

TRNT030003512023



FORM A

**IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE
NORTH TRIPURA, DHARMANAGAR**

Present: Sri S. Debnath
Chief Judicial Magistrate,
North Tripura, Dharmanagar.

Date of judgment: Tuesday, the 14th day of May, 2024

Case No. PRC (WP) 75 of 2022

Details of FIR/ Crime and Police Station : 2022WDN0002 dated 24.01.2022 under sections 366/506/344//417/376/384/34 of IPC

Complainant : **State of Tripura**
Represented by : Sri B. Das, Ld. APP.
Accused : **Md. Formuj Ali @ Chotomana**
S/o. Lt. Sahid Ali @ Sayed,
R/o. Rowa, PS. Dharmanagar,
North Tripura.
Represented by : Sri T. K. Paul, Ld. Adv.

FORM B

Date of Offence : 15.09.2021
Date of FIR : 24.01.2022
Date of Charge sheet : 15.06.2022
Date of substance of accusation : 30.03.2023
Date of commencement of evidence : 17.07.2023
Date on which judgment is reserved : Does not arise
Date of Judgment : 14.05.2024
Date of the sentencing order, if any : Does not arise

Accused details:

Rank of the accused	Name of the accused	Date of arrest	Date of release on bail	Offences charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428 of CrPC.
A1	Md. Formuj Ali @ Chotomana	03.05.2022	21.07.2022	U/S 417 of IPC	Acquitted	Does not arise	79 days

J U D G M E N T

1. This is a case under section 417 of the Indian Penal Code, 1860 registered upon a police report.
2. The Prosecution case in brief is— On 15.09.2021 at about 1030 hours at Krishnapur near Jur-Culvert under Dharmanagar PS, the accused cheated informant Mst. Jhulekha Iyasmin, allured her to marry him and had sexual intercourse with her falsely promising to marry her. On receipt of the FIR lodged by the informant, police investigated the case and submitted charge-sheet under sections 417/376 of the Indian Penal Code, 1860 against the accused.
3. Copies of prosecution papers were furnished to the accused as required U/S. 207 CrPC. Substance of accusation under sections 417 of IPC was framed against and read over to the accused to which he pleaded not guilty and claimed to stand trial.
4. The defence case was a total denial one. The accused was examined U/S. 313(1)(b) Cr.P.C. and on query he declined to adduce evidence in his defence.
5. Prosecution examined 16 (sixteen) witnesses. Defence side declined to adduce evidence, either oral or documentary.
6. The sole point for determination in this case is:
 - i) *Whether the accused cheated informant Mst. Jhulekha Iyasmin, allured her to marry him and had sexual intercourse with her falsely promising to marry her?*

7. I carefully considered the evidence and materials on record and the arguments of Ld. APP and Ld. Defence Counsel in deciding the above point for determination.

DISCUSSION AND DECISION

8. Ld. APP fairly submitted in his argument that there was absence of material in the record to prove the guilt of the accused. Accordingly, Ld. APP prayed for passing necessary order.

9. Ld. Defence Counsel submitted that the accused was falsely implicated in this case and prayed for his acquittal forthwith since there was no material in the prosecution case.

10. Considering the materials on record and submissions of both the sides in argument, I am of the following opinion:

10.1. PW1 Adv. Sri Mantosh Roy deposed that he typed the complaint petition of the informant of this case as per her version. In cross-examination, PW1 denied the suggestion that he did not type the complaint petition as per the version of the informant.

10.2. PW2 ASI Chaitali Paul deposed that on 03.05.2022 she was posted as W/HC of police at WDN PS. On that day, at Dharmanagar District Hospital, the IO of this case seized the blood sample of accused Md. Formuj Ali before her by preparing a seizure list. Defence side did not cross-examine PW2.

10.3. PW3 Md. Lokman Uddin deposed that the informant was his niece in relation. On 16.09.2021 the informant's mother named Patarun Bibi called PW3 to her house. When PW3 went there, she told him that on the previous day accused Md. Formuj Ali had kidnapped the informant from near Jur culvert, Dharmanagar. On getting such information, PW3 called mother of the accused who was PW3's grandmother in relation. She told PW3 that the informant was living in her house at that moment. PW3 also came to know from her that the accused had another wife in his house. Mother of the accused attempted to amicably settle the matter, but the accused went to Bengaluru leaving the informant in his house. So, the matter could not be settled and the instant case was filed. In cross-examination, defence side

drew omission in the testimony of PW3 to the extent that mother of the accused told him that the informant was living in her house. Defence side confirmed the same with the help of the IO. PW3 admitted that he did not visit the house of the accused.

