became ill, and on 23.06.2022, the victim disclosed the fact/incident to her mother that the accused person committed the aforesaid act upon her, due to which she became ill and was suffering. In the meantime, due to the death of their relative (*sister-in-law of the complainant*), they failed to submit the complaint in time.

4. On receiving the above complaint, the O/C of the police station registered a case and endorsed the case to one S.I. Swapan Das of Chailengta P.S. to start the investigation of the matter. Hence, the case was lodged against the appellant. Thereafter, the charge-sheet was filed and as many as 17(seventeen) witnesses were examined. After the closure of prosecution evidence, the accused appellant was examined under Section 313 of Cr.P.C., and after hearing the arguments of both sides, vide judgment dated 12.08.2024 passed by the learned Special Judge (POCSO), Dhalai Judicial District, Ambassa, in connection with Case No. Special (POCSO) 04 of 2022, the appellant was convicted as stated hereinabove.

5. Being aggrieved and dissatisfied with the same, the appellant has preferred this appeal seeking to set aside and quash and impugned Judgment and Order of conviction dated 12.08.2024.

6. Heard Mr. D. Biswas, learned counsel appearing for the appellant as well as Mr. R. Saha, learned Addl. P.P., appearing for the respondent.

7. Mr. Biswas, learned counsel appearing for the appellant, submits that the accused person is the brother-in-law of the mother of the victim girl. There are inconsistencies in the deposition of the victim. Moreover, the DNA report of the child does not match with the convict-appellant. Learned counsel further submits that the case filed is totally false, as there was certain dispute between the relatives, and as such, in order to falsely implicate the appellant herein, a false FIR has been lodged.

Learned counsel further submits that, on the examination of the victim girl, no injury was found on her body. According to the FIR, the incident allegedly took place on 21.06.2022, whereas the FIR was registered on 01.07.2022. The explanation offered for such delay in filing the FIR is that on the date of the incident, the sister-in-law of the informant, i.e., the mother of the

victim, had passed away, and as she was busy with the funeral rites and as such, she was unable to lodge the FIR. Learned counsel argued that it is unnatural for a mother to wait for such a long period to file the FIR after having knowledge that such a ghastly act had been committed upon her daughter. Further, in the record, the Aadhaar Card as well as the birth certificate of the victim are missing. Thus, the document necessary to ascertain the age of the victim has not been placed before the Court, which fact is reflected at page-2 of the paper book. From the deposition of P.W.-2, the Emergency Medical Officer of Dhalai District Hospital, it is clear that, it was not ascertained against whom the complaint was to be filed. The victim girl, in her statement before the learned Magistrate, stated that the accused had forcibly committed rape upon her on several occasions and that she informed her mother only after the last incident. However, in her deposition before the Court, she stated that on the first occasion itself she informed her mother, and thereafter her mother lodged the complaint with the police. Thus, the deposition of the victim is an improved version and cannot be relied upon. Further, the incident has been stated only by the victim and the informant and has not been corroborated by any independent witness. Even the neighbour, examined as P.W.-10, stated in his deposition that he knew nothing about the incident. Further, the wife of the accused has also not been examined in the present case.

8. To strengthen his argument on the point of inconsistent statement of the victim, learned counsel appearing for the appellant relied upon **Para-5** of the Judgment of the Hon'ble Supreme Court reported in **(2008) 14 SCC 763** titled as **Vijayan Vs. State of Kerala** bearing No.**Criminal Appeal No.1110 of 2008**. The same is produced here-in-under:-

“5. The present case wholly depends upon the testimony of the prosecutrix. The incident in the present case took place 7 months prior to the date of lodging the complaint. At a realization drawn upon her that she has been subjected to rape by the accused-Appellant. No complaint or grievance was made either to the police or the parents prior thereto. The explanation for delay in lodging the FIR is that the accused-Appellant

promised her to marry therefore the FIR was not filed. In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for 7 months for filing the FIR for rape. This leaves the accused totally defenseless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for 7 months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was borne out of the said incident of rape and that the accused Appellant was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, we are of the opinion that the view taken by the Trial Court and the Learned Single Judge of the High Court in convicting the accused-Appellant u/s 376 Indian Penal Code cannot be sustained. Consequently, we set aside the judgment and order of the Trial Court as also of the High Court and quash the conviction and sentence of the accused-Appellant u/s 376 Indian Penal Code. The accused may be released forthwith from custody if not required in any other case.”

