HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

Crl. A(J) No. 66 of 2024

1. Prasanta Debnath @ Prasenjit, son of Sri Pradip Debnath @ Dipu of Rajnagar, Anandabazar, P.S. Dharmanagar, District: North Tripura (age-24 years.)

2. Pappu Debnath, son of Sri Pradip Debnath @ Dipu of Rajnagar, Anandabazar, P.S. Dharmanagar, District: North Tripura (age-22 years.)

…..Appellants

_V_E_R_S_U_S_

1. The State of Tripura, to be represented by the learned Public Prosecutor, The Hon'ble High Court of Tripura.

….. Respondent.

BEFORE
HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

For Appellant(s)	:	Mr. S. Bhattacharjee, Advocate. Mr. K. Nath, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing	:	***28.01.2026***
Date of delivery of judgment and order	:	***04.02.2026***
Whether fit for reporting	:	***YES***

JUDGMENT & ORDER

[Dr.T. Amarnath Goud, J]

Heard Mr. S. Bhattacharjee, learned counsel appearing for the appellants also heard Mr. R. Saha, learned Additional Public Prosecutor appearing for the State-respondent.

[2] This criminal appeal under Section-374(2) of the Code of Criminal Procedure, 1973 is directed against the judgment dated 05.11.2024 passed by the learned Special Judge (POCSO), North Tripura, Dharmanagar, in connection with case No. Special (POCSO) 09 of 2022, whereby and whereunder, the learned Court convicted the appellants under Sections-376(2) (n)/506 of IP and Section-6 of the POCSO Act, 2012 and sentenced them to suffer RI for 10 years and to pay fine of Rs.10,000/- each and in default, to suffer further imprisonment

for six month under Section-376(2)(n) of the IPC and RI for one year and to pay fine of Rs.1,000/- each and in default of payment, to suffer further imprisonment for one month under Section-506 of the IPC and RI for 20 years and to pay a fine of Rs.25,000/- each and in default, to suffer further imprisonment for eight months under Section-6 of the POCSO Act, 2012 and further directed that all the sentences shall run concurrently.

[3] The factual background of the prosecution case is that on 26.02.2022 the victim in this case who is a minor girl lodged an ejahar with Dharmanagar Woman PS to the effect that one day about one year back while she was studying in Class-VIII she was returning back home and on way she was feeling thirsty and she went to the house of the accused Prasanta Debnath at Rajnagar, Anandabazar under Dharmanagar PS and called the mother of the accused whom she addressed as grandmother. During that time the accused came out from his house and asked her to come inside the house. When she went inside the house the accused locked the door from inside and thereafter he forcefully had sex with her. After that incident the accused threatened her not to disclose the incident to anyone and also asked her to come to his house as and when he calls her. The victim thereafter went to the house of the accused many a times and against her wish the accused had sexual intercourse with her.

[4] One day when she and the accused were inside the house having sexual intercourse, the younger brother of the accused Pappu Debnath, the 2nd appellant in this case saw them. After few days of the incident while she was going to school, accused Pappu Debnath met her and told her that he saw her and accused Prasanta Debnath, the appellant No.1 herein, on that day and he also requested her for sexual favour and also threatened to disclose the incident if she did not fulfill his request. Thereafter the appellant No.2 after few days took her to a jungle and had sexual intercourse with her on many dates. After few months of that incident, the victim realized that she was pregnant and she informed the appellant No.1 and he told her that he will marry her and asked her to take medicine to abort the pregnancy.

[5] After 5/6 months, the victim informed her mother about the incident and it was brought to the notice of the father of the appellant No.1 who took the victim to Makunda Hospital for treatment but doctor there declined to abort the pregnancy and they returned back to Dharmanagar and after few days

the appellant No.1 married the victim in a temple in presence of parents of both sides. However, she was not taken to the house of the accused after the marriage and she went back to her parental house and after few days, father of the appellant No.1 came to her house and gave Rs.40,000/-to her father and asked to abort the pregnancy. However, the pregnancy could not be aborted as she was in advance stage and after few months, she gave birth to a son. Thereafter, the victim finding no other alternative lodged an ejahar with Dharmangaar WPS regarding the entire incident.

