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**(1996) 07 GAU CK 0039**  
**In the Gauhati High Court**  
**Case No : Criminal Appeal (J) No. 16 of 1995**

Narayan Dey

APPELLANT

Vs

State of Tripura

RESPONDENT

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**Date of Decision :** 29-07-1996

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 313  
Penal Code, 1860 (IPC) — Section 376

**Citation :** (1997) CriLJ 2613

**Hon'ble Judges :** N.G. Das, J

**Bench :** Single Bench

**Advocate :** A.C. Bhowmik, for the Appellant; S. Das, Public Prosecutor, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.G. Das, J.—This is perhaps a most shocking case in which a father has been held guilty for commission of offence of rape upon his own minor daughter.

2. Learned Additional Sessions Judge, Belonia who found the appellant guilty for commission of offence u/s 376, IPC for having raped his own minor daughter (11 years), sentenced him to suffer rigorous imprisonment for a period of 10 years and also to pay a fine of Rs. 1,000/- in default of which he is to suffer a further period of imprisonment for 30 days.

3. I have heard Mr. A.C. Bhomik, learned counsel appearing on behalf of the appellant and Mr. S. Das, learned Public Prosecutor appearing on behalf of the State.

4. The brief facts of the case are that the appellant who is said to be a rikshaw-puller is a resident of village Sarashima under Belonia PS and he used to live in his village with his wife and daughter whose age was about 11 years at the time of occurrence. The prosecution case is that on 9-12-94 after dusk the victim girl Supriya Dey (PW 1) was returning to her house along with her father, namely,

the appellant and when they came near one deserted hut, the appellant asked his daughter (PW 1) to go to that deserted hut. Although initially the victim girl (PW 1) did not agree to go to that deserted hut, she ultimately had to concede to the pressure of the appellant and due to his pressure the victim girl (PW 1) went to that deserted hut. It was alleged that after taking the victim girl to that deserted hut the appellant undressed her and by force made her to lie on the floor and thereafter raped her. After commission of the offence the appellant brought the victim girl to the house when blood was oozing out from her private part.

5. On seeing the condition of the victim girl after her return to the house, her mother, viz., Smt. Kajal Dey (PW 5) asked her what had happened. Thereupon P.W. 1 disclosed to her that the appellant took her to the deserted hut and by force raped her. The mother was, however, unable to take the victim girl to the Doctor as she was short of fund. But meanwhile, a few neighbours came to know about the occurrence and on coming to know about this sensational incident, the neighbours took the victim girl to the Doctor. But before taking her to the hospital, the victim girl was taken to Belonia PS where she lodged an ejahar with Officer-in-Charge, Belonia Police Station Shri Bhusan Dutta (PW 6). The Officer-in-Charge recorded the ejahar as per the version of the victim girl and after recording the ejahar, the Officer-in-Charge registered it as Belonia PS case No. 100/ 94 u/s 376, IPC after filling up of the prescribed form of FIR (marked as Exl.-P/7) and endorsed the case to Sub-Inspector P.K. Jamatia for investigation.

6. Accordingly, Sri P.K. Jamatia (PW 10) took up the investigation in this case and in course of the investigation, Sri Jamatia visited the place of occurrence, prepared a hand-drawn sketch map thereof, seized blood-stained cloth and wearing lorn pant of the victim girl under seizure lists. He also sent the victim girl on 13-12-94 to Belonia hospital for examination. The doctor (PW 7) examined the girl and submitted his report stating that victim girl (PW 1) was raped 5 or 7 days prior to that date. The Investigating Officer thus after completion of investigation submitted the charge-sheet through Officer-in-Charge, Belonia PS for prosecution of the appellant u/s 376, IPC. The appellant who was arrested was also produced before the Court.

7. The case being exclusively triable by the Court of Session it was committed to the learned Additional Sessions Judge, Belonia who after perusal of the materials on record framed the charge u/s 376, IPC against the appellant for committing the offence of rape upon Supriya Dey (PW 1). The charge was read over and explained it in Bengali to the appellant who pleaded not guilty and claimed to be tried.

8. In order to bring home the charge the prosecution examined 10 witnesses in all and took the aid of documentary evidence, namely, ejahar, medical report, seizure list etc. The appellant adduced no evidence in support of his defence. However, his defence as would appear from the cross-examination as well as his statement recorded u/s 313, CrPC is that the charge brought against him is

absolutely false. His defence is a total denial of the prosecution case.

