

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.REV.P. NO.130 OF 2006

Shri Laxman Das,
S/o Late Purna Das,
Resident of Kalikapur,
Bhagat Singh Colony,
P.S. West Agartala,
District- West Tripura.

.... **Accused-Petitioner.**

-- **Vrs** --

The State of Tripura.

..... **Respondent.**

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the Accused-petitioner : Mr. B. Nandi Majumder,
Advocate.

For the Respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing : **13.01.2015 & 17.01.2015**

Date of delivery of
Judgment & order : **02.02.2015.**

Whether fit for reporting : **No.**

JUDGMENT & ORDER

This revisional application under Section 397 read with Section 401 of Cr.P.C. is directed against the judgment and order dated 22.08.2006 passed by learned Addl. Sessions Judge, West Tripura, Agartala in Criminal Appeal

No.18(2)/2005 where-under the learned Addl. Sessions Judge upheld the judgment and order of conviction and sentence, dated 24.03.2005, passed by learned Asstt. Sessions Judge, Court No.2, West Tripura, Agartala in Case No.ST(WT/A)138 of 2004. Learned Asstt. Sessions Judge found the accused-appellant guilty of the charge framed against him under Section 376(1)(f) of IPC and sentenced him to suffer R.I. for 3(three) years and to pay a fine of Rs.500/- in default of payment to suffer further R.I. for one month.

2. Heard learned counsel Mr. B. Nandi Majumder for the accused-petitioner and learned Addl. P.P., Mr. R.C. Debnath for the State-respondent.

3. P.W.1, Smt. Jyostna Chakraborty set the law in motion by filing an FIR in writing on 17.05.2004 alleging that her daughter (name kept withheld), the victim prosecutrix, aged about 13 years used to go to the house of her neighbour Laxman Das with a view to sleep with Jharna Das, daughter of Laxman Das at night for last 7/8 days. On 15.05.2004 during night time, when the victim prosecutrix was sleeping with Jharna, the accused Laxman Das jumped over victim prosecutrix and raped her. On the following day, in the morning, the victim prosecutrix narrated the fact to her mother and she then reported the incident to her neighbours. She,

therefore, prayed for investigation and punishment of the accused.

4. On the basis of that FIR, Agartala Women P.S. Case No.24/04 under Section 376 IPC was registered and after investigation police submitted charge-sheet against accused Laxman Das under Section 376 of IPC.

5. Cognizance was taken on the basis of the police report and in due course on commitment of the case to the Court of Sessions trial was taken up in the Court of learned Asstt. Sessions Judge and accordingly learned Asstt. Sessions Judge on 13.09.2004 framed charge against the accused Laxman Das for commission of offence punishable under Section 376(i)(f) of IPC to which the accused pleaded not guilty and claimed to be tried.

6. Prosecution examined 12 witnesses to prove the charges and also proved the documents such as the FIR, the seizure list of wearing apparels of the victim, the report of vaginal swab examination, medical examination report of the accused, medical examination report of the victim and the hand sketch map of the place of occurrence etc.

7. After closure of the prosecution evidence, accused was examined under Section 313, Cr.P.C. to which he denied the prosecution case and in his turn, accused examined 3 (three) D.Ws.

8. At the conclusion of trial, learned Asstt. Sessions Judge found the accused guilty of the offence alleged and sentenced him as stated hereinbefore.

9. Aggrieved, the convict-accused preferred Criminal Appeal No.18(2) of 2005 and the learned Addl. Sessions Judge by impugned judgment dated 22.08.2006 dismissed the appeal. Hence, this revisional application.

10. While exercising jurisdiction under Section 397 read with Section 401 of Cr.P.C., this Court is required to see the correctness, legality and propriety of the judgment/order passed by the inferior Court and further to see the regularity of the proceedings. This Court is not ordinarily required to re-examine and re-appreciate the evidence which is already appreciated by the trial Court and the appellate Court unless there is allegation of perversity that the evidence on record has not been properly appreciated.

11. This is a case of rape of a minor girl by a fatherly person while the girl was sleeping in the house of the accused. I have gone through the impugned judgments passed by the learned trial Judge and by the appellate Judge.

12. Learned counsel Mr. Nandi Majumder appearing for the accused-petitioner concentrated his argument only on the point that the charge was defective since it was framed under Section 376(i)(f) of IPC. There was no such material to frame a charge under Section 376(i)(f) of IPC. Since the charge was defective there should be a *de novo* trial and the case should be remanded back to the trial Court.

13. Learned Addl. P.P. submitted that the charge has been correctly framed but while mentioning the offending Section, the trial Court mentioned Section 376(i)(f) but it should be 376(1) of IPC only. Wrong mention of the Section does not vitiate the trial since the charge contains the substance of allegation of fact against the accused.

14. For proper appreciation, let us quote here the charge framed by the trial Court which reads as follows:-

“I, Shri K. Chakraborty, Asstt. Sessions Judge, Court No.2, West Tripura, Agartala, do hereby charge you,

*1. Laxman Ch. Das,
as follows:-*

That, you on 15-5-2004 night at any time before dawn at Kalikapur Bhagat Singh Colony, under Agartala Women Police Station, in your house committed rape on Kumari Sonai Chakraborty (13 years), D/O Sri Partha Chakraborty of Kalikapur, Bhagat Singh Colony, and thereby committed an offence punishable U/S-376(i)(f) of the I.P.C. and within my cognizance.

