

**BEFORE
TRIPURA HUMAN RIGHTS COMMISSION
KUNJABAN, AGARTALA**

**Complaint No.03 of 2023
Suo-Motu Cognizance**

Rape of minor girl of Murapara under Kakraban PS

FINAL ORDER DATE 27.09.2023

There was a news item in a local news paper namely : 'Tripura Bhabishyat' on 29.03.2023 with the heading "নাবালিকা ছাত্রীর উপর অমানবিক নির্যাতন". The news item reported that in the year 2022 a minor school student (girl), resident of Murapara under Kakraban PS, was returning from Dewali Fair of Matabari and on the way a person namely: Bikash Miah, a professional meat seller, enticed the girl away and committed rape on her. He threatened her not to disclose it to anybody and in that case she and her family will be in trouble. Thereafter also, on several occasions that Bikash Miah committed rape on the minor girl and ultimately she got pregnant and the pregnancy was terminated somehow through some doctor. The incident was reported to police of Kakraban PS and accordingly Kakraban PS case no. 41 of 2023 U/S 376/313/506/109 IPC and Section 6 of POCSO Act has been registered and investigation has been taken up.

Attention of the Commission was drawn to the above news item and since it was a barbaric act of rape on a minor girl, the Commission took suo-motu cognizance and the complaint was accordingly taken up by the Commission.

-  2. After taking cognizance, the Commission directed the DGP, Tripura vide its order dated 29.03.2023, enclosing a copy of the news item with a paper cutting to submit a detail report.

3. Accordingly, the DGP, Tripura submitted his report to the Commission vide his letter dated 26th April, 2023. The report of DGP, Tripura revealed that on the basis of written complaint of Smt. Lanchana Bala Das W/O Sri Babul Das of Murapara, Kakraban PS, Udaipur Gomati Tripura, a specific case was registered at Kakraban PS vide Kakraban PS case no. 2023KKB041 dated 26.03.2023 U/S 376 (3)/376(2) (n)/313/506/109 IPC and Section 6 of POCSO Act, 2012 against (i) Bikash Miah S/O Md. Manchur Ali (ii) Rakesh Miah @ Abu Miah S/O Manchur Ali and (iii) Smt. Ful Banu Begam W/O Alfu Miah all of Murapara, PS Kakraban, Gomati District. In his report, the DGP further mentioned that during investigation of the case, the I/O took all necessary steps in the interest of the investigation including recording the judicial statement U/S 164 (5) Cr.PC of the victim girl. The I/O also arrested all the FIR named accused persons and forwarded them to court and they were sent to judicial custody. The I/O also collected the medical examination report of the minor victim girl and accused Bikash Miah.

4. Since the crime committed on minor girl was very heinous in nature, the Commission further ordered its Investigation Wing to conduct a detailed investigation into the news item and submit report to the Commission. Accordingly Dy. SP L. Malsom of the Commission made a through inquiry into the news item and submitted a detailed report to the Commission on 12.07.2023.

5. From the report of Dy. SP L. Malsom, following facts transpired:-

(i) The victim girl namely: Konika Das (15) (actual name kept concealed) D/O Sri Babul Das of Murapara, under Kakraban PS, District Gomati Tripura is a student of class IX of Murapara Higher Secondary School. She has one elder brother and one elder sister.



The victim girl usually goes to school at 8:00 AM and returns by 2:00 PM. After arrival from school, she cooks food, as her mother goes to her work place (labour of SBS brick Kiln, Kakraban) early in the morning and returns late. Often the victim girl stays alone at the house. Her father is a band player and is a physically disabled person.

(ii) During last Diwali i.e 23/24 October, 2022 afternoon, her neighbor Bikash Miah S/o Md. Manchur Ali entered the house of victim girl when she was alone. He tied her face with towel and took off her clothes and committed rape upon the minor girl. Bikash Miah told the victim girl that if she tells about the incident to any one, he will kill all her family members. Fearing that the victim girl did not inform the incident to her parents. Since then Bikash Miah often went to the victim's house in the afternoon and committed rape on the victim in the absence of her parents.