9. Learned Additional Sessions Judge, however, after perusal of the evidence on record arrived at a conclusion that the appellant committed the offence of rape upon his daughter, namely, Supriya Dey (PW 1) and convicted him u/s 376, IPC and sentenced him thereunder to suffer the period of sentence as mentioned above.

10. Now the first point of criticism advanced by Mr. A.C. Bhowmik, learned counsel for the appellant is that although the matter appears to be very shocking and serious, a careful scrutiny of the records would show that the prosecution could not establish the case beyond all reasonable doubt. It is submitted by Mr. Bhowmik that the ejhar will show that although the occurrence took place on 9-12-94, the cjhar was actually lodged on 13-12-94 and no cogent reason has been assigned as to the delay for lodging the FIR. It is true that in the cjhar it was alleged that the occurrence took place on 9-12-94 AD and the ejhar was lodged on 13-12-94 AD. Now therefore the question which needs consideration is whether in a case of rape of such nature a delay for a few days as has happened in the present case can be considered to be fatal.

11. In the present case it is true that the ejhar marked as Exbt. P/6 does not indicate that the PW 1 gave any reason for such delay. But in her statement recorded u/s 164, CrPC it appears that she made a statement that she could not be taken to doctor for her examination due to poverty. The statement which learned Magistrate recorded u/s 164, CrPC shows that when the matter was brought to the notice of the neighbours then a few boys of the neighbourhood took the victim girl to the Police Station and then to the hospital. In the present case we cannot lose sight of the fact that this is a case where a minor girl alleged to have been raped by her father whose age is 39 years. From the evidence on record it is quite clear that the family is poverty-stricken. In the circumstances I am of the view that such a delay cannot be considered to be fatal.

12. In the case of Ram Murti and Another Vs. State of Haryana, the Supreme Court in paragraph 2 of the judgment held that even though explanation for delay found not very satisfactory then also that cannot by itself be a ground for disbelieving the prosecution case.

13. In the case of Harpal Singh and Another Vs. State of Himachal Pradesh, it has been held by the Supreme Court that in view of the question of honour of the family be involved, a delay for 10 days in lodging the FIR was not unreasonable in a case of rape. In the instant case if the allegation that the prosecutrix was raped on 9-12-94 is found to be acceptable then in my view such delay cannot be considered to be fatal.

14. Now the crucial question which calls for consideration is whether P. W.1 Supriya Dey was raped by her father, the appellant on the night of occurrence as mentioned in the charge. The contention of Mr. Bhowmik, learned counsel for the

appellant is that neither the prosecutrix nor her mother brought any allegation against the appellant before the Court. Hence, no reliance can be placed on the other evidence which learned trial Court relied for holding the appellant guilty for commission of offence u/s 376, IPC

15. It is true that prosecutrix Supriya Dey who has been examined as P.W. 1 did not specifically state in her deposition before the Court that on the night of occurrence she was raped by her father. What she stated before the trial Court was that on that night when she was returning to her house from the market one person dragged her to a deserted hut and raped her there. Her further version in this regard is that after three days she lodged the ejhar with Officer-in-Charge, Belonia PS and the Officer-in-Charge also reduced her version into writing and thereafter she put her signature on that ejahar. This ejahar which has been marked as Exbt-P/6 is identified by P.W. 6, O.C. Bhusan Dutta. It shows that the PW 1 made a specific statement to the effect that on that fateful night while she was returning to her house along with her father, her father took her to the deserted hut and raped her and as consequence of rape there was profuse bleeding from her private part. O.C., Bhusan Dutta who has been examined as P.W. 6 identified the ejhar and stated that it was that ejahar which he wrote as per the version of P.W.1. Apart from this, it is found from the records that the victim girl also made a statement before the learned Judicial Magistrate (1st Class) on 14-12-94. This statement also shows that the victim girl made a specific statement that on that fateful night while she was returning to her house along with her father, the latter forcibly took her to that deserted hut and raped her by force. According to the victim girl she narrated the occurrence to her mother after her return to the house. The mother Smt. Kajal Dey has been examined as P.W. 5.