9. To strengthen his argument on point of medical evidence, learned counsel appearing for the appellant relied upon **Para-19** of Judgment of the Hon’ble Supreme Court reported in **(2011) 7 SCC 130** titled as **Krishan Kumar Malik Vs. State of Haryana** bearing No. **Criminal Appeal No.1252 of 2011**. The same is produced here-in-under:-

“19. Medical evidence shows that her Labia Majora and Labia Minora were healthy and had no marks of injury. Hymen had old healed tear and the same was not red hot or tender and did not bleed on touching. Vagina admitted two fingers easily. P.W.6 Dr. Sushma Saini further opined in her cross-examination that she might be habitual to sexual intercourse prior to 23.06.1994. Her Medico Legal Report and medical evidence further reveal that she had not received any significant injuries on other parts of her body and injuries on her private parts were much less as mentioned by her in the FIR, except for the cheek bite.”

10. Stating thus, learned counsel appearing for the appellant urged this Court to allow this appeal the set aside the impugned Judgment and Order of conviction.

11. On the other hand, Mr. R. Datta, learned Additional Public Prosecutor, appearing for the respondent submits that rape was committed upon the victim girl by the convict-appellant under threat and intimidation, which explains why she did not disclose the incident immediately and disclosed it only

after she developed physical symptoms and her mother enquired about her condition. Learned Addl. P.P, on the point of presumption, referred to Section 29 of the POCSO Act and submitted that the burden of proving innocence lies upon the convict himself. Learned Addl. P.P., further submits that the statements of P.W.-12 are corroborated by the statements of P.W.-14, the victim, and P.W.-16, which are sufficient to prove the guilt of the convict, and that medical evidence is not mandatory in such cases.

12. To strengthen, his arguments, learned Addl. P.P., cited the following Judgments of the Hon'ble Supreme Court:-

12.1. **Paras-5 and 7** of the Hon'ble Supreme Court Judgment reported in **(1995) 5 SCC 518** titled as **Karnel Singh Vs State of M.P** bearing No. **Criminal Appeal No.877 of 1995**. The same is produced here-in-under:-

“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 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.

7. We have carefully examined the evidence of the prosecutrix, the medical evidence of her examination and the evidence of the investigating officer and we are inclined to think there is no risk involved in accepting the version of the prosecutrix. Her evidence shows that she had joined the two accused persons hardly three days before the incident as a labourer under a contractor. She was, therefore, in not too familiar an environment. She was the only female worker just out of her teens. Besides, the two accused persons and the prosecutrix there was one more person by the name Charan who was sent away to fetch tea. Taking advantage of the prosecutrix being alone in their company the appellant picked her up and took her inside the machine room, laid her on a pile of sand, removed her saree and petticoat, and had sexual intercourse with her against her wish. After he had satisfied his lust, he called his companion but before the latter could have her, she ran away and narrated the incident to Multanabai and then went in search of her husband, a rickshaw puller. After narrating the

