

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRL.A.(J)71 of 2019**

**Sri Shantu Hrishidas,**  
son of Sri Thakur Chand Hrishidas  
of East Aralia, P.S. East Agartala,  
District : West Tripura

----Appellant(s)

Versus

**The State of Tripura**

---- Respondent(s)

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For Appellant(s)	:	Mr. S. Sarkar, Adv.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing	:	15.06.2020
Date of delivery of Judgment & Order	:	30.06.2020
Whether fit for reporting	:	YES

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**HON'BLE MR. JUSTICE S. TALAPATRA  
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**Judgment & Order**

*[S. Talapatra, J]*

This is an appeal from the judgment dated 16.11.2019 delivered in Special (POCSO)41 of 2016 by the Special Judge, West Tripura, Agartala. By the said judgment, the appellant has been convicted under Section 376(2)(i) of the IPC for committing rape upon female child aged below 16 years and also under Section 4 of Protection of Children from Sexual Offences Act, 2012 [POCSO Act, in

short] for committing penetrative sexual assault on the victim who was aged about 13 years at the time of occurrence.

2. Pursuant to the said judgment and having regard to the provision of Section 42 of the POCSO Act, the appellant has been sentenced only under Section 4 of the POCSO Act. The appellant has been sentenced to suffer 10 years rigorous imprisonment and to pay fine of Rs.15,000/- with default stipulation. It has been observed that if the fine money is paid, the sum would be paid to the victim. That apart, the District Legal Service Authority, West Tripura, Agartala has been asked to pay the compensation as per the Victim's Compensation Scheme. It has been also observed that the period of detention undergone by the appellant shall be set off from the substantive sentence. Being aggrieved thereof, this appeal has been preferred.

3. The prosecution against the appellant commenced with filing of the complaint by one Monojit Das [PW-1] on 04.07.2016 to the officer-in-charge, Srinagar Police Station, West Tripura by revealing that on 03.07.2016 at about 5.30 p.m. his daughter [the name of the victim has been withheld for protecting her identity] was raped by the appellant and his daughter was aged about 13 years. When she went to take back their cows from the Nagichara Cashew Orchard, the cows returned their house, but his daughter did not return. The complainant with some family members rushed to the said orchard and initially they did not find out her. But about 6.30 p.m.,

the victim was recovered with injuries on her face. When the victim was asked by the complainant and his wife, she told them that when she went to bring back the cows, then Shantu Hrishidas, son of Thakur Chan Hrishidas raped her by applying criminal force. After hearing their[the complainant and others] voice, the appellant fled from that place. As his daughter was feeling unwell, she was brought to the IGM Hospital, Agartala. She was admitted there for treatment. One sub-inspector of police of Srinagar Police Station namely Dilip Sarkar recorded the oral ejahar of PW-1 on 03.07.2016, however, that was forwarded to the Police Station on 04.07.2016. Based on the said complaint, Srinagar P.S. Case No.2016/SRN/009 under Section 341/376(1) of the IPC and Section 4 of the POCSO was registered and taken up for investigation. Having completed the investigation and on analysis of the materials those were collected during the investigation, the police report under Section 173(2) of the Cr.P.C. was filed in the Court of the Special Judge. On taking cognizance, the Special Judge(POCSO) framed the charges against the appellant as stated before. The appellant pleaded innocence and claimed to be tried in accordance with law.

4. In order to substantiate the charge, the prosecution adduced as many as 19 witnesses including the victim [PW-7] and the medical officers who had examined the victim within a short while from the time of occurrence. After recording the evidence of the

prosecution, the appellant was examined under Section 313 of the Cr.P.C. to have his response on the incriminating materials those surfaced in the record of evidence. From the verification of the said statement what appears before this court is that the appellant had denied all the materials and reiterated his plea of innocence. However, the appellant has admitted that he was examined by PW-19 on requisition, as reflected in G.D.Entry No.23 dated 03.07.2016. To rebut the evidence of the prosecution, the appellant did not adduce any evidence. On evaluation of the evidence, the Special Judge returned the finding of conviction as stated.