(iii) When the victim's elder sister namely: Mamata Das visited their house and learnt from her younger sister that her period has stopped. The victim's mother brought a urine test kit from the drug store and made her undergo the test. The test report came positive. On being asked, the victim girl disclosed everything about the incident to her guardian and the guardian also learnt that the victim girl became pregnant for six months.

(iv) The mother of the victim girl Smt. Lanchana Bala Das confronted Manchur Ali, father of Bikash Miah about the incident. Manchur Ali after talking to his son admitted that his elder son Bikash Miah committed rape upon the victim girl.

(v) On 17.03.2022 morning around 1000/1100 hrs, one Ful Banu Begam, Aunt of Bikash Miah and Rakesh Miah, younger brother of Bikash Miah took the victim girl and her mother to Udaipur in a doctor's chamber. They kept her and her mother outside of the doctor's chamber and gave money to the doctor. That day afternoon, they admitted the victim girl to Udaipur old Hospital i.e Tripura

Sundari Sub-Divisional Hospital, Udaipur as per direction of said doctor. After admission of victim girl at hospital, Ful Banu Begam and Rakesh Miah left the hospital. Doctor of TSSDH, Udaipur had given medicines to the victim girl and after taking medicine she vomited at that hospital. On next day i.e 18.03.2022 her stomach was upset and she was feeling excruciating pain. Later on the victim girl gave birth to a stillborn boy at that hospital. On the same day at night the victim returned back at home.

(vi) On 26.03.2023 Smt. Lanchana Bala Das, mother of victimgirl went to Kakraban PS and submitted a written complaint against Bikash Miah, Rakesh Miah and Ful Banu Begam at Kakraban Police Station for committing rape on her.

(vii) Inspector Subimal Barman, O/C Kakraban PS registered a specific case vide Kakeaban PS Case No. 2023/KKB/041 dated 26.03.2023 U/S 376 (3)/376(2)(n)/313/506/109 IPC and 6 of POCSO Act, 2012 and endorsed the case to W/SI Sima Roy of Kakraban PS to complete his investigation.

The Gist of FIR lodged by complainant Smt. Lanchana Bala Das W/O Babul Das as appeared in the police record is:

"The fact of the case in brief is that on the day of last Kali Puja for the year 2022 at about 2200 hrs while complainant's minor daughter namely Miss Konika Das (actual name kept concealed) (who is a student of class IX and had attained the age of 15 years) was returning towards her house after attending Kali Puja 2022. At that time the principal FIR named A/P namely : Bikash Miah had forcibly committed rape upon her and threatened her not to disclose the matter to anybody. Since after the first incident for subsequent 06(six) months, after taking advantage of loneliness (as the mother of the victim used to go for her work in a brick kiln her father used to go for playing band party) on various dates and times the A/P had committed repeated sexual assaults upon the victim against her will by putting her with life

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threat, in their dwelling hut, resulting which complainant's daughter carried a pregnancy for a period of 06 (six) months. Lastly on 17.03.2023 on asking by the complainant to victim regarding her deteriorating health condition at that time the victim informed the whole incident and at that time 3 FIR named A/Ps namely- Rakesh Miah @ Abu and Smt. Ful Banu Begam had forcibly taken the victim to a doctor at Udaipur near Punjab National Bank, adjacent to B.O.C and thereby caused miscarriage of her pregnancy illegally. Since after the incident, the A/Ps are continuously threatening the complainant and her family members with dire consequences if she discloses the matter to police”.

6. After investigation I/O WSI Sima Roy submitted part Charge Sheet against Rakesh Miah (22) S/O Manchur Ali, Bikash Miah (24) S/O Manchur Ali and Ful Banu Begam (40) W/O Alfu Miah all of Murapara, PS Kakraban.