10.4. PW4 Md. Amir Uddin deposed that the informant was his neighbour. On 15.09.2021 at about 10.30 am PW4 was going to work from his house. Reaching near Botarashi Jur culvert, PW4 saw the informant and accused Md. Formuj Ali talking with one another. Then PW4 went for his work. On the same day, in the evening on returning home, PW4 came to know from mother of the informant that the informant went missing. Later on, PW4 came to know that the accused had kidnapped the informant. In cross-examination, PW4 admitted that he did not file any complaint against the accused to the PS.

10.5. PW5 Md. Abdul Matin deposed not to know anything about this case. Defence side did not cross-examine PW5.

10.6. PW6 Mst. Patarun Nessa deposed that the informant was her daughter. In the year 2002, the informant was reading in Krishnapur School. Then she developed love affairs with accused Md. Formuj Ali. Out of such love affairs, one day the accused took the informant to his house from her school with his motorbike. The accused kept the informant in his house with promise to marry her. But after one day, he left for Bengaluru. The informant waited for him two months, but he did not return. Then the family members of the accused left the informant one day near PW6's house. From there, the informant went to PW6's house. In cross-examination, PW6 stated that it took about one and half hours to go to the house of the accused from her house by car. The house of the accused was situated at Rowa, Panisagar. PW6 admitted that she did not go to the house of the accused when her daughter was there. She stated that her daughter got married with another person and that she was residing in Bengaluru.

10.7. PW7 Dr. Anup Goswami deposed that on 03.05.2022 he was posted as Medical Officer at Dharmanagar District Hospital. On that day, he prepared the blood sample authentication form in respect of accused Md. Farmuj Ali and also signed on the said form. On the same date, PW7

received a requisition from the IO of this case to conduct potency test of the aforesaid accused and on the requisition letter itself he prepared report after conducting potency test of the accused. In cross-examination, PW7 denied the suggestion that his reports were not proper.

10.8. PW8 Smt. Sunanda Nath deposed that on 03.05.2022 she was posted W/C of police at Dharmanagar Women PS. On that day, at Dharmanagar District Hospital, the IO of this case seized blood sample of the accused before her by preparing a seizure list. In cross-examination, PW8 denied the suggestion that the IO did not seize anything before her.

10.9. PW9 Mst. Rajiya Begam deposed that the informant was her husband's sister. About 16/17 months ago, one day the informant was going to her school i.e. Krishnapur School. On the way, accused Md. Formuj Ali took her to his house. Then he went to Bengaluru keeping the informant in his house. After one month, the informant returned to her house. In cross-examination, PW9 admitted that informant has got married to another person of Padmabil and she has given birth to a boy out of that wedlock.

10.10. PW10 Md. Inul Haque deposed not to know anything about this case. Defence side did not cross-examine PW10.

10.11. PW11 Md. Atabur Rahaman deposed that the informant was known to him as his sister's matrimonial house was situated near her house. He deposed not to know anything about this case. Defence side did not cross-examine PW11.

10.12. PW12 Mst. Ayesha Begam deposed not to know anything about this case. Defence side did not cross-examine PW12.

10.13. PW13 Mst. Sultana Nachrin deposed that the informant was his younger sister. He deposed not to know anything about this case. Defence side did not cross-examine PW13.

10.14. PW14 Md. Mirjan Ali deposed that the informant was his wife's sister. He deposed not to know anything about this case. Defence side did not cross-examine PW14.

10.15. PW15 Dr. Debajyoti Bandopadhyay deposed that on 26.01.2022 he was posted as Medical Officer at District Hospital, Dharmanagar. On that

day, he examined an alleged victim of sexual assault named Mst. Julakha Yeasmin. On examination of the patient, he found no external injury in her person. The Pubic hair combing was non-metted and no foreign body was found. Whitish discharge was present which was normal. Hymen was intact. Vagina and cervix was nulliparous and thus finger insertion test not done. No test was done over anus. Urine pregnancy test report was negative. Blood samples, vaginal swabs and vulval swabs were sent to SFSL. The alleged victim stated before PW15 that on 15.09.2021 at about 10.30 am on her way to school one Formej Ali had taken her in his house with his motorbike with promise to marry her and that he had had sexual intercourse with her. In cross-examination, PW15 denied the suggestion that the alleged victim did not state before him that on 15.09.2021 at about 10.30 am on her way to school one Formej Ali had taken her in his house with his motorbike with promise to marry her and that he had had sexual intercourse with her.