incident to him, both of them went to the police station and lodged the complaint, Exhibit P.1, at about 4.10 p.m. It was said that there was considerable delay and sufficient time for tutoring and therefore her evidence could not be belivered. There is no merit in this contention. The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. The possibility of tutoring is ruled out because the evidence does not show that her husband knew the appellant and his companion before the incident. She too had started work hardly three days before and therefore she had no reason to falsely involve the appellant. No such reason is even suggested. She was a poor labourer hired by a contractor just a few days back and had no enmity with the appellant and his companion. Nor is there any such history so far as her husband is concerned. There is, therefore, no reason to doubt her word. As for corroboration the find of semen stains on her 'saya' and in her vagina lends sufficient assurance to her accusation. In *State of Maharashtra v. Chandraprakash Kewal Chand Jain* (1990) 1 SCC 550, this Court speaking through one of us (Ahmadi,J) had an occasion to point out that a woman who is a victim of a sexual assault is not an accomplice to the crime but is a victim of another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice. She is not in the category of a child witness or an accomplice and therefore the rule of prudence that her evidence must be corroborated in material particulars has no application, at the most the court may look for some evidence which lends assurance."

12.2. **Paras-3 and 4** of the Hon'ble Supreme Court Judgment reported in (2017) 4 SCC 393 titled as *Sunil Vs. State of Madhya Pradesh* bearing No. *Criminal Appeals Nos.39-40 of 2014*. The same is produced here-in-under:-

"3. At the very outset, we deal with the arguments advanced on behalf of the appellant that in the present case the report of DNA testing of the samples of blood and spermatozoa under Section 53-A of the Code of Criminal Procedure, 1973 has not been proved by the prosecution. The prosecution has, therefore, failed to prove its case beyond reasonable doubt. Reliance in this regard has been placed on the decision of this Court in *Krishan Kumar Malik v. State of Haryana*.

4. From the provisions of Section 53-A of the Code and the decision of this Court in *Krishan Kumar* it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in *Krishan Kumar* (para 44), Section 53-A really

"facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."

12.3. Regarding the testimony of single witness, **Para-49** of the Judgment of the Hon'ble Supreme Court reported in (2012) 1 SCC 16 titled as **Prithipal Singh and ors Vs. State of Punjab and anr.**, bearing No. **Criminal Appeals Nos.523-27 of 2009** with **Criminal Appeal No.528 of 2009**. The same is produced here-in-under:-

*"This Court has consistently held that as a general rule the Court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of **Section 134** of the Evidence Act. But if there are doubts about the testimony, the court will insist on corroboration. In fact, it is not the number or the quantity, but the quality that is material. The time-honoured principle is that evidence has to be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value, weight and quality of evidence, rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence."*

13. Stating thus, learned Addl. P.P., urged this Court to dismiss this appeal and upheld the impugned Judgment and Order of conviction.

14. Heard and perused the evidence on record. Before delving in the conclusion of the case, let us examine some important witnesses and evidence.

15. PW-2, Dr. Helina Debbarma, Medical Officer, Dhalai District Hospital, deposed that she examined the victim on 01.07.2022 on police requisition and prepared the medical examination report. She stated that no fresh external injury was found on the body or private parts of the victim, though the hymen was found torn, old and healed at the 6 o'clock position, and

that she did not conduct internal genital examination. She further stated that various biological samples were collected and handed over to the police and that the urine pregnancy test was positive. She deposed that subsequent ultrasonography showed a single live intra-uterine gestation of 6 weeks and 6 days.

In cross-examination, she stated that she did not ask the name of the accused from the victim or her parents and did not prepare any blood sample authentication card.

16. P.W.-10, the neighbour, in his examination is chief stated that he knows nothing about this case and he cannot say as to why he have been cited as a witness in connection with the instant case.

17. PW-12, the mother of the victim deposed that the accused Tridip Chakma is her brother-in-law. She stated that her daughter had gone to the house of Manik Lal Chakma and thereafter being called by the accused went to the dwelling hut of the accused, where the alleged incident took place. She further stated that the matter was disclosed to her by her daughter after she fell ill, following which she informed her husband and the village headman and subsequently lodged an ejahar with the police, identifying her signatures thereon. She also identified the accused in court and stated that her daughter subsequently gave birth to a male child.

In cross-examination, PW-12 stated that the incident occurred on 21.06.2022 and that the disclosure was made by her daughter on 22.06.2022 in the evening, and that the ejahar was lodged on 01.07.2022.

