HIGH COURT OF TRIPURA
AGARTALA

CRL.A.(J)12 of 2017

Sri Sukesh Das,
son of late Nilkanta Das
of Village-Dasda, P.S. Kanchanpur,
District : North Tripura

----Appellant(s)

Versus

The State of Tripura

---- Respondent(s)

For Appellant(s)	:	Mr. A. Acharjee, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing	:	15.11.2019
Date of delivery of Judgment & Order *	:	29.05.2020
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S. TALAPATRA
HON'BLE MR. JUSTICE ARINDAM LODH

Judgment & Order

[Talapatra, J]

The appellant was charged under Section 376(1) of the IPC for committing rape on the victim on 28.07.2007 about 11/11.30 a.m. nearby a place situated between Upper Dasda and Brikhapur under Kanchanpur Police station and after regular trial by the judgment dated 26.04.2016 delivered in Case No.ST/T-1/0000002/2015 by the Sessions Judge, North Tripura, Dharmanagar, the appellant has been convicted.

*The pronouncement of the judgment was deferred for lockdown of the court.

2. Pursuant to the said judgment of conviction, the appellant had been sentenced to suffer ten years' rigorous imprisonment and to pay fine of Rs.10,000/- with default stipulation, with further direction that if the fine money is realized that shall be paid to the victim as compensation. That apart, setting off was allowed in terms of Section 428 of the Cr.P.C. for purpose of deducting the period of detention from the substantive sentence of imprisonment. By this appeal, the said judgment and order of conviction and sentence are challenged.

3. The genesis of the prosecution case is rooted in the complaint [Exbt.5] filed by one Smt. Rajpati Reang [PW-5] to the Officer-in-Charge, Kanchanpur Police Station revealing that her daughter [the name is withheld to protect the identity of the victim] went to Dasda Bazar to deliver ten pineapples to her mother for selling. While returning home from Dasda Bazar along the way leading towards Brikshapur the appellant namely Sukesh Das appeared with a sharp cutting weapon [dao] in hand from the jungle and embraced her, touched her breast and gagged her mouth. The appellant put off her skirt and pant despite her resistance and committed rape by inserting his penis into her vagina. She was returning home with one boy namely Sujit Reang [aged about 8 years] who has been referred by the police as Subit Reang and examined in the trial as PW-6. PW-6, according to the complainant was the witness to the occurrence. On

31.01.2007, the complainant [PW-5] lodged the said complaint to the police officer. Based on that complaint, Kanchanpur P.S. Case No.37/07 under Section 376(1) of the IPC was registered and taken up for investigation. The final police report was filed on completion of the investigation sending up the appellant to face the trial in accordance with law. The case was committed to the court of the Sessions Judge. Having taken the cognizance, the Sessions Judge framed the charge as stated before. The appellant pleaded his innocence, denied the charge and claimed to be tried in accordance with law.

4. In order to substantiate the charge, the prosecution adduced as many as ten witnesses [PWs-1 to 10] including the victim and introduced eleven documentary evidence including the medical examination report of the victim and the report of Forensic Science Laboratory in the evidence.

5. The appellant examined himself to rebut the charge but, he has not adduced the other evidence including any documentary evidence. After recording the prosecution's evidence, the appellant was examined under Section 313 of the Cr.P.C. for having his response to the incriminating materials those surfaced in the record of evidence. The appellant denied his involvement at that time of examination and stated that the evidence as led by the prosecution was falsified by way of perfunctory investigation.

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6. Mr. A. Acharjee, learned counsel appearing for the appellant has submitted that there is no reliable evidence to convict the appellant. The findings are perverse as those are not based on legal evidence. Moreover, presence of the appellant in the place of occurrence could not be proved by the prosecution. The version of PWs is mostly improved. The conviction has therefore been on surmise and conjuncture. Mr. Acharjee, learned counsel having referred the medical examination report [Exbt.1] has stated that there was no mark of violence, no injury marks on breast, lips, thigh or any parts of her body. No foreign body or pubic hair found on her private parts. No final opinion was expressed initially by the examining medical officer namely Dr. Satadal Das [PW-1] in respect of the victim, whether she was raped or not.

