

IN THE HIGH COURT OF TRIPURA
AGARTALA

CRL. REV. P. No.68 of 2011

Sri Govinda Debnath,
son of Shri Jagadish Debnath,
of West Bhubanban, P.O.
Bhubanban, P.S. West
Agartala, District – West
Tripura

..... Petitioner

- V e r s u s -

The State of Tripura,
represented by the Department of
Home, Government of Tripura, Civil
Secretariat, New Capital Complex,
P.O. Kunjaban, P.S. East Agartala,
District – West Tripura

..... Respondent

BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA

For the petitioner : Mr. D.C Roy, Advocate

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

Date of hearing and : **10.06.2015**
delivery of judgment & order

Whether it is fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

Heard Mr. D.C. Roy, learned counsel appearing for the petitioner, who was juvenile at the time of commission of offence, of outraging the modesty of the victim girl, punishable under Section 354 of the I.P.C. and of the offence of house

trespass, punishable under Section 457 of the I.P.C. Also heard Mr. A. Ghosh, learned P.P. appearing for the State.

[2] By this petition filed under Section 397 read with Section 401 of the Cr.P.C., the judgment and order dated 19.08.2011 delivered in Criminal Appeal No. 12(2) of 2011 by the Sessions Judge, West Tripura, Agartala has been questioned. By that judgment dated 19.08.2011, the judgment of conviction and order of detention dated 22.03.2011 delivered in Juvenile Case No.09 of 2008 arising out of GR 38 of 2008 has been affirmed.

[3] The prosecution case is rooted in the ejahar lodged by one Arati Das disclosing that while she was making 'traditional cake' in their house, her daughter was sleeping in a cot inside the kitchen at the dead hour of night at about 0200 hours. She found that latch of the kitchen door was opened and her daughter, whose name has been withheld for protecting her identity, was not in the kitchen. Suddenly, she heard the cry of her daughter, coming from the adjacent paddy field. She along with her husband and son rushed towards that direction and found her daughter, lying undressed in the paddy field. Her daughter informed them that she was forcibly brought by the petitioner and one Tapan Sarkar, who gagged her mouth and thereafter, they made her naked and the petitioner attempted to

rape her while Tapan caught hold of her. Thereafter, she with her son went to the house of the petitioner and Tapan and informed the matter to their house inmates but they did not get any positive response. As a result, she lodged the written ejahar to the West Agartala Women Police Station.

[4] Based on the said Ejahar, West Agartala Women P.S case No. 13 of 2008 under Sections 376/511/34 of the I.P.C. was registered and taken up for investigation and the case was investigated by one Sub-Inspector namely, Mamtaj Hasina (PW-10). On completion of the investigation, she filed the final police report against the petitioner under Sections 447/376 of the I.P.C. After the final police report was received by one of the Judicial Magistrates, Agartala, West Tripura, she transferred the said case to the Juvenile Justice Board for trial as both the accused persons were found to be juvenile in conflict with law by the order dated 02.02.2009. Thus, the Juvenile Justice Board took up the case for trial. During the trial, the charge under Section 457 read with Section 109 of the I.P.C and under Section 376 of the I.P.C. was framed against the juvenile offender, namely Tapan Sarkar and the charge under Sections 457/376 of the I.P.C. was framed against the petitioner. Both of them pleaded not guilty and claimed to face the trial.

[5] In order to substantiate the charge, the prosecution adduced as many as 10(ten) witnesses including the victim (PW-2), the informant (PW-1) and the investigating officer(PW-10). In addition to the oral evidence, the prosecution introduced 10(ten) documentary evidence including the medical examination report of the victim, Exbt.10. After the prosecution evidence was recorded, the juveniles in conflict with law were examined under Section 313 of the Cr.P.C. separately. Having appreciated the evidence, the Juvenile Justice Board has observed as under:

"We have very carefully and closely scrutinized the evidence of those witnesses and do not find any material contradiction in respect of sleeping of victim girl in the kitchen and taking away the victim girl in the paddy filed by the accused persons. The victim girl clearly stated that the accused took her away pressing hold her mouth to the nearby paddy filed from where she raised alarm and she also stated that her parents and brother Suman arrived there. The parents and brother have also stated that they went to the paddy filed hearing the cries of the victim girl. There is no iota of contradiction in the evidence of the witnesses regarding this fact.

The victim also stated that she stated to her parents and brother that accused Gobinda and Tapan had brought her to the paddy filed forcibly from the kitchen pressing her mouth. The parents and brother have also stated the victim girl disclosed to them that the accused Gobinda and Tapan brought her there forcibly. So, there is also no contradiction in the evidence of the witnesses.

The next statement of the victim girl is that accused persons made her naked and lying down on the paddy filed accused Gobinda Debnath inserted his

penis through her vagina while accused Tapan Sarkar had caught her.

PW.1 Arati Das and PW.3 Sandnda Das stated that the victim told them that accused Gobinda had committed sexual intercourse with her. Whereas, PW.4 Suman Das, the brother of the victim girl stated that the victim girl informed them that Tapan Sarkar had set his penis to her private part. So, there is a sharp contradiction in the evidence of PWs. 1, 2, 3 and 4. Let us see what was stated by the informant in the FIR.