18. PW-14, the victim, deposed through an interpreter that on 21.06.2022 in the evening she went to meet a friend and thereafter went near the house of her aunt, where the aunt was not present. She stated that the accused-Tridip Chakma, her uncle, called her while she was returning home and

took her to his dwelling hut, where the alleged sexual act took place. She further stated that she disclosed the matter to her mother after she fell ill, following which the case was lodged, and that she was examined at the hospital, by the police, and her statement was recorded before the Magistrate. She stated that she knows the accused, though he was absent in court on that day.

During cross-examination, PW-14 stated that when the accused forced her to have sexual intercourse for the first time, she informed her mother, who thereafter went to the police and lodged a complaint against the accused in relation to the said incident. She denied the suggestions put to her regarding false implication, prior relationship with any other person, tutoring by police, and paternity of the child.

19. P.W.-15, Dr.Subhankar Nath who was posted as Deputy Director, DNA Typing Division, Tripura State Forensic Laboratory, Narsingarh, Agartala in his examination in chief stated that the victim girl is the biological mother of the newly born infant baby and the accused-Sri Tridip Chakma is not the biological father of the newly born infant baby.

20. P.W.-16, Shri Rushan Chakma stated that about two years back one day at about 3.00 pm which he was in the house of the accused he saw the victim suddenly appear there and the accused asked her about her marriage etc. Then he left the house of the accused. After 2/3 days he could hear that the said victim was sexually harassed by the accused in the Tong Hut of his house.

21. The statement of the victim-girl given under Section 164(5) of Cr.P.C. is also extracted here-in-under:-

“ On 21.06.2022, I went to Maniklal Chakma’s house to meet Miss Padali Chakma, Maniklal’s daughter, who is my friend. At about 3.00 pm, Tridip Chakma called me to his house, wherein he throttled me, tore my wearing apparel and had sexual intercourse with me forcibly. He also threatened me not to disclose this to anyone else.

Prior to this, Tridip Chakma used to sexually abuse me forcibly on numerous occasions but I could not muster courage to disclose theis to anyone out of fear and stigma.

Ours', Maniklal's and Tridip Chakma's house are situated nearly in the same locality. I gradually fell ill and ultimately I disclosed everything to my mother. I want justice."

22. Upon a careful and independent re-appreciation of the entire evidence on record, this Court finds that the conviction of the appellant rests substantially on the testimony of the victim (PW-14), sought to be corroborated by PW-12, her mother. It is a settled principle that conviction can be founded on the sole testimony of the prosecutrix, provided such testimony is found to be wholly reliable and inspires confidence. However, where the testimony suffers from material inconsistencies on vital aspects, the Court is required to exercise greater caution before acting upon it.

23. In the present case, the evidence of PW-14, the victim-prosecutrix does not remain consistent on material particulars, particularly with regard to the timing and manner of disclosure of the alleged incident, the number of alleged occurrences, and the sequence of the events. The victim prosecutrix in her deposition before the Court stated that when the accused forced her to have sex for the first time, then she told to her mother about it and her mother went to the police and filed a complaint against the accused. But in her statement made under Section 164 of Cr.P.C., she stated that the accused raped her multiple times and only when she fell ill and on the query of her mother she divulged about the incident. While in the statement of P.W.-12, the mother of the victim, there is no mention of multiple incident of rape. Accordingly, the versions emerging from the testimony of PW-14, when read in conjunction with the evidence of PW-12, do not present a uniform or consistent narrative. Such inconsistencies assume significance, as the prosecution case primarily hinges on oral testimony without contemporaneous corroboration.

24. The delay of about ten days in lodging the FIR, though sought to be explained, assumes significance in the facts of the present case. The explanation offered for such delay does not find consistent support from the prosecution evidence itself. This Court is of the opinion that when such a ghastly incident allegedly occurred on 21.06.2022, and the victim fell ill on 22.06.2022 and disclosed the incident, the complainant mother filed the complaint only on 01.07.2022, after a lapse of several days, merely on the pretext of performing the funeral rites of her deceased sister-in-law. Such delay in lodging the FIR in a sensitive case of this nature, and the reasons assigned for the same, appear unnatural and raise serious doubts in the mind of this Court.