5. Mr. S. Sarkar, learned counsel appearing for the appellant has submitted that even though, the victim has categorically stated that she did bite the right palm of the appellant but no such bite has been located during the appellant's medical examination by PW-19. Mr. Sarkar, learned counsel has further submitted that if the evidence is properly appreciated, it would be apparent that the investigation has failed to gather evidence to link the appellant with the alleged crime of rape or penetrative sexual assault on the victim. The investigating officer has failed to follow the material trail and failed to gather the evidence which could have indicated involvement of the appellant in the crime. Mr. Sarkar, learned counsel has persuaded this court to look at the medical report of the victim [Exbt.9] and contended that even to the medical officer the victim did

not disclose the identity of the perpetrator of the crime. She had made reference to "the accused". That apart, Mr. Sarkar, learned counsel has submitted that the medical officer who examined the victim is also not very specific as it has been opined that "the victim was assaulted and may be sexually assaulted or may be raped." But the act of rape neither can be confirmed nor can be ascertained from such opinion. Hymen was found torn with fresh bleeding.

6. According to Mr. Sarkar, learned counsel the medical examination did take place immediately after the occurrence, as it appears, on 03.07.2016. Thereafter, Mr. Sarkar, learned counsel has taken this court to the medical examination report of the appellant dated 04.07.2016 [Exbt.13] where the examining doctor has clearly opined as follows :

**"On examination, no injuries found on body and no injuries found on private part. There are no bite/nail marks present on the body. No seminal blood, vaginal, salivary stain, hair, foreign material found on body."**

Mr. Sarkar, learned counsel has contended that it shows that the tale as told by the victim is not wholly reliable. If she was bitten the appellant, the marks on the palm would have been available. Hence, this court may not rely on the testimony of the victim.

7. From the other side, Mr. S. Debnath, learned Addl. P.P. appearing for the state has submitted that what Mr. S. Sarkar, learned counsel appearing for the appellant has submitted is completely the

distorted version of the evidence on record. Mr. Debnath, learned Addl. P.P. has submitted that what the victim has stated during her examination under Section 164(5) of the Cr.P.C. has been stated or repeated in the trial and there is no deviation from her previous statement. The victim is consistent and there is no reason not to rely on the victim. Mr. Debnath, learned Addl. P.P. has however submitted that the examining medical officer was very casual in recording his opinion. The findings are unwaveringly indicative of rape, but for using the words loosely, the opinion has become subject to different interpretations. But the opinion cannot be formulated completely brushing aside the indicators those were recorded during the course of medical examination. The courts can form their opinion on the basis indicators.

8. That apart, Mr. Debnath, learned Addl. P.P. has taken us to the testimony of PW-14. The forensic expert has stated that the blood stains were detected on the vaginal swab and panty of the victim. But during the cross examination carried out by the defence, PW-14 has observed that as no seminal stain/spermatozoa of human origin could be detected in the exhibit he did not determine the blood group available in Exbts.A, E and I. According to Mr. Debnath, learned Addl. P.P. that the forensic expert would have gone for determining the blood group which were found in the vaginal swab and in the panty of the victim. But Mr. Debnath, learned Addl. P.P. did not fail to

refer that there was a fresh tear in the hymen and the blood stain was found with contusion on both right and left side of the below area of hymen. Obviously, the blood group those were found in the panty and in the vaginal swab were of the victim. Mr. Debnath, learned Addl. P.P. has submitted that the victim has given a graphic detail how she suffered penetrative sexual assault. Mr. Debnath, learned Addl. P.P. has quite emphatically submitted that there is no challenge about the age of the victim.

9. True it is that Mr. S. Sarkar, learned counsel appearing for the appellant has categorically referred to the evidence as led by the prosecution in respect of age of the victim. He has submitted that the determination of age by the Special Judge would not be challenged by the appellant.

10. Having regard to the rival contention raised during hearing, this court is of the view that a short survey of evidence be made to decide the appeal.

11. PW-1, Sri Monojit Das who lodged the oral ejahar has stated in the trial that his daughter [the name is withheld for protecting her identity] on 03.07.2016 at about 5/5.30 p.m. went to the cashew nut orchard to bring back their cows and after sometime the cows returned, but the victim did not. After the day's work, he returned home at 6/6.30 p.m. and learnt that his daughter did not return home from the cashew orchard. PW-1 and other family