[6] The O/C of the PS based on the ejahar registered PS Case No.10 of 2022 and the matter was investigated and on completion of investigation charge-sheet was filed against the accused persons under Sections-376(2)(n)/506 & 34 of IPC and under Section-6 of the POCSO Act. The charge-sheet was filed before the learned Court below and cognizance of the offence was taken and during the proceeding prosecution papers were supplied to the accused persons.

[7] Thereafter, both sides were heard and on finding prima facie evidence formal charge was framed against the accused persons under Sections-376(2)(n)/506 & 34 of IPC and under Section-6 of the POCSO Act and the same was read over and explained to them to which they pleaded not guilty and claimed to be tried. Prosecution to bring home the charges under the aforesaid provisions of IPC and POCSO Act adduced as many as 23 witnesses.

[8] On closure of prosecution evidence, the accused-persons were examined separately under Section-313 of Cr.P.C. for having their response in respect of the incriminating materials surfaced in the evidence, as adduced by the prosecution, wherein, the accused-persons did not adduce evidence in support of their defence. Thereafter, on appreciation of the evidence and materials on record, the learned Court below passed the judgment and order of conviction and sentence dated 05.11.2024 against all the above named accused-persons.

[9] Having heard the learned counsel appearing for the parties and gone through the material evidence on record, the learned Court below has observed as under:

> "41. In the result, the prosecution has proved this case beyond all reasonable doubt against the accused persons namely, Prasanta Debnath @ Prasenjit and Pappu Debnath.

The accused persons are accordingly convicted under Section-376(2)(n) and 506 of IPC and under Section 6 of the POCSO Act.

42. I have heard the convicts on the question of sentence.

The convicts claimed themselves as innocent and prayed for mercy.

As discussed above, the convicts committed the offence against a minor girl and such incidence had been committed repeatedly against the consent of the girl.

Having taken note of the aforesaid facts, this Court is of the view that a sentence of imprisonment for 10(ten) years along with fine under Section 376(2) (n) of the IPC and sentence of imprisonment for one year along with fine under Section 506 of IPC and also sentence of imprisonment for the minimum term of 20(twenty) years under Section 6 of the POCSO Act will suffice to render justice to the cry of the victim.

43. Accordingly, the convicts namely Prasanta Debnath @ Prasenjit and Pappu Debnath are sentence to undergo rigorous imprisonment for 10(ten) years and to pay fine of Rs.10,000/- (Rupees ten thousand) each and in default of payment to suffer further imprisonment for six month under Section 376(2)(n) of the IPC.

The convicts namely Prasanta Debnath @ Prasenjit and Pappu Debnath are also sentenced to udergo rigorous imprisonment for 01(one) year and to pay fine of Rs.1000/- (Rupees one thousand) each and in default of payment to suffer further imprisonment for one month under Section 506 of the IPC.

The convicts are also sentenced to undergo rigorous imprisonment for 20 (twenty) years and to pay fine of Rs.25,000/- (Rupees twenty five thousand) each and in default of payment of fine to suffer further imprisonment for eight months under Section 6 of the POCSO Act.

All the sentences of imprisonment shall run concurrently.

The period of detention undergone by the convicts during the investigation and trial of this case shall be set off from the total sentence of imprisonment.

The fine money, if realized, shall be paid to the victim as compensation for her sufferings.

Furnish a copy of this judgment free of cost to the convicts.

Office is directed to return the seized birth certificate of the victim to her parents after observing all formalities.

This Court has also taken into consideration that due to such incident the victim had suffered mentally and physically and a financial support is necessary for her rehabilitation. This Court having considered the nature of offence is of the opinion that a compensation amount of Rs. five lakhs to the victim will be appropriate.

The District Secretary, DLSA, North Tripura, Dharmanagar is requested to arrange for payment of the aforesaid compensation to the victim in terms of Tripura Victim Compensation Scheme, 2018.