7. Mr. Acharjee, learned counsel has further submitted that when the victim [PW-4] was examined in the trial she was nineteen years of age but the occurrence took place when she was 12/13 years of age. Therefore, it is only natural to have the injuries on the person of the victim after she was subjected to alleged forceful and non-consensual intercourse. According to Mr. Acharjee, learned counsel if the evidence is read collectively it would appear that the victim and the informant cooked up a story of rape against the appellant and hence, this is not a case where relying the version of the victim, the

person who has been alleged of committing rape can be convicted or sentenced.

8. Mr. Acharjee, learned counsel has relied on a decision in **Jamiruddin Ahmed versus State of Assam** reported in **2008 Cri LJ 586** where the Gauhati High Court had occasion to observe that when there was no symptom of sexual intercourse or sexual assault on the victim, the evidence contrary thereto, be it of the prosecutrix or of the other witness, cannot be relied upon. On meticulous appreciation of the evidence when it is found that the testimony of the prosecutrix is in contrast to the medical opinion her statement should not be relied by the trial court for returning the finding of conviction.

9. In **Vibhishan versus State of Maharashtra** reported in **2008 Cri LJ 721** the apex court had observed that when there is no sign of semen on the private part neither the clothes of the victim were torn nor there was presence of hair of the accused on the private part of the prosecutrix and the doctor after examining the prosecutrix has stated that the girl was habituated to sexual intercourse, the version of the prosecution becomes fragile. In such fact-situation, the apex court had interfered with the conviction as returned by the trial Judge and affirmed by the appellate Court [the High Court].

10. Mr. Acharjee, learned counsel has relied further on **Rajoo and Others versus State of M.P.** reported in **AIR 2009 SC 858** where the apex court has restated the law that ordinarily the evidence

of a prosecution should not be suspect and should be believed and if evidence is reliable, no corroboration is necessary but at the same time that principle cannot be universally and mechanically applied to the facts of every case of sexual assault.

11. Two recent decisions of this court have been relied by the counsel for the appellant. In **Rinku Nath versus State of Tripura** reported in **(2018) 1 TLR 600** this court has curtly reiterated the law by stating as follows :

> **"22. I is true that the version of victim is in great command deserves respect and acceptability but if the same under any circumstances casts some doubt in the mind of the court on the veracity of the victim's evidence, then it is not safe to rely on the uncorroborated version of the victim of rape in isolation."**

12. In **Anwar Hossain Maishan versus The State of Tripura** [judgment dated 04.11.2019 delivered in Crl.A(J) 31 of 2016] where this court had held as under :

> **"The element of exaggeration or imagination in respect of the occurrence has inflated or deflated when PW-2 has categorically stated that the victim was raped thrice in series forcefully. But the victim is silent about such consecutive rape. Moreover, the vulva of the vagina even not found swollen. Though the penetration to the labia majora may not be the essential ingredient, even the rapture of hymen is not material as proof of rape, but from the description of rape it appears that it is not a case of attempt but forceful intercourse out of which the victim lost her consciousness. Even the medical evidence has not indicated to such violation."**

13. Mr. Acharjee, learned counsel has made an endeavour to bring out resemblance of the fact situation of **Anwar Hossain Maishan**(supra).

14. Mr. S. Debnath, learned Special P.P. appearing for the state has submitted that no space has been left by the prosecution to infer differently other than that the appellant has committed rape on the victim [PW-4]. Mr. Debnath, learned Special P.P. has submitted that PW-6 has categorically stated that one Bengali boy jumped in front of them and caught hold of her [PW-4]. If this statement is read with the testimony of PW-4, there will be no confusion about the involvement of the appellant in committing rape on PW-4. That apart, the medical examination report [Exbt.1] is unambiguous in holding that hymen of the victim [PW-4] was found torn. Mr. Debnath, learned Special P.P. has also taken us to Exbt.4, the report of the Director and Chemical Examiner of State Forensic Science Laboratory (SFSL, in short), Exbt.3. In the serological report, it has been stated that in the torn panty seized from the victim, blood stain could be detected. For purpose of reference the relevant part of the serological report dated 08.11.2007 is reproduced hereunder :

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REPORT NO.FSL/81/08 DATED : 08.11.07

Sl.No.	EXHIBIT NO.	DESCRIPTION OF EXHIBIT(S)	STAIN/FLUID/TEST MATERIAL PRESENT ON EXHIBIT POSITIVE FOR	TEST RESULT FOR ORIGIN GROUP
1.	The exhibit was marked as "B" and same no. has been maintained in the laboratory.	One sealed paper packed contained one violet color old, torn panty	Blood	Human "AB"

		having some black stain in small areas said to be the wearing apparel of victim.		