In the ejahar the informant stated that when the accused person were putting off the pant of the victim girl she raised alarm and thereafter the informant along with her husband and son went to the paddy field. So, in the ejahar, the informant did not state that Gobinda or Tapan committed sexual intercourse with the victim girl as she stated before the Court at the time of giving deposition. So, here also we find a major contradiction in the evidence of the informant with the contents of the ejahar. Had there been any incident of sexual intercourse as described by the witnesses at the time of giving deposition, the informant being the mother of the victim girl could not have any reason to suppress that material fact when she took the decision to get justice for such heinous offence committed upon her daughter. Such contradiction creates a doubt in the mind of Board regarding the sexual intercourse of the victim girl by either of the accused forcefully.

From the evidence of the informant as well as, from the victim girl and IO we find that the victim girl was examined by the medical officer at IGM Hospital. So, let us see the evidence of the medical officer. PW.12 Dr. Basudeve Majumdar stated that on 17.01.2008, he examined the victim girl in connection with Agartala women PS Case No.13 of 2008 and on examination he found that the victim girl was physically and mentally normal and no injury mark found in any part of her body including her private part and on examination the doctor opined that there was no sign of sexual intercourse. The report submitted by the witness was marked as Exhibit-10 being proved by

him. Thus, the evidence of the medical officer also does not show that there was any sexual intercourse upon the victim girl.

Thus, we find that the testimony of the victim girl and her parents and brother regarding sexual intercourse is not supported by the contents of the FIR and also not corroborated by the evidence of the medical officer."

[6] Finally, it has been observed by the Juvenile Justice Board that

'the prosecution could not prove beyond shadow of reasonable doubt that the accused Gobinda Debnath committed sexual intercourse with the victim girl and accused Tapan Sarkar aided Gobinda in committing sexual intercourse. However, from the evidence of the victim girl as well as, from the evidence of her parents and brother it is crystal clear that the accused persons had applied criminal force upon the victim and thereby outraged her modesty.'

[7] Accordingly, it has been held that the juveniles in conflict with law is liable to be convicted under Sections 457/354 of the I.P.C and hence, they were convicted by the judgment dated 22.03.2011 delivered in Juvenile Case No.09 of 2008 arising from GR 38 of 2008. In terms of the said judgment of conviction, the petitioner and the other accused were sentenced to detention for a period of 3(three) months for committing offence punishable under Section 457 of the I.P.C. and another detention for a period of 6(six) months for committing offence punishable under Section 354 of the I.P.C. It has been observed that the sentences shall run concurrently.

[8] Mr. D.C. Roy, learned counsel appearing for the petitioner has submitted that the finding of conviction has been returned solely on the basis of the statement made by the victim. While considering the sentence, the trial court did not consider the various aspects viz. reformation of the juvenile delinquents. An appeal was filed against the judgment of conviction delivered by the Juvenile Justice Board in the court of the Sessions Judge, West Tripura, Agartala under Section 52 of the Juvenile Justice (Care & Protection of Children) Act, 2000 being Criminal Appeal No.12(2) of 2011. After hearing the appeal, by the impugned judgment dated 19.08.2011, the appellate court dismissed the appeal without interfering either on the finding of the conviction or the sentence. Hence this revision petition has been preferred by the petitioner.

[9] Mr. Roy, learned counsel has further submitted that there is no doubt that the accused were juveniles in conflict with law but while considering the sentence, the aspect of reformation has to be considered on the top of other considerations. Mr. Roy, learned counsel has referred a decision of the Gauhati High Court, Agartala Bench in the judgment and order dated 26.11.2012 passed in Criminal Revision Petition No.73 of 2012 which is however set in a different perspective. Thus, no benefit the petitioner can derive from the said

judgment. According to the apex court, a grown up major man cannot be detained in the special home, meant for detention of the juvenile delinquents, when he is convicted of the offence, committed by him when he was juvenile. Based on that particular fact, the apex court denied to confirm the order of detention. In that judgment, several decisions of the apex court including **Bhola Bhagat vs. State of Bihar**, reported in **(1997) 8 SCC 720** was discussed. But that judgment cannot come to the salvage of the petitioner. However, on considering the age of the petitioner, the nature of the offence and the transaction, this Court is of the view that reformatory course should be adopted. That course may be by detention in the special home but that be by the other dispositional alternative.

[10] Having held so, this Court of the considered opinion that the petitioner, the juvenile in conflict with law be released on probation placing him under the care of his parent at home namely, Sri Jagadish Debnath, resident of West Bhubanban, P.O. Bhubanban, P.S. West Agartala, District – West Tripura who shall furnish a bond before the Juvenile Justice Board undertaking that he shall take reformatory care of the juvenile delinquent for a period of one year for bringing about the behavioural correction inculcating a new healthy attitude to life so that the propensity to commit offence is curbed. On furnishing such bond, the petitioner, the juvenile delinquent

shall be released. In addition thereto, the probation officer submit a report after every 6(six) months to the Juvenile Justice Board. If any adverse report is received by the Juvenile Justice Board in respect of the petitioner, the juvenile delinquent, the bond of probation shall stand revoked and the petitioner shall be compelled to suffer the detention as awarded. The said bond shall be furnished by the father of the delinquent juvenile within a period of 3(three) weeks from today. If such bond is not furnished within the stipulated time, the juvenile delinquent shall surrender before the Juvenile Justice Board for undergoing the detention in the special home in terms of the impugned judgment and order.

A copy of this order shall be furnished to Mr. A. Ghosh, learned P.P. for giving the necessary information to the Juvenile Justice Board.

With this observation and direction, this revision petition is partly allowed to the extent as indicated above.

Send down the LCRs forthwith.

JUDGE

Sujay