

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No.67 of 2011

Shri Babulal Das,
son of late Chandra Kishore Das
resident of village – Chandrapur, P.S.
Dharmanagar, District – North Tripura

..... Petitioner

- V e r s u s -

The State of Tripura

..... Respondent

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner : Mr. A. Dasgupta, Advocate

For the respondent : Mr. A. Ghosh, P.P.

Date of hearing and : **16.06.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Dasgupta, learned counsel appearing for the petitioner as well as Mr. A. Ghosh, learned P.P. appearing for the State.

[2] As the appeal against the judgment of conviction dated 27.01.2011 delivered in ST 40(NT/D) of 2010 by the Assistant Sessions Judge, North Tripura, Dharmanagar has been dismissed, the petitioner has filed this revisional application under Section 401 read with Section 397 of the I.P.C. The

appellate Court by the judgment and order dated 22.06.2011 delivered in Criminal Appeal No. 12(1) of 2011 has affirmed the finding of conviction under Section 376 (2) (f) read with Section 511 of the I.P.C, however on reducing the sentence from 3(three) years rigorous imprisonment with fine of Rs. 20,000/-, in default of payment of fine to suffer further rigorous imprisonment for 6(six) months to that to suffer rigorous imprisonment for 6(six) months with fine of Rs. 20,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 1(one) month.

[3] The said judgment and order has been challenged by this petition on the ground that the appellate court has failed to appreciate the evidence and for non-consideration of the materials, the impugned judgment has been passed in contrast to the basic principles of appreciation of evidence.

[4] Mr. A Dasgupta, learned counsel appearing for the petitioner has submitted that it would be apparent if the records of evidence are appreciated that the prosecution has miserably failed to prove the offence of attempting rape on the victim (PW-2), whose name has been withheld by this court for protecting her identity. Apart that, Mr. A. Dasgupta learned counsel for the petitioner has submitted that the petitioner is now aged about

65 years and he has become infirm and that aspect be considered.

[5] From the other side, Mr. R.C Debnath, learned Addl. P.P has succinctly submitted that there is no infirmity in the finding of conviction and as such, he has urged this court not to interfere with the impugned judgment of conviction.

[6] For purpose of appreciating the rival contentions, projected by the learned counsel appearing for the parties, it would be apposite to glance through the records of evidence, though in a brief manner.

On the complaint of the mother of the victim, namely, Madhavi Sarkar (PW-1) to the Officer-in-Charge, Dharmanagar police station, North Tripura, disclosing that on 22.05.2009 at about 6 pm, her daughter went to the house of the petitioner for collecting mango, then the petitioner kissed on her cheek. He tried to do obscene things and in order to achieve that undressed her daughter. Even he got him undressed. Then he embraced her. Her daughter ran away from the place of occurrence and after coming to the house, the victim started weeping and narrated her and others what the petitioner had done to her.

[7] Based on the said written ezahar dated 22.05.2009, Dharmanagar P.S. case No. 68 of 2009 under Section 376 and

511 of the I.P.C. was registered and taken up for investigation. After completion of the investigation, the final police report chargesheeting the petitioner was filed under Section 376 read with Section 511 of the I.P.C. On taking cognizance, since the case was exclusively triable by the court of Sessions, the police papers were committed to the court of the Additional Sessions Judge, North Tripura, Dharmanagar. In the course of time, the case was transferred to the court of the Assistant Sessions Judge, North Tripura, Dharmanagar for trial and the Assistant Sessions Judge framed the charge against the petitioner under Section 376 (2) (f) read with Section 511 of the I.P.C in Sessions Trial No. 40(NT/D) of 2010 which has emerged from Dharmanagar P.S case No. 68 of 2009. The petitioner pleaded total innocence and claimed to face the trial.