And I hereby direct that you be tried by this court of session on the said charge.”

15. A bare reading of the charge makes it clear that the substance of allegation has been stated in the charge but while mentioning the offending Section, the trial Judge mentioned Section 376(i)(f) of IPC but it ought to be Section 376(1) of IPC only. This defect in the charge, in my considered opinion, has not vitiated the trial and not required to remand the case to the trial Court for trial afresh. Section 215 of Cr.P.C. prescribes provision regarding effect of errors in charge which reads as follows:-

“215.Effect of erros.—*No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.”*

16. The material allegation has been clearly stated in the charge and therefore, there is nothing to draw an inference that the accused was in any manner misled by the charge framed against him. What was the allegation against him has been clearly stated. The offence must be under Section 376(1) but while mentioning it the trial Court noted 376(i)(f) and that in my view has in no way misled the accused and therefore, I find no justification in the submission of learned counsel Mr. Nandi Majumder to remand the case to the trial Court for framing charge and recording evidence afresh. Further, Section 464 of Cr.P.C. prescribes thus:--

“464. Effect of omission to frame, or absence of, or error in, charge.—(1) *No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.*

(2) *If the Court of appeal confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—*

(a) *in the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommenced from the point immediately after the framing of the charge;*

(b) *in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit.*

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

17. A bare reading of the above provisions makes it abundantly clear that the charge framed against the accused has given proper notice about the allegation and there is nothing to hold that the accused was misled or misguided by the charge and therefore, was deprived of taking his proper defence and consequently there was failure of justice occasioned thereby.

18. Neither at the stage of trial nor at the time of appeal the point was raised on behalf of the accused. So, at the revisional stage, I find nothing to consider the submission of learned counsel Mr. Nandi Majumder that the charge was so defective that the accused was misled or misguided and was deprived of taking appropriate defence and hence, I find no justification in the submission of learned counsel Mr. Nandi Majumder on this score.

19. As I find the victim prosecutrix has been examined as P.W.2. In her deposition she stated that Jharna Das, daughter of Laxman Das is her friend and the incident took place at night few months ago. At that time, for about 7 days

she was sleeping in the house of Jharna Das as her parents went elsewhere. Laxman Das and his wife returned home that night. Laxman Das slept in the adjacent bigger portion of the room. At late night she was awakened as Laxman Das came to her bed. He pressed her mouth and removed her clothes. He then removed his dress, took out his penis and entered it in her body. He then returned to his bed. She called Jharna and wife of Laxman Das who got up and hearing about the incident from her, she (wife of Laxman) told her that she would pay her money and that she should not disclose the fact to others. Early in the morning, she returned home and narrated the incident to her mother. She identified her clothes which she was wearing at the time of incident and marked as Exhibit M.O.1 series. She also identified the accused in the dock.

Her statement has been supported by her mother P.W.1 and her neighbours P.Ws. 3, 4, 5, 6 and 7. The medical evidence i.e. the medical examination report of the victim prosecutrix has been proved by P.W.11 and marked as Exhibit-5 which is supporting the case of rape. The evidence of the victim prosecutrix inspires all confidence.

20. The defence case is that daughter of accused namely Jharna was abused by the son of the informant namely Amaresh Chakraborty and the sons of P.W.7 Anil Ch.Das

namely Rajib and Sanjoy and on that issue Laxman Das reported the incident to CPIM party office and there was dispute between their families. By examining the D.Ws accused tried to show that on the night of occurrence he was in the house of D.W.1, Lalita Das relating to her daughter's marriage and he returned home only on Sunday. D.W.2 has stated about the boundary dispute between accused Laxman Das and the informant and P.W.7 Anil Ch. Das. D.W.3 is the daughter of the accused with whom the victim was sleeping on the night of alleged occurrence. D.W.3 nowhere stated that on the night of occurrence, the victim was not sleeping with her. She simply stated about the allegation that she was abused by Amaresh and that she informed the fact to her parents and her parents reported it to party office. From party office someone rebuked Amaresh, Rajib and Sanjoy. 2/3 days thereafter Anil Das threatened her father that he will be evicted from the locality. They went to the home of their aunt 2 days before marriage and they returned to their house from the house of their aunt only on Sunday. D.W.1 Lalita Das claimed to be the sister of the accused where the accused with his wife went to attend a marriage ceremony. During cross examination of the prosecution witnesses, defence has suggested that the accused with his wife went to the house of one Namita Das, his sister but Namita Das was not examined whereas one Lalita Das was

examined and there is nothing to show that Lalita and Namita was same person. Therefore, the defence plea of alibi that the accused was away from the house on the night of occurrence has not been proved. The victim's evidence since inspires all confidence, I am of considered opinion that the trial Court and the appellate Court rightly arrived at a conclusion of guilt of the accused and he has been rightly convicted and sentenced. Minimum sentence has been given and so, I find nothing to interfere in the sentence also.

21. The revisional application accordingly stands dismissed.

22. Send back the L.C.Records along with a copy of this judgment.

JUDGE