

**HIGH COURT OF TRIPURA
AGARTALA**

CRL.A(J)22 Of 2015

1. Shri Naresh Jamatia @ Afulu
son of Shri Bikram Sadhan Jamatia,
2. Shri Ananda Jamatia @ Mother,
son of Shri Shib Sadhan Jamatia
3. Shri Raj Kishore Jamatia @ Pai,
son of Shri Budha Jamatia, @ Bud Pada

All are residents of Khupilong, PS: Killa, District: Gomati Tripura.

-----Appellant(s)

Versus

The State of Tripura

-----Respondent(s)

For Appellant(s)	:	Mr. Ratan Datta, Adv.
For Respondent(s)	:	Mr. B. Choudhury, P.P.
Date of hearing and Judgment & Order	:	28.02.2019
Whether fit for reporting	:	NO

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

Judgment & Order(Oral)

Heard Mr. Ratan Datta, learned counsel appearing for the appellant as well as Mr. B. Choudhury, learned Public Prosecutor appearing for the state.

[2] Mr. Ratan Datta, learned counsel appearing for the appellant has built up his submission on the basis of the evidence on record. For the course of hearing, this court has come across the charge that was framed on 22.05.2015 (as surfaced from the record). The charge had been framed

separately against the appellants, namely Naresh Jamatia @ Afulu and Ananda Jamatia @ Mother under Section 376(D) of the IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short POCSO Act) for committing rape on one of the victims (the name is withheld for protecting her identity). On the same date, the other charge was framed separately against the appellant, Raj Kishore Jamatia for committing rape on another victim along with the appellants and others, namely Naresh Jamatia @ Afulu and Ananda Jamatia @ Mother, Sanjib Jamatia, Ganja Kr. Jamatia @ Bashi on 03.10.2014 at Kupilong Madhya Para in the same trial. The charge was also framed under Section 376(D) of IPC and Section 6 of the POCSO Act, 2012. The first charge, as manifest from the records, was not read to Raj Kishore Jamatia @ Pai, one of the appellants, and the second charge was not read over to Naresh Jamatia @ Afulu and Ananda Jamatia @ Mother in conformity to the provisions of Sections 211, 212, 213 of the Cr.P.C. But the appellants have been convicted for committing rape on both the victims and the finding of the conviction has been framed in the following words by the judgment dated 22.05.2015 delivered in Special 01 of 2015 by the Special Judge (under POCSO Act, 2012), Gomati Udaipur:

"In the instant case three accused persons namely, Naresh Jamatia @ Afulu, Andanda Jamatia @ Mother and Raj Kishore Jamatia @ Pai along with others restrained the victims and their accompanies, driven out the accompanies with the common intention. The circumstances clearly established that they had a prior meeting of mind and they acted in concert in commission of crime of rape with that plan in furtherance of common intention. Thus; the evidence on record, established that the accused

persons committed offence punishable under Section-376(D) of IPC.

In order to constitute an offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 it is to be proved that accused persons committed aggravated penetrative sexual assault.

In this case, from the prosecution evidence it is found that the accused persons, named above, committed aggravated sexual assault while doing rape on the minor girls. Therefore, the evidence on record established that all the three accused persons namely, Naresh Jamatia @ Afulu, Ananda Jamatia @ Mother and Raj Kishore Jamatia @ Pai committed offence punishable under Section 6 of the Protection of Children from Sexual Offences, Act, 2012."

[3] Mr. Datta, learned counsel appearing for the appellants has urged for acquittal of the appellants on the basis of the appreciation of evidence as well as on reading of the charge. According to him, the framing of charge has itself given the leverage to claim for acquittal on the basis of infringement of the provision of Sections 211, 212 and 213 of the Cr.P.C.

[4] However, Mr. B. Choudhury, learned Public Prosecutor has strenuously argued that these defects mere irregularities within the meaning of Section 464 of the Cr.P.C. For purpose of reference, the relevant part of the said section is extracted hereinunder:

"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."

[5] According to Mr. Choudhury, learned Public Prosecutor even lapse in framing of the charge in the required manner may not give any ground to the appellants for

challenging the finding of conviction, as they carried out the cross-examination and as such they cannot plead now any prejudice.

[6] We have given a careful consideration of the submission made by the learned counsel appearing for the parties and are of the view that the appellants have claimed prejudice rightfully as their right emerges from Sections 211, 212 and 213 of the CrPC. An accused must know the substance of the charge in as much as Section 211 obligates the trial court to frame the charge by providing the distinct content in terms of Section 211 as well as the particulars of time and place of the alleged offence and the every statement regarding the manner of committing the offence under Sections 212 and 213, so that the accused does notice the substance and he can sufficiently have his opportunity to defend.

[7] This court is constrained to observe that for framing two separate charges in the manner as stated, the right of the accused has been substantially infringed and the prejudice has been caused to their defence. However, at the same time, the submission made by Mr. Choudhury, learned Public Prosecutor cannot be set aside casually in as much as the statement has been recorded by the trial court after affording opportunity of cross-examination. But if the charge was combined as is desired in the circumstances, the accused may or might vary their cross-examination for projecting the defence.

[8] In view of above, this court in exercise of the power granted by Section 464 (2) of the Cr.P.C., do hereby direct the trial court to frame the charge properly on the basis of the materials available in the police report. It is noted that the compliance of Sections 211, 212 and 213 of the Cr.P.C. is mandatory.

[9] Having observed thus, the judgment and order delivered in Special 01 of 2015 by the Special Judge (Under POCSO Act, 2012) Gomati, Udaipur dated 22.05.2015 is interfered with and set aside for the above limited purpose. The examination in chief of the witnesses are protected by this court. The trial shall be confined from the stage of cross-examination of all the witnesses by the appellants, the accused in the trial and thereafter, the trial shall be taken to its logical end within the timeframe as stipulated hereunder. From the date of receipt of the record from this court within 6 (six) months, the entire course of the trial shall be completed as the appellants are in the custody for long. If within 6 months, the trial is not complete for any unforeseen reason, which is unexpected, the appellants shall be at liberty to make prayer for their bail in the trial court.

Mr. Datta, learned counsel has submitted that all the appellants are in the Kendriya Sansodhanagar, Bishalgarh. The competent authority shall transfer the appellants to the District Jail at Udaipur forthwith. For that purpose, the Registry is directed to send a copy of this judgment and order

to the Superintendent of Jail, Kendriya Sansodhanagar,
Bishalgarh.

In terms of the above, this appeal stands disposed of.

Send down the LCRs forthwith.

JUDGE

JUDGE



Dipak