

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A

CrI. A(J) No. 19 of 2022

1. Haripada Bhim, son of late Birendra Bhim of Netaji Chowmuhani, P.O. Head Post Office, Agartala. P.S. West Agartala, District: West Tripura, PIN-799001.

.....Appellant

-V E R S U S-

1. The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE THE CHIEF JUSTICE (ACTING)

For Appellant(s)	:	Mr. S. Kar Bhowmik, Sr. Advocate. Mr. S. Bal, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Whether fit for reporting	:	NO

Judgment and order dated 18th January, 2023

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. S. Bal, learned counsel appearing for the appellant. Also heard Mr. S. Ghosh, learned Addl. P.P. appearing for the respondent-State.

[2] This appeal has been filed under Section-374 of the Cr. P.C. against the judgment and order dated 04.07.2022 passed by the learned Special Judge (POCSO), West Tripura, Agartala in connection with Special (POCSO) 45 of 2019 convicting the appellant under Section-354(A) of IPC or alternatively under Section-10 of the POCSO Act and sentenced to suffer RI for 5(five) years and to pay a fine of Rs.15,000/- in default to

suffer simple imprisonment for further term of 2(two) months under Section-10 of the POCSO Act.

[3] The facts of the prosecution story highlighted in nutshell is that on 25.08.2019, at about 0700 hours, when the minor victim-daughter (name withheld) of the informant went to the house of her English teacher Haripada Bhim, the convict appellant herein, near Janakallyan Samiti for taking tuition, at that time, while the victim was going upstairs, the appellant suddenly hugged her from behind and started kissing her and also touched her body parts. The informant, as well as , father of the victim namely, Sri Prasenjit Debnath being aggrieved and finding no other alternatives took legal recourse of law and on 26.08.2019, lodged a written complaint against the appellant. Hence, the present case.

[4] On receipt of such complaint, FIR No. 2019/WAW/073 dated 26.08.2019 was registered at West Agartala Women's P.S. and SI Smt. Sima Das Choudhury was endorsed with the charge of investigation and after completion of investigation charge-sheet vide C/S No.47/2019 dated 31.10.2019 was filed against the accused under Section-354(B) of IPC and Section-10 of the POCSO Act.

[5] Finding prima facie case against the accused, charge under Section-354(A) of IPC and Section-10 of the POCSO Act was framed against the appellant. The contents of the charge when read over to the appellant, he pleaded not guilty and claimed to be tried.

[6] During trial, to substantiate the charge, prosecution has adduced as many as 6 witnesses including the complainant of this case mentioned in the appendix attached herewith. The prosecution also relied upon some documentary evidence as well as material object which were also marked as exhibits in connection with the instant case as reflected in

the attached appendix. The defence case was that of total denial of the allegation of the prosecution and as such the convict-appellant during his examination under Section-313 of Cr. P.C, pleaded his innocence and denied to adduce any witness in support of his defence.

[7] After hearing both the parties, the learned Court below found that the appellant is guilty for committing offence punishable under Sections-354(A) of IPC or alternatively, under Section-10 of the POCSO Act and thereby, sentenced him as stated supra. For the purpose of reference, the observation of the Court below may be reproduced hereinbelow:

“25. In the result, accused namely Sri Haripada Bhim is found guilty and convicted under Section-354(A) of the IPC or alternatively, under Section-10 of the POCSO Act. He is taken into custody and will be heard on question of sentence in due course of time of the day.

26. Surety of the bail bond, except the bail bond furnished under Section-437(A) Cr. PC., stands discharged.”

[8] The appellant herein, being aggrieved by and dissatisfied with the impugned judgment and order of conviction dated 04.07.2022, has preferred this present appeal for the ends of justice.

[9] Mr. S. Kar Bhowmik, learned senior counsel assisted by Mr. S. Bal, learned counsel appearing for the appellant has contended that the learned Court below committed gross error in passing the impugned judgment and order of conviction appealed against. The Court below relying upon the purported witnesses in the present case whose evidences were untrustworthy, improbable and also were not legally tenable under the law. The charge was not framed according to law causing grave prejudice to the appellant since the charge did not give sufficient notice to the appellant.

[10] He has further submitted that the learned Court below has failed to appreciate the fact that PW-1 Sri Prasenjit Debnath, the father of the victim who is a hearsay witness, in his examination-in-chief stated that on the next day of the incident he heard from his wife that on 25.08.2019 when his daughter was entering the room of the tuition and was going up by the stairs, the appellant grabbed her from behind and touched various parts of her body. But during cross examination, the witness stated that his daughter was attending the tuition of the appellant for last about 2 years and 8 months. He further stated that her daughter used to attend the tuition in a batch of 12/13 students twice in a week and which starts about 7.