16. This P.W. 5, however, was declared hostile and allowed to be examined in the nature of cross-examination as learned Additional Sessions Judge on examination of her statement recorded u/s 161, CrPC found that she resiled from her original statement. During examination of this witness in the nature of cross-examination, the prosecution brought three of her statements, namely, Exts-3, Exbt.-4 and Exbt.-5 on record. These three statements have formed part of legal evidence as Investigating Officer Sri P.K. Jamatia (PW 10) deposed that PW 5 made these statements when he was examined by him. Exbt. P/3 statement shows that Smt. Kajal Dey (PW 5) made statement to the Investigating Officer that on 9-12-94 at about dusk she sent the prosecutrix to the market. Exbt. P/4 statement shows that she also made a statement to the Investigating Officer to the effect that on the following morning when she noticed that blood was oozing out till then she again asked her daughter P.W 1 who told her that on that fateful night she was forcibly taken to the deserted hut and was raped by her father. Exbt. P/ 5 statement further shows that on coming to know about this heinous offence she called a few of her neighbours and informed them of the occurrence when the neighbours took her daughter to Thana. So the statements of P.W. 5 which have been brought on record by way of examination in the nature of cross-

examination support the story of rape unfolded by PW 1 in her ejahar.

17. Coming now to the evidence of the doctor, it will also be found that the victim girl was examined by him on 14-12-94 and according to the doctor after examination he found the following marks of violence on the private parts of the prosecutrix. These are : ?

(1) Hymen was found lacerated,

(2) Many radiate tears in the posterior half and edge was found less swollen but it was painful.

The doctor opined that in view of the injuries he found in the private parts of the girl he came to the conclusion that she was raped 5/6 days prior to that date of examination. The doctor has been examined as PW 7. In his evidence, the doctor also deposed that he also examined the appellant to ascertain as to whether the appellant was capable of doing sexual intercourse. The doctor stated that after examination he found that the appellant was capable of doing the sexual intercourse. The doctor has however been cross-examined but on perusal of the same I find nothing material to discredit his version. PW 1 also deposed that on that night she was raped. Only she did not state that she was raped by her father. So the version of P.W. 1 that she was raped on that night finds enough support from medical evidence. I am, therefore, of the opinion that there is no ray of doubt that prosecutrix was raped on the night of occurrence as mentioned in the charge. Now the question which remains to be examined is whether the appellant committed this heinous offence.

18. As already stated, the ejhar as well as the statement which learned Magistrate recorded u/s 164, CrPC clearly shows that it was the appellant who committed this shocking and heinous offence. The evidence of P.W. 3 who is a neighbour shows that only on following day of the occurrence she went to the house of the prosecutrix and at that time she noticed that blood was oozing out from her vagina. Therefore, she wanted to know the reason when prosecutrix told her that she was raped by her father on the previous night, similarly P.W. 8 Sankar Dutta deposed that on coming to know that the appellant committed rape on his daughter, he visited the house of prosecutrix and on his query he came to know from the prosecutrix that she was raped by her father. This witness has been cross-examined. But there is nothing in the cross-examination to disregard their version. It does not appear that they have any sort of enmity with appellant to make such a statement against him. I, therefore, see no reason why reliance should not be placed on the testimony of the evidence.

19. Hence, having regard to the facts, circum-stances and probabilities as discussed above, I come to the conclusion that learned Additional Sessions Judge rightly made the finding that it was the appellant who committed the rape on P.W. 1 Supriya Dey on the date and time as mentioned in the charge.

20. Mr. Bhowrnik has, at last, made a submission that the family will be ruined in

case the conviction and sentence for a period of 10 years is maintained. He, therefore, made an appeal to the Court for consideration of this aspect of sentence. Mr. Bhowmik submits that the sentence may be reduced to five years as there is none to look after this family. He also submitted that the question of marriage of the victim girl is also involved. So if the sentence for such a longer period is maintained, then by the efflux of time the family will be ruined. Learned Public Prosecutor has, on the other hand, submitted that although the offence is a grave and heinous one, in the facts and circumstances it may be said to have been committed due to some momentary insanity/perversion. So sentence may be reduced.

21. The appellant has no doubt committed a very shocking and heinous offence. The magnitude of offence cannot be over-emphasised in the context of the fact that he being the father committed the rape on his minor daughter aged 11 years. But in spite of the gravity of the offence, it is also a fact that there is no earning member in the family and due to this occurrence the prospect of getting a suitable match for the prosecutrix will be a little difficult. So taking into account all the probabilities from all the circumstances and on overall view of the matter, I am of the view that the sentence awarded by the learned Additional Sessions Judge may be reduced to a period of five and a half years. Accordingly the sentence of ten years is reduced to five and a half years and the appellant is also to pay a fine of Rs. 1000/- in default of which he is to suffer R.I. for a further period of six months.

22. Subject to the modification in the sentence to the aforesaid extent, the appeal fails and it is dismissed. It is submitted that the appellant is in custody. So he is to serve out the remaining period. The period of detention undergone during enquiry, investigation, trial shall, however, be set off.