[8] In order to substantiate the charge, the prosecution adduced as many as 12(twelve) witnesses including the informant (PW-1), the victim (PW-2), two medical officers (PWs- 7 & 8) of Dharmanagar hospital, who examined the victim for different purposes and the Investigating Officer (PW-12). After the evidence of the prosecution was recorded, the petitioner was examined under Section 313 of the Cr.P.C to have his response on the incriminating materials which surfaced on the evidence. He again reiterated that he was completely innocent and falsely implicated in the said case. Thereafter, by the judgment dated

27.01.2011, the trial court returned the finding of conviction under Section 376 (2) (f) read with Section 511 of the I.P.C. It is to be noted that on 29.05.2009, after seven days of the occurrence the victim's statement was recorded under Section 164(5) of the Cr.P.C by the Sub-Divisional Judicial Magistrate, North Tripura, Dharmanagar. The victim gave the details how the petitioner behaved with her on the pretext of giving her mango.

[9] The victim was also examined in the trial as PW-2 after testing her capacity to understand the duty of speaking the truth and she has without any incoherence narrated how the incident took place and there was no incongruity with the statement she made before the Sub-Divisional Judicial Magistrate, North Tripura, Dharmanagar. Except PWs-7,8 and 12, all other witnesses are from the neighbourhood or the related witnesses and they have stated in the trial what they had heard from the victim or from the mother of the victim.

[10] PW-7, Dr. Supriya Roy, who examined the victim, has stated that she examined the victim but she did not find any mark of violence or application of force on her person or in her sexual organ.

[11] PW-8, Dr. Biswajit Paul examined the age of the victim, by way of ossification test. He has asserted that the age

of the victim was 7(seven) years. As such, a clear line of corroboration has been found in the prosecution case.

[12] PW-12, Sri Samaresh Das, the investigating officer has briefly narrated how he conducted the investigation and facilitated recording of the statement of the victim.

[13] PW-9, Sri Satyabrata Datta, the Sub-Divisional Judicial Magistrate, Dharmanagar has stated appearing in the trial that he followed the test to ascertain the maturity of the victim and only after being satisfied that the victim has the intelligence to understand the things and how the things are transacted, he recorded the statement of the victim under Section 164(5) of the Cr.P.C. The said statement has been introduced in the evidence as Exbt.4. Some other documentary evidence though had been introduced but according to this Court, on the face of the statement of the victim which is adequately convincing, no other evidence is required to be looked into.

[14] The victim has definitely gone through a very traumatic and excruciating experience and perhaps her sense of trust on the adults around her has been fractured. It may so happen that for the unpardonable act of the petitioner, the frame of her mind has become vulnerable forever. But this Court, while scanning through the records, finds that there is no

evidence that the petitioner has applied force to commit rape and as such, this Court is of the opinion that the offence that has been committed by the petitioner is punishable under Section 354 of the I.P.C. for outraging the modesty of the victim. Accordingly, the conviction under Section 376(2)(f) read with Section 511 of the I.P.C. is interfered with and set aside. Since the offence punishable under Section 354 of I.P.C is cognate to the offence punishable under Section 376(2)(f) read with Section 511 of the I.P.C., this Court without framing any charge under Section 354 of the I.P.C. is of the view that the petitioner shall be convicted under Section 354 of the I.P.C. based on evidence on record, without allowing him to lead any further evidence. Accordingly, the petitioner is convicted under Section 354 of the I.P.C. and hence, the petitioner shall be sentenced adequately. While considering the sentence of the petitioner, this Court has taken in the consideration of the age of the petitioner that the petitioner at present is 65 years of age. Having regard to all these, this Court is of the considered opinion that the petitioner shall be sentenced to suffer 2(two) months rigorous imprisonment with a fine of Rs.20,000/-, in default of payment of fine, to suffer further rigorous imprisonment for 2(two) months. The petitioner is directed to surrender within a period of 15(fifteen) days from today for suffering the sentence as awarded by this Court. If the fine

money is deposited by the petitioner that shall be handed over to Smt. Madhavi Sarkar, the mother of the victim (PW-1) for the benefit of the victim. This sentence is given as the offence was committed by the petitioner before 03.02.2013 when by way of the Criminal Law (Amendment) Act, 2013, the minimum sentence has been prescribed at one year imprisonment which may extend to 5(five) years and also with a fine under Section 354 of the I.P.C.

Having held so, this petition stands partly allowed to the extent as indicated above.

Send down the LCRs forthwith.

A copy of this order be furnished to Mr. A. Dasgupta, learned counsel appearing for the petitioner.

JUDGE

Sujay