Inform accordingly.

This case stands disposed of on contest.

Make necessary entry in the Trial Register and CIS."

[10] Being aggrieved by and dis-satisfied with the said judgment and order of conviction dated 05.11.2024, passed by the learned Court below, the appellants herein have preferred this appeal before this Court for redress.

[11] Mr. S. Bhattacharjee, learned counsel appearing for the appellants has submitted that the evidences of the present case have not been appreciated judiciously and in accordance with the well settled principle of criminal jurisprudence. The finding of the learned Court below to the effect, that, the appellants committed offence punishable under Sections-376 (2)(n)/506 of IPC and Section-6 of POCSO Act, 2012, is based on surmise and conjecture and as such it is liable to be interfered with by this Court.

[12] The prosecution has absolutely failed to prove, beyond reasonable doubt, the ingredients of offence punishable under Sections-376(2)(n)/506 of IPC and Section-6 of POCSO Act, 2012 of IPC and Section-6 of the POCSO Act, 2012. In absence of evidence & findings of the learned Court below, regarding common intention of the appellant No.2, Pappu Debnath, regarding alleged sexual intercourse with the victim, the conviction against him, under Sections-376 (2)(n)/506 of IPC and Section-6 of POCSO Act, 2012, is not sustainable in fact as well as in law.

[13] The learned Court below absolutely failed to appreciate the evidence of PW-20, Dr. Subhankar Nath of FSL as well as filed to appreciate the report of FSL. The learned Court below absolutely failed to appreciate the fact of delay in lodging the written complaint by the victim. The DNA profile is mismatch against the appellants herein, thus, the conviction against the appellants, is illegal. The learned Court below ought to have appreciated the fact that the evidence of victim is not trustworthy or inspire confidence of the learned Court below as the DNA profile report; Exhibit-20 is contrary to the statement of PW-1, as much medical evidence gets primacy over the oral evidence.

[14] It has been further contended that the learned Court below failed to appreciate the evidence of PW-14, father of the victim, wherefrom in the cross examination, he admitted, that, out of acrimony, prior to lodging of FIR about gifting of 7 kani betel nut garden to her daughter, wherein he worked as Labouer, the victim lodged the instant case against the appellants. The victim was tutored before her statement was recorded by the Magistrate, as the said averment did not come up in any of her subsequent depositions by anyone.

[15] It has been averred that PWs-8, 12, 14 and 15 who are the parents and close relatives of the victim did not state anything in respect to accused Papu Debnath, the appellant No.2 herein. It was also contended that the entire case is false and the family of the victim filed the case in order to grab the 7 kanis of land owned by the father of the accused persons. Further, it was contended that the DNA test is vivid enough to state that both the accused persons are not the biological father of the new born baby of the victim girl and it gives a clean chit to both the accused persons.

[16] Mr. Bhatacharjee, learned counsel has submitted that the victim in her testimony did not state that anyone saw her entering the house of the accused on the date of first incident. She also did not state that after the incident she disclosed it to anyone. Further she did not state that after the accused had sexual intercourse with her many a time she even then did not disclose the incident to anyone. Similarly, she did not disclose the incident between her and the 2nd appellant. The incident came to the light and to the notice of the mother of the victim when the victim disclosed to her regarding the incident. During that time the victim also told her mother that she was pregnant due to such incident. It is the sole testimony of the victim and the question is whether her statement could be trustworthy or not and thus, he prayed to allow this appeal by setting aside the judgment of the learned Court below.

[17] Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State in support of his case has argued that the evidence of the victim is cogent enough to hold the accused persons guilty for the offence. It was also held that the accused persons can be held guilty based on the sole testimony of the victim.

[18] It has been further contended that result of the paternity test is not the subject matter of this case and the result of the paternity cannot impact of the fate of this case.