[11] PW-1 further stated that the time when he went to pick his daughter from her tuition, she was accompanied by 4/5 students but, he could not tell their names. It was further stated by PW-1 during cross examination that his daughter came out from the tuition class after the full session along with other students. PW-1 further stated that after the tuition he picked up his daughter and returned back home as usual and she stated nothing to him. He also stated that he did not notice any abnormality in her on the way back home. It is crystal clear from the above version that the prosecution story is not true rendering the judgment and order of conviction, which liable to be set aside.

[12] In view of above depositions, let us discuss the other relevant witnesses for a clear view. PW-2, Smti. Jharna Debnath, the mother of the victim in her examination in chief stated on 26.08.2019 her daughter told her that on the previous day at about 7.00am when she went to attend her private tuition in the house of the accused and when she was on the stairs, the appellant grabbed her from behind and touched various parts of her body. Surprisingly she stated in her chief that she wrote the complaint as per version of her husband and thereafter he put his signature. As per

prosecution case the victim first disclosed the alleged incident to her mother i.e. PW-2 had the first hand information, but in the present case the FIR has been drafted as per dictation of the father, who allegedly heard the incident from the mother of the victim.

[13] During the cross-examination, PW-2 admitted that she cannot say accurately the total number of students who take tuition in the batch, but the victim told her that many students were there. She further stated in cross that she did not try to inquire about the incident from the other batch mates of her daughter on the day she heard about the incident or any day thereafter. She further stated that she heard from her daughter that the appellant stays in the house with his family. She further stated that she did not ask her daughter as to why she did not inform anything about the incident to the wife of the appellant immediately or to her batch mates.

[14] She further stated that her daughter told her that at the time of the alleged incident she shouted. Her daughter took tuition from the appellant for 2 years and 8 months. She also stated that her daughter attended the full session of tuition on that day. From the above evidence, it reveals that the prosecution story is not true rendering the judgment and order of conviction liable to be set aside.

[15] PW-3, the victim in her examination in chief stated that on the alleged date of incident she was on the stairs for going to the roof where the tuition room is situated, but suddenly the appellant grabbed her from behind and kissed her. She tried to shout but, the appellant threatened her. As such, the version of PW-2 that her daughter shouted during the incident is found to be false.

[16] During cross-examination PW-3 was confronted with her statement recorded under Section-164(5) Cr. P.C. and it was found that

there she never stated that the appellant kissed her. She admitted that there were about 40 students who studied in the batch and all of them were her classmates. She stated that Akarshi Majumder, Deepa Das, Prantika Roy and others were in her batch in the tuition class. She further admitted that she studied in the private tuition for about 2 years 8 months. She further stated that she could not narrate the alleged incident to anybody after attending the tuition while coming out of the class. She further admitted that on the alleged day she met the wife of the accused when she entered the tuition class.

[17] She further admitted that wife of the appellant often meet them in the class room and behaved cordially with them. That from the aforesaid evidence it is evident that the prosecution story is false since it is highly improbable that the victim did not narrate anything to the wife of the appellant, though she claimed to have met her before entering the tuition class. The aforesaid vital evidence was missed by the Court below.

[18] PW-4, Akarshi Majumder, the classmate of the victim and they only independent witness of this case in her examination-in-chief did not utter anything incriminating against the appellant and during her cross-examination she stated the appellant used to teach in a batch consisting of 35/40 students. She stated that she was also a student of morning batch starting from 7 to 9am. She further stated that on 25.08.2019 along with her friends namely Miss Prantika Roy and the victim went together to their tuition class taking the staircase and thereafter they came out together at about 9.00am. Further, it has been stated that on the alleged day when she went to the classroom, she found her teacher was already present there. She further stated that on the date of alleged incident the victim took tuition together and was happy. In her cross further confirmed that when her

victim friend was accompanying her on 25.08.2019 no incident occurred as per her belief.

[19] This vital portion of evidence was totally missed by the learned Court below that firstly the alleged incident happened in the staircase and the victim was accompanied by her two other friends during climbing upto the tuition room, as such the prosecution case is false to its core. This vital aspect of the case was grossly overlooked by the Court below while passing the impugned judgment and order of conviction thus, making the same liable to be set aside.

[20] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. 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 as analyzed above, 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 accused-appellant.

[21] In the backdrop of above analysis, this Court is of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed. Accordingly, the order of conviction and sentence dated 04.07.2022, passed by the learned Special Judge (POCSO), West Tripura, Agartala, in connection with Special (POCSO) 45 of 2019 is set aside. It is made clear that the appellant is on bail, thus, his bail bond be discharged forthwith. As a sequel, miscellaneous

applications pending, if any, shall stand closed. Send down the LCRs forthwith.

[22] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

CHIEF JUSTICE [ACTING]

A.Ghash