members went out to search out the victim and ultimately, he found the victim in the said cashew orchard under a mango tree in an unconscious condition. PW-1 in the trial has stated that he found blood on her face and there was no apparel on her lower portion. When the victim regained her sense, she was taken to the house. He noticed the blood on her vagina. When she was asked to say what happened to her the victim told that Santa Hrish Das [the appellant] had raped her and left her in the said condition. She was brought to the IGM Hospital, Agartala. Thereafter, PW-1 went to East Agartala Police Station. The said police station informed that the jurisdictional police station is Srinagar P.S. The officer in charge of Srinagar P.S. came to the IGM Hospital and recorded his oral ejahar. PW-1 signed over the said ejahar [Exbt.1] after reading the content and being satisfied that was written as per his version. On the following day, the police went to the place of occurrence and found one umbrella of the victim and one tube of dendrite. The police seized all those materials by preparing the seizure list dated 04.07.2016 [Exbt.2]. In the cross examination, no material could be extracted out from PW-1 which might strike at the root of his testimony. PW-1 has denied all the suggestions made in contrast to the statement he made in the examination-in-chief.

12. PW-2, Smti. Sarmistha Banik and PW-3 one Smti. Sandhya Debbarma were present in the IGM Hospital on 03.07.2016



for discharging their duty as the staff nurse. They were present at the time of medical examination of the victim and they handed over the medical examination report to one police officer. PW-2 had identified her signature on the seizure list dated 04.07.2016 [Exbt.3] by which various biological materials related to the victim were seized. However, PW-3, Smti. Sandhya Debbarma did follow the same suit but there had been no cross-examination from the defence.

13. PW-4, Shri Pintu Debbarma was present on 04.07.2016 as staff nurse at Anandanagar PHC on the day when the appellant was produced in the hospital for medical examination. After such medical examination some biological materials viz. blood sample, penile swab and nail scrapping of the appellant were found and preserved and later on was handed over to the police officer. He has identified the seizure list [Exbt.4] of those samples where he signed as the witness.

14. PW-5, Shri Bishnu Kr. Debbarma is the night guard who facilitated in collecting the biological samples, as stated before. He has identified the seizure list dated 04.07.2016. But in the cross-examination he has stated that he had only handed over the wearing apparels of the appellant to the staff nurse [PW-4].

15. PW-6, Smti. Anima Das, the mother of the victim has stated that on the day of recording deposition i.e. 05.12.2018, the victim was aged about 15 years. She has testified in the trial by stating that on 03.07.2016 in the evening, she went to a neighbour's

house by leaving her two daughters and son in the house. At that time, her husband was also not at home. After one and half hour, she returned home and found the victim missing from the house. She was informed by her other children [one daughter and one son] that the victim had gone to bring back the cows from the cashew nut orchard of their village. They noticed that the cow had returned but the victim did not. They, as such, proceeded at once to find her out, but initially in the cashew nut orchard she was not found. Her husband had returned in the meanwhile then again they started search in the cashew nut orchard and found her lying on the ground and there were scratches and other injuries on her face, throat etc. They brought the victim to their house and in the meanwhile neighbouring people had gathered there. On their asking, the victim had stated that the appellant had given her "smell of something" in her nose in the said cashew nut orchard when she went there to bring the cow. Thereafter, she lost her senses and could not say anything more. When she [PW-6] waked up, she found that her frock and panty were torn and blood was oozing out from her vagina. They at once took her to the IGM Hospital where she was admitted for 12 days. She had identified in the trial those material objects. She has further stated in the trial that the investigating officer seized her birth certificate by the seizure list dated 13.07.2016[Exbt.5]. PW-6 being the mother of the victim has categorically asserted that the date of birth of the victim is

01.07.2003. PW-6 has identified the birth certificate [Exbt.6] in the trial. In the cross-examination, she did not deviate from any of the statement and denied the suggestion made contrary to her statement in the examination-in-chief.

16. PW-7, [the name is withheld] is the pivotal witness of the prosecution's case as she is the victim. She has stated that on 03.07.2016 at about 5 p.m. she went to the cashew nut orchard of the village to bring their cows back home. When she was returning from the orchard with her cow, suddenly the appellant of their locality came from her behind and gave smell of something in her nose and she fell on the ground. She tried to get out from the clutch of the appellant but could not be successful. Then she raised alarm, but the appellant put his hand inside her mouth. Then she gave a bite on his hand and in turn, he gave bite on her face and nose. Then he was about to throttle and thereafter, she lost her sense. When she regained her sense and tried to stand up then she found her father and another person from their neighbourhood namely Biswajit Pal [PW-11]. Both of them brought her to their house and later on she was taken to the IGM Hospital. The medical officer examined her and on his advice, she was admitted in the said hospital. She gave the statement to the Magistrate and her statement was recorded according to her version. She identified the statement as recorded under Section 164(5) of the

Cr.P.C. [Exbt.7 series]. In the cross-examination, her testimony could not be dented at all.