10.16. PW16 WSI Smt. Sanchita Nath was the IO of this case. She appearing before the Court narrated as to how she conducted investigation in this case. In cross-examination, she stated that her investigation did not reveal any previous reporting of the matter by the informant to police before filing the instant case in the Court. The complaint petition of the instant case did not mention the name of the scribe and that of the filing Ld. Advocate. The complaint petition also did not bear any signature of the complainant. PW16 admitted not to have examined Sri Sajal Rudra Paul and Sri Kajal Chakraborty in connection with this case whose shops have been shown as B and E in the hand-sketch map of the first PO. She also admitted not to have examined Md. Habib Ali in connection with this case whose house has been shown as D in the hand-sketch map of the second PO. She clarified to the Court that Md. Habib Ali was the brother of the accused and he would not support the prosecution case against the accused. So, PW16 did not examine him. Md. Habib Ali was also an FIR named accused in this case.

10.17. This is the total prosecution evidence before the Court.

11. The above discussion reveals that out of sixteen witnesses examined by prosecution in this case, PW1 was the scribe of the complaint petition filled by the informant, PW2 and PW8 were the seizure witnesses and

PW16 was the IO. Therefore, these witnesses did not put forward anything on the facts of this case. Moreover, PW5, PW10, PW11, PW12, PW13 and PW14 were the witnesses who deposed to know nothing on the facts of the case. Thus, the aforesaid ten witnesses did not support the prosecution case substantially.

12. PW3, PW4, PW6 and PW9 were the corroborating witnesses. Out of them, PW3 deposed to know from PW6 that her daughter i.e. the informant had been kidnapped by the accused. Admittedly, PW6 was not an eye-witness of the said incident. Therefore, the testimony of PW3 which was based on the testimony of PW6 was wholly hearsay. PW3 also deposed that he came to know from the mother of the accused that the informant was living in her house. The said portion of the testimony of PW3 was proved to be developed version by the defence side. Situated thus, PW3 did not support the prosecution case the accused.

13. PW4 have deposed to have seen the accused and the informant talking with one another. He also deposed to have known from the mother of the informant that the informant went missing. He also came to know later on that the accused had kidnapped the informant. Now, this is not a case of kidnapping. It clearly came out of the testimony of the IO (PW16) that the alleged victim was a major on the date of the alleged incident. Therefore, the testimony of PW4 which attempted to prove kidnapping of the informant by the accused, did not support the prosecution case of cheating of the informant by the accused.

14. PW6 deposed that there was love affairs between the informant and the accused and one day the accused took the informant to his house and kept her there with promise to marry her and after a few days the family member of the accused left the informant near PW6's house. PW6 admitted not to have visited the house of the accused at any point of time. She did not clarify to the Court as to how she came to know that the accused had taken the informant to his house and had kept her there. Thus, the testimony of PW6 was purely hearsay and did not support the prosecution case.

15. Like PW6, PW9 also could not tell the source of her information that the accused had taken the informant to his house and had left her there.

Situated thus, PW9 also could not support the prosecution case against the accused.

16. In the present case, prosecution could not bring and examine the informant cum alleged victim despite allowing of multiple opportunities. This is where the prosecution case suffered the first set-back. Secondly, as discussed above, none of the four corroborating witnesses could support the prosecution case for this reason or that.

17. Thus, there only remained the medical experts viz. PW7 and PW15. These two witnesses being expert witnesses were not supposed to speak on the facts of the case. However, PW15 testified that he came to know that the informant on 26.01.2022 that on 15.09.2021 the accused had taken her to his house with promise to marry her and that he had had sexual intercourse with her. Thus, PW15 attempted to corroborate the informant in the manner provided under section 157 of the Indian Evidence Act, 1872. However, it is clear from the bare language of section 157 of the Indian Evidence Act, 1872 that for its application, the former statement made by the witness to be corroborated must be made at or about the time when the fact took place. In the instant case, as stated above, the incident complained of took place on 15.09.2021 and the informant narrated the same to PW15 on 26.01.2022 i.e. after more than four months. Therefore, the aforesaid testimony of PW15 could not also support the prosecution case against the accused as per section 157 of the Indian Evidence Act, 1872.