7. The reports submitted by the DGP, Tripura and Dy. SP L. Malsom of Investigation Wing of THRC confirmed the fact that victim Konika Das (15), a student of class IX was raped on many occasions during the period from 23/24 October, 2022 to 17.03.2023. As a result she got pregnant. When her pregnancy was initially detected her elder sister Smt. Mamata Das asked Konika about the person responsible for this. She disclosed the entire story stating that accused person Bikash Miah S/O Manchur Ali of Murapara, Kakraban PS used to rape her on many occasions putting her on the threat and fear of murder. Then her mother Smt. Lanchana Bala Das went to the house of Manchur Ali, father of Bikash Miah and demanded action against him. But Manchur Ali did not pay any heed to her. Then Ful Banu Begam W/O Alfu Miah (Aunty), Rakesh Miah brother of accused Bikash Miah took victim Konika Das and her mother Smt. Lanchana Bala Das to Tripura Sundari Sub-Divisional



Hospital. There Dr. Joydeep Debbarma, SDMO, TSSD Hospital, Udaipur, Gomati Tripura treated her and terminated her pregnancy.

8. Victim Konika Das was a minor girl (15 years old) during the commission of crime on her and specially during termination of the pregnancy. According to birth certificate (registration no. 34 dated 08.08.2013) of the victim issued by the BDO Kakraban Block, Udaipur Gomati Tripura, the date of birth of the victim is 07.02.2008, thereby conclusively confirming that the victim was a minor girl.

9. Section 4 of the Tripura Medical Termination of Pregnancy Act, 1971 (Act No. 34 of 1971) reads as follows:-

“(a) No pregnancy of a woman, who has not attained the age of eighteen years, or, who, having attained the age of eighteen years, is a lunatic, shall be terminated except with the consent in writing of her guardian”.

“(b) Save as otherwise provided in CI. (a), no pregnancy shall be terminated except with the consent of the pregnant woman”.

10. The Investigation Wing of THRC asked Dr. Joydeep Debbarma vide its letter no. 906-907/THRC/2023 dated 30.05.2023 for the following information:-

(i) Date and the time of entry of patient at Tripura Sundari Sub-Divisional Hospital, Udaipur Gomati.

(ii) Medicine prescribed to the patient before and after the abortion.

(iii) Whether any medical team was formed to decide about the termination of pregnancy of the patient. If so, names of the doctors of the medical team who examined the patient before the operation and their opinion.

(iv) How many weeks old the fetus was on the date of causing abortion.

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(v) Whether guardians of the patient were consulted and consent of the patient and her parents was taken.

(vi) With what history the patient was admitted at the hospital.

(vii) Names of the staff who attended the operation, of the victim girl namely: Konika Das (actual name kept concealed).

11. Dr. Joydeep Debbarma, in response, furnished the following para wise reply :-

(i) The patient Mrs. Konika Das (17) years W/O Bikash Miah from Murapara admitted to Tripura Sundari Sub-Divisional Hospital, Udaipur on 17.03.2023 at 4:45 PM.

(ii) Medicine prescribed noted down in seritem during admission.

- Inj. Contiprine (Tramodal hydrochloride 100 mg)
- Inj. N.S with Inj. Sintocinon Zamp (10 unit 5+5) in drip @ 20 min drop.
- Cap. Amoxycilline (500 Mg) antibiotic.

Medicine prescribed after delivery:-

- Continue inj. NS with 2amp sinticinon, IVF.
- Inj. Metregine 1 amp, 1/M stat.
- Cap. Amoxycilin 500 mg continue.
- Tab. Paracetamol 650 mg. SoS.
- Cap. Omez-DOD.

(iii) No medical team was formed because the duration of pregnancy was 16 weeks. As per MTP Act under Section 3 (2) tells us when the pregnancy is below 20 weeks can be terminated by one single trained registered medical practionner. This was a premature normal vaginal delivery. So question of operation does not arise. Since the patient came with a history of bleeding per vagina in a 16 weeks of pregnancy, my duty was to admit the patient and treat accordingly to save mother's life first.

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(iv) The pregnancy was 16 weeks size.

(v) Guardian of the patient has been consulted and they have given to signature.

(vi) Patient admitted to hospital with a history of bleeding per vagina in a case of 16 weeks pregnancy.

(vii) It was a simple case of spontaneous abortion (miscarriage), so question does not arise for operation. After that patient left the hospital without Medical advice (LAMA) by next day. The duty roster of on duty Medical Officer and other staffs on 17.03.2023 evening and night and 18.03.2023 (morning) is enclosed.