[19] The prosecution also contended that result of the paternity test is not the subject matter of this case and the result of the paternity cannot impact the fate of this case. The prosecution in this respect referred to the judgment of the Hon'ble Apex Court in ***Sunil v. State of Madhya Pradesh,*** reported in ***(2017) 4 SCC 393*** wherein, it has been held that:

> "3. At the very outset, we deal with the argument advanced on behalf of the appellant that in the present case the report of DNA testing of the samples

> of blood and spermatozoa under Section-53-A of the Code of Criminal Procedure, 1973 has not been proved by the prosecution. The prosecution has, therefore, failed to prove its case beyond reasonable doubt. Reliance in this regard has been placed on the decision of this Court in Krishna Kumar Malik v. State of Haryana.
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> 4. From the provisions of Section-53A of the code and the decision of this Court in Krishna Kumar it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in Krishna Kumar (para.44), Section-53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accsued it, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. it is to the other materials brought on record by the prosecution that we may not turn to."

[20] Mr. Saha, learned Addl. P.P. to bolster his case has placed reliance on a decision of the Hon'ble Apex Court in ***Satish Kumar Jayanti Lal Dabgar v. State of Gujarat,*** reported in (2015) 7 SCC 359, wherein, the Court has observed thus:

> "15. The legislature has introduced the aforesaid provision with sound rational and there is an important objective behind such a provision. It is considered that a minor is incapable of thinking rationally and giving any consent. For this reason, whether it is civil law or criminal law, the consent of a minor is not treated as valid consent. Here the provision is concerning a girl child who is not only minor but less than 16 years of age. A minor girl can be easily lured into giving consent for such an act without understanding the implications thereof. Such a consent, therefore, is treated as not an informed consent given after understanding the pros and cons as well as consequences of the intended action. Therefore, as a necessary corollary, duty is cast on the other person in not taking advantage of the so-called consent given by a girl who is less than 16 years of age. Even when there is a consent of a girl below 16 years, the other partner in the sexual act is treated as criminal who has committed the offence of rape. The law leaves no choice to him and he cannot plead that the act was consensual. A fortiori, the so-called consent of the prosecutrix below 16 years of age cannot be treated as mitigating circumstance.
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> 16. Once we put the things in right perspective in the manner stated above, we have to treat it as a case where the appellant has committed rape of a minor girl which is regarded as a heinous crime. Such an act of sexual assault has to be abhorred. If the consent of minor is treated as a mitigating circumstance, it may lead to disastrous consequences. This view of ours gets strengthened when we keep in mind the letter and spirit behind the Protection of Children from Sexual Offences Act, 2012."

[21] In view of the above submissions and observations, let us examine the evidence once again. The victim deposed that on the first date of incident she went to the house of the accused Prasanta Debnath, the appellant No.1 while returning back home as she was feeling thirsty and she called the mother of the accused whom she addressed as grandmother and hearing her voice the accused came out from the house and asked her to come inside. She also deposed that

after she went inside the house the accused locked the door from inside and thereafter forcefully had sexual intercourse with her. She also deposed that after the incident the accused threatened her not to disclose the incident to anyone and also to come to his house as and when he calls her. Further, she deposed that she went to the house of accused many times after that incident and against her wish the accused had sexual intercourse with her.

[22] It has transpired from the testimony of the victim, PWs-8, 12 and 14 that after the pregnancy of the victim girl came to the notice of her parents as well as in the notice of the father of the accused persons approached the family of the victim and gave Rs.40,000/- to abort the pregnancy. This particular evidence by prosecution remains un-rebutted. The accused side failed to establish that this particular evidence has no basis. It is clear that the father of the accused approached the family of the victim and paid Rs.40,000/- in cash for the abortion.

[23] Here the question is why the father of the accused decided to pay Rs.40,000/- to the family of the victim after it come to his notice that the victim is pregnant. It is clearly means that the father of the victim had knowledge that there was a relation between the victim and the accused and it may have resulted in pregnancy of the victim.

[24] PWs-8 and 14 are the parents of the victim girl and they corroborated the victim as they came to know about the incident from the victim herself. But, they maintained complete silence regarding the involvement of the other accused person i.e. the appellant No.2 herein, in the entire incident. They also stated that the victim was taken to Makunda Hospital and the doctor there declined to abort the pregnancy as it was in the advance stage. They also deposed that the father of the accused appellant No.1 gave them Rs.40,000/- to abort the pregnancy.