In *Vijayan v. State of Kerala(supra)*, the Hon'ble Apex Court has cautioned that in cases resting solely on the testimony of the prosecutrix, unexplained or inadequately explained delay in lodging the FIR, coupled with absence of supporting medical or other evidence, makes it unsafe to sustain a conviction.

25. The medical evidence, as deposed by PW-2, does not lend corroboration to the prosecution case. PW-2 categorically stated that no fresh external injury was found on the body or private parts of the victim and that the hymen was torn, old and healed. The pregnancy of the victim, though established, has not been medically linked to the appellant.

26. Though it is true that absence of medical corroboration is not by itself fatal to the prosecution but the said principle applies where the oral testimony is otherwise found to be cogent, consistent and trustworthy. In the present case, the oral evidence itself suffers from inconsistencies, and therefore the lack of medical corroboration assumes relevance while appreciating the cumulative effect of the evidence.

27. The testimony of PW-10, an independent neighbour witness also does not support the prosecution case, as he categorically stated that he knew nothing about the alleged incident. The absence of support from

independent witnesses further weakens the prosecution version, particularly in a case resting predominantly on related witnesses. P.W.-16, which the learned Addl. P.P., relied upon is a hearsay witness and such witnesses cannot be relied upon.

28. This Court is of the opinion that while a conviction may be based on the testimony of a single witness, such testimony must be of sterling quality and wholly reliable. Where doubts arise regarding the quality and consistency of the evidence, the Court must insist on corroboration. In the present case, the evidence of the prosecutrix does not meet the standard of being wholly reliable so as to form the sole basis of conviction as seen from her mismatch of evidence before the Trial Court and her statement under Section 164 of Cr.P.C.

29. As regards the presumption under Section 29 of the POCSO Act, it is well settled that such presumption arises only after the prosecution establishes the foundational facts beyond reasonable doubt. In the present case, in view of the inconsistencies in the prosecution evidence, the unexplained aspects surrounding delay, and the absence of corroborative medical or independent evidence, this Court is of the view that when the foundational facts themselves have not been established, the same does not attract the statutory presumption.

30. It is seen from the record that though it is stated that as per the list of exhibits at page 46 of the impugned Judgment, the birth certificate and Aadhaar Card of the victim was shown as Exbts-16 and 17, respectively. However, upon thorough physical verification of the LCRs, no such documents have been found and accordingly, the same has not been incorporated in the paper book. The same have also been reflected in page-2 of the paper book itself. Further the judgments referred to by the learned Addl. P.P. are not relevant to the fact of the present case.

31. In view of the above discussion and overall evaluation of the evidence and in light of the settled principles laid down by the Hon'ble

Supreme Court as cited supra, this Court finds that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

32. Consequently, the appellant is entitled to the benefit of doubt, and the conviction and sentence imposed by the learned Special Judge (POCSO) cannot be sustained. In the result, the appeal is allowed. The judgment and order of conviction and sentence dated 12.08.2024 passed by the learned Special Judge (POCSO), Dhalai Judicial District, Ambassa, in Special (POCSO) Case No. 04 of 2022 are hereby set aside.

33. The appellant is acquitted of all the charges levelled against him. He shall be released forthwith from custody, if not required in connection with any other case. The bail bonds, if any, stand cancelled, the fine amount, if already deposited, shall be refunded to the appellant, in accordance with law.

34. As a sequel, stay if any stands vacated. Pending application(s) if any also stands closed.

S. DATTA PURKAYASTHA, J

DR. T. AMARNATH GOUD, J

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR SUHANJIT
SINGHA
Date: 2026.02.11 16:05:54
+05'30'