17. PW-8, Shri Parimal Sarkar was present when the police went to the cashew nut orchard in the course of investigating the case. The police officer seized one pink-coloured umbrella and one tube of dendrite from the cashew nut orchard by the seizure list dated 04.07.2016 [Exbt.2/1] and he was witnessed to the said seizure, and in acknowledgment, signed over the said seizure list. There had been no effective cross-examination.

18. PW-9, Smti. Aparna Rani Bhowmik, a constable from the Srinagar P.S., recorded the statement of the victim under Section 161 of the Cr.P.C. As per direction, she produced the victim for recording her statement under Section 164(5) of the Cr.P.C. in the court of the Magistrate. There was no cross-examination of worth mentioning.

19. PW-10, Shri Dilip Sarkar, one Sub-Inspector of police from the Srinagar P.S. got the telephonic information from the duty officer of the said police station that one girl had been raped in the cashew nut orchard at Nagichara area. The victim was admitted in the I.G.M. Hospital. He had also accompanied the officer-in-charge when he visited the IGM Hospital. At that point of time, PW-1 had lodged the oral ejahar to him which he reduced in writing. He had identified the written ejahar [Exbt.1]. No material could be extracted out from the cross-examination.

20. PW-11, Sri Biswajit Paul who had accompanied PW-1 during search of the victim. He has stated that the victim was found beneath a 'lichi' tree having bleeding injury on her person. At that point of time, her brother namely Subhajit Das had arrived there. The victim was taken at home. He had learnt from PW-1 that the appellant had raped her. On that day, the victim was taken to the hospital. But he has stated in the trial that he did not have any conversation with the victim. He has denied the suggestion that he did not accompany PW-1 during search in the cashew nut orchard.

21. PW-12, Smti. Anjana Sarkar came to learn about the occurrence from the mother of the victim [PW-6]. But she was witness to the seizure of the birth certificate by preparing the seizure list dated 13.07.2016 [Exbt.5]. She has categorically denied the suggestion that the victim was not raped.

22. PW-13, Haripada Debnath is the Ward Secretary of Aralia Ward No.34 [re-designated as Ward No.27]. He had identified the documents i.e. the birth certificate which was handed over to the police officer.

23. PW-14, Dr. Sabyasachi Nath, is the forensic expert. His statement has been shortly recorded in the trial while noting the submission of Mr. S. Debnath, learned Addl. P.P. appearing for the state. The testimony of PW-14 has been reflected substantively.

24. PW-15, Dr. Ashim Debbarma is the Medical Officer who examined the victim. He has testified in the trial that on 03.07.2016 he had examined the victim. He has categorically stated in the trial that while giving the history, the victim had stated that she was forcefully assaulted by the accused at around 6.30 p.m. on that day and was dragged to the jungle and she was assaulted on several parts of the body and then suddenly, she lost her consciousness. She has also stated that the appellant had compelled her to inhale some smell. Thereafter, he has stated as follows :

**"Her underwear was not changed but she urinated before my examination. She was facing difficulty in walking and was depressed. On my examination I found multiple of scratch/linear mark present on several parts of the body such as back side of chest, both arms, both legs, neck and face. There was fresh tear in the hymen and blood stain was found with contusion on both right and left side of said torn area of hymen. Thereafter, I collected vaginal swab sample (both wet and dry), public hair sample, skull hair sample with some foreign body such as soil etc., nail sample, blood sample, saliva sample and panty of the victim and handed over the same to the police. Thereafter, I gave my opinion that the victim was assaulted and might be sexually assaulted or might be raped, but the act of rape neither can be confirmed nor can be ascertained. The injuries as found in the body and private part of the victim were simple nature and sign of recent sexual intercourse was present."**

**[Emphasis added]**

He admitted the medical examination report [Exbt.9] in the evidence.

She was cross examined but did not make any such statement which might debase the foundation of her opinion.

Strangely enough, he has stated in the cross-examination that his opinion was : "the sign of recent sexual intercourse was present, was written by me beneath my signature and seal on the report." He has voluntarily stated that due to shortage of space, the said opinion was written on that space. The trial Judge had put a question that his opinion does neither indicate to the act of rape, nor from it, it could be ascertained what had happened to the victim. His observation is that the sign of recent sexual intercourse was present. Whether that is contradictory to his reply to the query by the court [under Section 165 of the Evidence Act.]