[25] PWs-3 & 4 are the constable of Dharmanagar WPS and they deposed regarding seizure of certain articles during investigation of the case. PWs-5 and 7 are the officials of Jiban Tripura HS School and they deposed that one school certificate in respect to the victim was issued and it was seized by the IO in their presence and they signed on the seizure list as witnesses. They also identified the school certificate as Exhibit-8.

[26] PWs-10, 11 and 15 are the witnesses who knew the victim and the accused appellant No.1 and they deposed that they heard about the physical relation between both of them and they also heard that the victim became pregnant due to such relation and in this respect meeting was called in the panchayet and the parties could not arrive at a settlement on the matter.

[27] PW-20, the doctor conducted the medication tests and in his report it has been observed that after DNA testing of the blood stains of the victim and her new born baby and also of both the accused it was found that the victim is the biological mother of the new born baby but both the accused persons are not biological father of the baby of the victim.

[28] The victim was a minor during the time of incident and the prosecution to prove this particular fact adduced her birth certificate. On perusal of the fact it is found that her date of birth is 03.06.2006 and the incident in this case took place during the year 2021. It means that the victim was a minor at the time of incident. To prove the age of the victim, they have adduced PWs-5 & 7 who are the teachers of Jiban Tripura HS School where the victim studying and they deposed regarding a school certificate issued regarding date of birth of the victim and both identified that school certificate it is found that the date of birth of the victim is 03.06.2006. PW-13 who examined the victim to determine her age and in his report marked as Exbt.9 he stated specifically that the age of the victim is less than 17 years and the accused side did not challenge it during the cross-examination of the witnesses.

[29] As discussed above, the appellant No.1 initially committed rape on the victim girl with a promise to marry her and thereafter he put the victim under fear not to disclose the incident to anyone and thereafter he compelled her to have sexual intercourse with him on many other dates against her consent. This clearly establishes that the accused repeatedly committed rape on the victim.

[30] PW-10 in his deposition has stated that in the year 2021 he heard the physical relation and due to which the victim became pregnant. In this respect a meeting was called in the panchayet and the father of the appellant No.1 was ready to face the punishment if it is proved by DNA test that the victim became pregnant due to relation with the accused. In his cross-examination it has been deposed that in the meeting there was proposal from the

family of the victim to give 7 kani of land to the victim's family and they will not institute any case against the accused.

[31] PW-11 was a villager and he deposed that he came to know about an illicit relation between both the accused and the victim and due to that the victim was pregnant and she gave birth of a male child. In this respect one panchayet meeting was called and as per decision of the meeting the victim was taken to hospital for delivery and the father of appellant No.1 gave Rs.40,000/- to the parents of the victim. According to the panchayet meeting the appellant No.1 was involved in the incident.

[32] PW-12 was a cultivator and he deposed that entire incident as discussed above. He further deposed that he was present in the panchayet meeting and in that meeting the father of the accused informed that he was married another girl. He also agreed to give 7 kani of land in the name of the victim to settle the matter. PW-12 was given responsibility to doe the registration of the land but subsequently, the father of the accused did not agree to their proposal and insisted upon DNA test of the victim.

[33] PW-21 was the Pradhan of Rajnagar GP and he has deposed that on 12.04.2022 a meeting was called under his Chairmanship. The meeting was called regarding an incident of harassment against a woman. In the meeting both sides were heard and it was resolved that they parties will amicably settle the matter. A decision was also taken that the aggrieved party will be compensated by the other party. The details of the meeting are mentioned in the resolution.