18. Accordingly, prosecution allegation against the accused could not be proved by the standard of beyond reasonable doubt. Hence, the sole point for determination stands decided in negative.

ORDER

19. Hence, accused Md. Formuj Ali @ Chotomana is acquitted of the offence alleged and is set at liberty forthwith. The bail bond furnished u/s. 437A of CrPC on his behalf shall remain in force for upcoming six months. Sureties of other bail bonds furnished on his behalf stand discharged forthwith.

20. The seized birth certificate of the informant may be handed over to her on expiry of the appeal period. On the other hand, the seized medical samples be destroyed by the CTI, Dharmanagar Police Court in the presence of the Nazir of this Court on expiry of the appeal period. Compliance report is to be submitted.

21. Inform accordingly.

22. The case is thus disposed off, on contest.

23. Send a copy of this judgment to the District Magistrate, North Tripura, Dharmanagar as per section 365 of CrPC.

24. The judgment is given under my hand and seal of this Court on this the 14th day of May, 2024.

P R O N O U N C E D

Typed to my dictation
and corrected by me

(S. DEBNATH)
CHIEF JUDICIAL MAGISTRATE
NORTH TRIPURA, DHARMANAGAR

(S. DEBNATH)
CHIEF JUDICIAL MAGISTRATE
NORTH TRIPURA, DHARMANAGAR

FORM C

LIST OF PROSECUTION/ DEFENCE/ COURT WITNESSES

A. Prosecution witnesses:

Rank	Name	Nature of Evidence (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, Other witness)
1.	Adv. Sri Mantosh Roy	Scribe
2.	ASI Chaitali Paul	Seizure witness
3.	Md. Lokman Uddin	Corroborating witness
4.	Md. Amir Uddin	Corroborating witness
5.	Md. Abdul Matin	Other witness
6.	Mst. Patarun Nessa	Corroborating witness
7.	Dr. Anup Goswami	MO (Medical expert)
8.	Smt. Sunanda Nath	Seizure witness
9.	Mst. Rajiya Begam	Corroborating witness
10.	Md. Inul Haque	Other witness
11.	Md. Atabur Rahaman	Other witness
12.	Mst. Ayesha Begam	Other witness
13.	Mst. Sultana Nachrin	Other witness
14.	Md. Mirjan Ali	Other witness
15.	Dr. D. Bandopadhyay	MO (Medical expert)
16.	WSI Smt. Sanchita Nath	IO (Police witness)

B. Defence witnesses, if any:

Rank	Name	Nature of Evidence (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, Other witness)
Nil	Nil	Does not arise

C. Court witnesses, if any:

Rank	Name	Nature of Evidence (Eye witness, Police witness, Expert witness, Medical witness, Panch witness, Other witness)
Nil	Nil	Does not arise

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution exhibits:

Sl. No.	Exhibit No.	Description
1.	Ext. P1/ PW2	Signature of PW2 on the seizure list
2.	Exts. P2/ PW7 & PW2(a)/ PW7	Blood sample authentication form and signature of PW7 on the same
3.	Ext. P3/ PW7	Potency test report of the accused
4.	Ext. P4/ PW8	Signature of PW8 on the seizure list
5.	Exts. P5 (as a whole)/ PW15 & P5(a)/ PW15	Medical report of the informant and signature of PW15 on it
6.	Ext. P6/ PW16	Signature of RO on printed FIR
7.	Exts. P7 (as a whole)/ PW16 & P7(a)/ PW16	Hand-sketch map of the first PO and its index
8.	Exts. P8 (as a whole)/ PW16 & P8(a)/ PW16	Hand-sketch map of the second PO and its index
9.	Exts. P9/ PW16, P10/ PW16 & P11/ PW16	Seizure Lists

B. Defence exhibits, if any:

Sl. No.	Exhibit No.	Description
Nil	Nil	Does not arise

C. Court exhibits, if any:

Sl. No.	Exhibit No.	Description
Nil	Nil	Does not arise

D. Material objects:

Sl. No.	Material object no.	Description
Nil	Nil	Does not arise

Typed to my dictation
and corrected by me

(S. DEBNATH)
CHIEF JUDICIAL MAGISTRATE
NORTH TRIPURA, DHARMANAGAR

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