15. Mr. Debnath, learned Special P.P. has contended in the backdrop as noted that there is no earthly reason to disbelieve the testimony of the prosecutrix. Having referred report of blood group examination of the victim [part of Exbt.4 series] Mr. Debnath, learned Special P.P. has contended that the victim's blood group is B +ve. But the blood group found in the panty was of AB group. Thus, the said blood group in the panty becomes an important piece of evidence to show that the blood group in the panty was of someone else. No attempt of comparison was made by the investigating officer. Therefore, the incidence of rape is proved by the medical examination report of the victim read with the serology report. That apart, the victim had immediately reported to her mother Rajputi Reang [PW-5] who had without delay reported the occurrence to the president of Young Bru Association namely Hamsarai Reang [PW-3] and the reason for the delay in lodging the complaint has been well explained by PWs-3 and 5. Hence, there is no infirmity in the impugned judgment of conviction and hence, no interference is called for.

16. The appellant [DW-1] has stated that he was not present in the place of occurrence inasmuch as his house is situated 3-4 km away from the place of occurrence and he did never go to that place.

But he had not adduced any other evidence to establish that plea of *alibi*. It is well settlement law that if the plea of *alibi* is raised, the burden of proving shifts completely on the person who raises such plea. No witness came forward to corroborate the statement of the appellant [DW-1] that at the relevant time and day he was in some other place. That is perhaps the reason why Mr. Acharjee, learned counsel has not marked any submission on that plea.

17. For purpose of appreciation of the evidence in an appropriate manner, it would be apposite to revisit the evidence meaningfully keeping in consideration the rival contentions raised by the counsel for the parties.

18. PW-1, Dr. Satadal Das examined the victim in connection with Kanchanpur P.S. Case No.34/2007. He has testified in the trial that the victim had stated to him that she was raped on 28.07.2007, 3 days before her examination in the hospital. On examination of the victim, PW-1 found that "her hymen was partially ruptured but there was no mark of violence on her private parts, there was no mark of injury on her breast, lips, thighs or any other part of her body. No foreign body or public hair was found on her genital part." PW-1 has identified the medical examination report [Exbt.1].

19. PW-2, Sri Rana Chatterjee is one of the two investigating officers in the case. He has stated that he took up the investigation when the first investigating officer namely Gopesh Ch. Sarkar [PW-10]

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was transferred from that police station. He has stated that he had recorded some statements, sent the vaginal swab of the victim for forensic examination and later on, he collected the medical examination report [Exbt.1] and the forensic examination report [Exbt.3], the blood test report [Exbt.4 series]. At the end of the investigation PW-2 filed the charge-sheet against the appellant for commission of offence punishable under Section 376(1) of the IPC. There had been no effective cross-examination.

20. PW-3, Hamsarai Reang is the community leader and she got the information of commission of rape on PW-4. While she after delivering the basketful pineapples to her mother [PW-5] was returning home. She was raped by the appellant. Due to the flood water the bridge over Deo river could not be used for going to the other side. There was an attempt to amicably settle that matter, but on her objection, such settlement was not possible and the complaint was filed to the police station. She was questioned fiercely in the course of cross-examination but did not deviate from her statement made in the examination-in-chief.

21. PW-4, [the victim] has stated that in the morning on 28.07.2007 her mother was engaged in selling pineapples at Dasda Market. She reached there with pineapples in a basket. Leaving the basketful pineapples to her mother, she took the return journey to home. When she had crossed the bridge over Deo, the appellant

appeared suddenly on the way with a dao in his hand. Her six years old cousin brother, Subit Reang [PW-6] was accompanying her. Seeing the appellant, out of fear he ran away. The appellant caught hold of her, disrobed her and committed rape. She could not raise alarm as the appellant was pressing her mouth with palms. After committing rape, the appellant left. Immediately, she went back to the market and informed her mother and her maternal uncle. Her mother had taken her to Dasda PHC for examination. PW-4 has testified in the trial that as a result of rape, she suffered bleeding injury and pain. After the matter was reported to the police, she was sent to the hospital for treatment. She was also produced before the Magistrate in order to get her statement recorded under Section 164(5) of the Cr.P.C. In the cross-examination, she has stated that the appellant tore her frock and she had received injury on her face and legs. While she was crossing the river a boat man had asked her what had happened to her. She told about the occurrence. As such, there is no statement contrary to the statement made in the examination-in-chief by the victim.