[34] PW-22 was posted as SI of police with Dharmanagar Woman P.S. On that day O/C of the PS endorsed her PS Case No.10/2022 for investigation. He deposed that after taking of the investigation he visited the PO on 27.02.2022, prepared hand sketch map of it with index on separate sheets of paper. On that day he examined the victim and other witnesses, recorded their statements under Section-161 of Cr. P.C. and seized the original birth certificate of the victim. He also arranged for her medical examination at Dharmanagar Hospital. He also arrested the accused persons and they were forwarded before the Court. He arranged for potency test of the accused persons. During investigation, he also arranged for collection of blood sample etc. of the victim and the accused and later seized them in presence of witnesses. During investigation he collected one school certificate from Jiban Tripura H.S. School

in order to verity the date of birth of the victim and collected the authentication report from BDO, Panisagar. He also collected the dry blood sample of the new born baby and later seized it in presence of witnesses. He collected dental ossification test report of the victim.

[35] It is seen from the record that subsequently, the appellant No.1 married the victim in a temple in presence of parents of both sides. However, she was not taken to the house of the accused after the marriage and she went back to her parental house and after few days, father of the appellant No.1 came to her house and gave Rs.40,000/-to her father and asked to abort the pregnancy. However, the pregnancy could not be aborted as she was in advance stage and after few months, she gave birth to a son. Thereafter, the victim finding no other alternative lodged an ejahar with Dharmangaar WPS regarding the entire incident. In view of above, it is clear that the appellant No.1 married the victim.

[36] Learned counsel for the appellant has stressed upon the report of DNA test to exonerate the accused. But we are of the view that the purpose of DNA test or analysis in rape case is for matching of semen of the accused with that found on the under garments or garments of the victim to make it a full proof case. However, merely because of DNA test has negative result cannot lead to the conclusion that the victim was not raped by the accused. The purpose of DNA test in rape case is to facilitate the prosecution to prove its case against the accused and merely because the DNA test has a negative report, it does not exonerate the accused from the offence. However, it exonerates from the paternity of the child.

[37] PW-12 who is a fellow villager of the victim as well as the accused deposed regarding the payment of Rs.40,000/- by the father of the accused to the family of the victim. He also deposed that a meeting was called in the panchayet and in that meeting the father of the accused agreed to give 7 kanis of land t the victim to settle the matter and he was given the responsibility to do the registration of the land but subsequently, the father of the accused did not agree. Thus, it is established the fact of marriage between the victim and the appellant No.1 and after a certain period, the father of the appellant No.1 had gone to the house of the victim with Rs.40,000/- for abortion of the baby. The accused person in his 313 statement did not explain anything regarding this fact except denying the fact.

[38] Here the question is why the father of the accused initially paid Rs.40,000/- in cash to the family of the victim and also has shown the willingness to settle the matter and why subsequently, wanted the victim to undergo DNA test. Section-375 of IPC defines rape and the 6th description given in the definition says that if the victim is less than 18 years of age it will be considered as rape if sexual intercourse is done with her with or without her consent. As stated above, the victim in this case was aged below 18 years of age at the time of incident.

[39] As discussed above the accused appellant No.1 initially committed rape on the victim girl and thereafter he put the victim under fear not to disclose the incident to anyone and thereafter, he compelled her to have sexual intercourse with him on many other dates against her consent. This clearly, establishes that the accused repeatedly committed rape on the victim. The marriage between the victim and the appellant No.1 is also established based on the discussion made above. Hence, the conviction and sentence as held by the learned Special Judge (POCSO) against the accused-appellant No.1, Prasanta Debnath @ Prasenjit stands affirmed.

[40] The way the prosecution has projected the case against the appellant No.2 found contradictions and inconsistencies in the statements in course of trial, it would be difficult for this Court to believe the case of the prosecution as in the deposition of the parents of the victim it has been observed that the name of the appellant No.2 was not disclosed. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt. Suspicions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case in respect to the appellant No. 2, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the appellant No.2. Hence, the conviction and sentence as passed by the learned Special Judge (POCSO) against the accused-appellant No.2, Sri Pappu Debnath, stands set aside and quashed. Accordingly, the appellant No.2 be released forthwith, if not wanted in connection with any other case.

[41] In the result, the appeal stands partly allowed and thus, disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

S. DATTA PURKAYASTHA, J **DR.T. AMARNATH GOUD, J**

A. Ghosh

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