PW-15 has stated that vagueness can be isolated from that statement. He has testified that on the basis of the tear with blood stain in the hymen he had observed that there was sign of recent sexual intercourse but as the forensic report was not produced before him, he did categorically opine about the sign of rape neither could he confirm any other act.

25. PW-16, Sri Dipak Das is a Inspector of Police. He has stated in the trial that he had received the oral ejahar from one Dilip Sarkar, a sub-inspector of police of that police station. The complainant [the ejahar] was written as per the version of one Monojit Das [PW-1] and the same was registered in Srinagar P.S. Case No.9 of 2016 under Sections 341 and 376 of the IPC and Section 4 of the POCSO Act. He had given the necessary endorsement on the printed

form of FIR and taken up for investigation. The information that reached to the police station was communicated by one unknown person over telephone. PW-16 met the victim in the IGM Hospital and he had tried to know from the victim through Puspa Sarkar, a constable. The victim had stated to Puspa Sarkar that she was raped. He had started the investigation without wasting any moment and seized the blood sample, vaginal swab, urine sample, saliva sample, one old ash colour skirt, one light green T-shirt and one green and black printed panty of the victim mixed with some grasses, and the panty was a little bit torn. Those were seized by the seizure list dated 04.07.2016 [Exbt.3/2]. Thereafter he recorded the statement of the witnesses who had some knowledge about the transaction of the crime or the witnesses who may be instrumental to prove the documentary evidence. He had prepared the hand sketch map after visiting that place. There he found one umbrella of the victim and one empty tube of dendrite, and thereafter he had seized those materials by preparing the seizure list. He took the photographs of that place. After seizure, the seized items were sealed in presence of SDPO. Through a police constable namely Aparna Rani Bhowmik PW-16 he had arranged to examine the victim and record her statement under Section 161 of the Cr.P.C. The victim was produced for recording her statement under Section 164(5) on 18.07.2016. The statements of the other witnesses which appeared to be material were as well recorded.



He had also collected the report of the State Forensic Science Laboratory, SFSL in short. In the cross-examination when he was asked about the forwarding report, PW-16 had stated as follows :

**"During investigation evidences so far collected from the statement of complainant victim girl verbal discussion with medical officer and other circumstantial evidences the allegation of rape against the below noted A/P is clearly established and on preliminary interrogation below noted FIR named A/P also confessed his offence."**

He has not deviated from any of his statement made during the examination-in-chief.

26. PW-17, Smti. Pushpa Sarkar and PW-18, Sri Nandan Sarkar are the constable of police and the auto rickshaw driver respectively. PW-17 did not state anything of material importance, whereas PW-18 had confirmed the statement that the victim was taken to the IGM Hospital by his vehicle.

27. PW-19, Dr. Anwesha Roy had examined the appellant and collected her penile swab, blood sample, nail scrapping and those were handed over by her to the investigating officer. The seizure list [Exbt.13] of those materials objects was admitted in the evidence.

28. Having examined the evidentiary materials as placed in the trial, this court does not have any doubt in mind that the testimony of the victim [PW-7] is wholly reliable. The immediate physical injuries, as recorded by PW-19, during the examination of the victim for sexual assault, would lead us irresistibly to an inference that the appellant had penetrated the victim's vagina causing bleeding

injuries, in and around hymen and that part of the organ was found bleeding when the examination was carried out after 4/4.30 hrs. Even in the victim's panty the blood could be found even though, the blood group was not determined. The victim of the sexual assault is an injured witness and as such, their statement is embedded in the truth, inasmuch as there had been no indication that someone else might have done the said assault on the victim. We have keenly noted the testimonies of the victim, her parents, in particular. Even, there is some materials which appear not in tune with the others. Such discrepancies are however, of minor nature and for such discrepancies, the substratum of the prosecution's case is not hit. Therefore, having fully inspired by the statement of the victim, we are inclined to affirm the impugned judgment and order of conviction and sentence dated 16.11.2019 delivered in Special(POCSO)41 of 2016. Accordingly it is ordered.

In the result, the appeal fails and the same is dismissed.

The appellant shall serve out the remaining period of sentence in terms of the impugned order.

Send down the LCRs forthwith.

**JUDGE**

**JUDGE**