22. PW-5, Rajpati Reang [the mother of the victim] lodged the complaint [Exbt.5]. She has stated clearly that her daughter [the victim] brought pineapples in a basket to Dasda Market when she was engaged in selling the pineapples at that market. The victim after delivering the pineapples left for her home. After a while, she returned

to the market and reported that she was raped by Sukesh Das [the appellant] on her way to home. PW-5 has testified in the trial that the robes of her daughter were not in order at that time and her whole body was stained with mud. While narrating the occurrence, her daughter [PW-4] was weeping. PW-5 has stated that without selling the pineapples she had taken her daughter to Dasda PCH for her treatment. After three days she lodged the complaint in the Kanchanpur Police Station. There was no effective cross-examination.

23. PW-6, Subit Reang has stated that when he and the victim were returning home many years back, a Bengali boy jumped in front of them from a nearby jungle and caught hold of his sister [PW-4] and showed him a dao. Out of fear, he ran away. He denied the suggestion that on the relevant time and day he was not with PW-4.

24. PW-7, Gopal Chetri is the father of the victim. At the time of occurrence he was away from the state and after coming from Mizoram, after five days of the occurrence, he came to learn of the occurrence and filing of the complaint by his wife [PW-5].

25. PW-8, Nandalal Das is the officer in charge of the Kanchanpur P.S. registered the case after the complaint was filed and he had prepared the FIR form [Exbt.6] and endorsed the case to Gopesh Ch. Sarkar [PW-10], the first investigating officer.

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26. PW-9, Dr. Biswajit Pal had carried out the intra-oral examination to determine the age of the victim [PW-4]. Having observed the position of truth and sign of erections he came to the opinion that the victim was aged on the day of examination between 12 and 13 years. The said report [Exbt.2] has been introduced in the evidence by him.

27. PW-10, Sri Gopesh Chandra Sarkar was the first investigating officer and he had recorded the statement of the witnesses without any delay. He has explained that since the statement of PW-5 was exactly the same that she narrated in the complaint, he did not record her statement separately under Section 161 of the Cr.P.C. On her asking the medical examination of the victim was carried out. Even the statement of the victim was recorded under Section 164(5) of the Cr.P.C. [Exbt.7]. On that day he had visited the place of occurrence and prepared the site map with index [Exbts.8 & 9 respectively]. He had seized the vaginal swab of the victim in a container from PW-1 by preparing a seizure list [Exbt.10]. He had also seized the wearing apparels of the victim by preparing a separate seizure list [Exbt.11]. He has categorically stated that her skirt and urna was stained with mud. He has admitted in the cross-examination that one has to cross the Deo river for going to the house of the victim. He has given the description of the place of occurrence with reference to the site map and the index. He has testified in the trial

that the appellant was not found at his house when he raided for his arrest.

28. DW-1 has already been discussed and utility of the said testimony has been recorded. Therefore, that part of the evidence is avoided for sake of brevity.

29. Having appreciated the submission of the learned counsel of the parties and scrutinized the evidence incisively this court finds that there is no difficulty in believing the victim as she had no relation earlier with the appellant. Her post-occurrence conduct is quite natural. The statement of PW-6 corroborates the material part of her statement substantively. The forensic opinion as recorded in Exbt.3 stands to corroborate the testimony of the victim. In such circumstances, the principle laid down in **State of Punjab vs. Gurmit Singh & Ors.** reported in **(1996) 2 SCC 384** is relevant and persuasive. The apex court in **Gurmit Singh** (supra) has laid down thus :

> **"We are in respectful agreement with the above exposition of law. In the instant case our careful analysis of the statement of the prosecutrix has created an impression on our minds that she is a reliable and truthful witness. Her testimony suffers from no infirmity or blemish whatsoever. We have no hesitation in acting upon her testimony alone withoutlooking for any `corroboration'. However, in this case there is ample corroboration available on the record to lend further credence to the testimony of the prosecutrix."**
>
> **[Emphasis added]**

This court does therefore have no hesitation to act upon the statement of PW-4 without looking for further corroboration.

30. Having observed thus, no interference in the judgment and order of conviction and sentence as challenged in this appeal is called for. Hence, the appeal stands dismissed. The appellant shall serve out the remaining part of the sentence.

Send down the LCRs forthwith.

JUDGE **JUDGE**

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Sabyasachi B