12. In para V of his reply to the Commission Dr. Joydeep Debbarma has stated that "Guardian of the patient has been consulted and they have given to signature" which is not a fact. Despite pursuance of the Commission and I/O of the case, Dr. Debbarma could not provide any written document in support of his claim that written consent of victim or her legal guardian was obtained before the termination of the pregnancy was done. Thus, it is a clear violation on the part of Dr. Joydeep Debbarma, SDMO, TSSD and the provisions made under Section 4 (a) of the Medical Termination of Pregnancy Act, 1971.

13. From the reports/ reply of Investigation Wing of THRC, and KKB PS case no. 2023KKB041 dated 26.03.2023 U/S 376 (3)/376 (2) (n)/313/506/109 IPC and Section 6 of POCSO Act, 2012, it transpired that minor victim Konika Das was taken to Tripura Sundari Sub-Divisional Hospital by Ful Banu Begam, Rakesh Miah, relatives of accused Bikash Miah and got her admitted by suppressing facts regarding her actual identity. The accused stated before the medical authority that victim was the wife of accused Bikash Miah. In fact, the termination of pregnancy was done to save the accused from the punishment for committing such a barbarous crime. The law

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makes it mandatory that before termination of pregnancy of a women below 18 years of age, written consent of the guardian is a must.

14. In this case Dr. Joydeep Debbarma, conducted the termination of pregnancy operation on the victim without obtaining any such consent, which is a serious lapse on his part.

15. In view of the above facts, the Secretary, Health Department, Govt. of Tripura is directed to cause a detail inquiry to find out if there was any delinquency on the part of any one in the termination of pregnancy of victim Konika Das. In this case, the police has submitted only part Charge Sheet i.e against the accused Bikash Miah, Rakesh Miah and Ful Banu Begam in Kakraban PS case no. 2023KKB041 dated 26.03.2023 U/S 376 (3) / 376 (2) (n)/313/506/109 IPC and Section 6 of POCSO Act, 2012 and KKB PS C/S No. 50/23 dated 19.07.2023 U/S 376(3)/376(2)(n)/313/201/506 /109 IPC & 6 of POCSO Act, 2012. The I/O also requested the Chief Medical Officer, Udaipur, Gomati District to conduct an impartial and unbiased inquiry to ascertain whether there was any lapse, both medical and legal regarding the termination of pregnancy of Konika Das by Dr. Joydeep Debbarma of SDMO of TSSD Hospital, Udaipur Gomati Tripura.

16. The inquiry conducted by the Investigation Wing of THRC revealed that victim Konika Das belongs to a down trodden and extremely poor family. Her father is physically disabled and cannot do any work. Her mother works in a brick kiln and cannot make both ends meet.

17. She fell a victim to the lust of an unscrupulous crime doer who took advantage of her poverty and loneliness and committed rape on

her day after day. This incident has left a social stigma on the victim and her family. Ours is a welfare state. It cannot ignore the pitiable condition of such a poor family being subjected to such inhuman torture and atrocities who cannot lead a life with dignity and honour. Though no compensation can fully ameliorate the dishonor done to the victim by the accused's fiendish act, even then by extending some financial assistance, as a matter of solace and humane gesture, the State Govt. may stand by her.

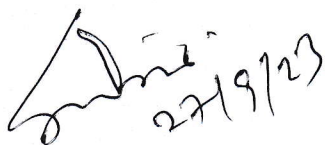
18. As such, it is suggested that to partly alleviate her woes, State Govt. may consider to sanction an amount of Rs. 100000/- (One Lakh) for her subsistence.

19. With these observations, the case stands disposed of.

20. Copy of this order be sent to the Secretary, Health Department, Govt. of Tripura for compliance within one month of receipt of the order.

21. Further, a copy of this order be sent to the Chief Secretary, Govt. of Tripura and the DGP, Tripura for compliance and report within one month in terms of the provisions made under Section 18 (e) of "the Protection of Human Rights Act, 1993".

22. A copy also be sent to complainant Smt. Lanchana Bala Das W/O Sri Babul Das of Murapara, PS Kakraban, for information.



(S.C. SAHA)
MEMBER


(JUSTICE S.C. DAS)
CHAIRPERSON

(B.K. RAY)
MEMBER