

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.(J) 20 of 2022

Sri Arjun Debnath,
S/o- Sri Sriranjana Debnath,
Resident of West Charakbai (Uttar Para)
PS: Baikhora, Dist: South Tripura

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Petitioner(s)	: Mr. Subrata Sarkar, Sr. Advocate. Ms. N. Debbarma, Advocate.
For Respondent(s)	: Mr. Raju Datta, PP.
Date of hearing	: 21.11.2023
Date of pronouncement	: 06.12.2023
Whether fit for reporting	: Yes/No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T. Amarnath Goud, J)

Heard Mr. Subrata Sarkar, learned senior counsel assisted by Ms. N. Debbarma, learned counsel appearing for the appellant. Also heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 21.03.2022 passed by the Ld. Special Judge, South Tripura in connection with Case No.Special 23 (POCSO) of 2021 convicting the appellant to suffer rigorous imprisonment for 20 years and to pay a fine of Rs.15,000/-(fifteen thousand) for the offence punishable under Sec. 6 of POCSO Act, in default, to suffer RI for two months.

[3] The prosecution story as revealed from the charge-sheet & judgment in short as alleged is that for the last three years the accused-appellant used to commit rape upon the victim daughter of the informant alluring money as a result of which the victim, daughter of the informant, became pregnant for three months. On 12.06.2021 at about 6.30 pm suddenly the victim daughter of the informant feeling abdominal pain and her bleeding was started. The informant and her husband shifted their victim daughter at Baikhora PHC. ON arrival at Baikhora PHC the attending medical officer asked the victim girl in presence of her parents about her pregnancy, then the victim girl disclosed the fact before the medical officer in presence of her parents. The victim also disclosed that she has taken medicine which was given by accused Arjun Debnath and after consumption of the medicine miscarriage was happened. Thereafter, the informant lodged the case to Baikhora PS.

[4] On this Baikhora PS Case No.2021/BKR/015 under Sec.376(2)(i) and 313 of IPC and section 6 of POCSO Act was registered against the accused person and the case was endorsed to Smt. Ruma Noatia WSI of police. The case was investigated and on completion of investigation I/O WSI Ruma Noatia filed charge sheet against accused Sri Arjun Debnath for commission of offence punishable under Section 376(2)(i) and 313 of IPC and section 6 of POCSO Act.

[5] During trial, the prosecution to establish the charge had adduced as many as 10 witnesses. After closure of recording evidences, the appellant was examined under Section 313 Cr.P.C. wherein he denied all the allegations leveled against him by the

prosecution witnesses. After hearing arguments and on examining the evidences and materials on record, the learned Special Judge had convicted and sentenced the appellant for committing offence, as aforestated. Hence, this appeal before this court.

[6] For appreciating the rival submission of the counsel for the parties, it would be apposite to revisit the evidence as recorded in the trial.

[7] PW-1, Smti Shikha Nath deposed that she took her daughter to Baikhora hospital three months back for her treatment as her daughter's menstruation was not coming for last three months. At the time of examination of her daughter by doctor, doctor came to know that her daughter is pregnant. Her daughter told the doctor in her presence that she was raped by Arjun Debnath and he arranged some medicines for her abortion. She took the pills and thereafter, her condition became deteriorated. After having tablets, her bleeding was started. Later on, her daughter was referred by the doctor of Baikhora PS to Santirbazar District Hospital. Doctor of Santirbazar District Hospital examined her daughter and her daughter was hospitalized for five days. Her daughter was given treatment by the doctor as per requirement and her pregnancy was cleared by the doctor.

[8] PW-2, the victim girl deposed that three years back one day in the evening at 7/7.30 pm she noticed light in the house of her uncle, Arjun Debnath. She went there to meet her aunty, the wife of Arjun Debnath. At that time, her aunty was not in the house and he forcibly raped her and from that date, he started to rape her continuously. He also threatened her that if she would disclose this

fact of rape to anyone, he would kill her. Because of this fear, she could not say anything to her parents and accused continuously committed rape upon her. In the month of March, April and May, her menstruation period did not come and she informed this to her uncle, Arjun Debnath. Her uncle compelled her for pregnancy test. On 04.06.21 he brought one pregnancy test kit. He also introduced her how to use this kit. She informed her uncle that she was pregnant at that time. On 06.06.21 Arjun Debnath arranged tablets for her abortion and asked her to use this tablet. He provided her five tablets. Witness identified Exhibit MO(1)/PW-1. She took some tablets and thereafter, bleeding started after having two tablets. She was also feeling pain in her abdomen. She was in fear because she did not share this information to her mother. Immediately her mother and father took her to Baikhora PHC for her treatment on 12.06.2021. Doctor after check up told that she is pregnant. Thereafter, she disclosed all the facts and act of Arjun Debnath to the doctor and at that time, her mother was also there. Because of her health condition doctor referred her to Santirbazar District hospital. In Santirbazar District hospital, her abortion was done by doctor. She was admitted in the hospital for three days.

[9] PW-3, Sanjib Debnath deposed that victim is his daughter and presently she is aged about 15 years. He is a rickshaw puller and goes for work daily. He came to know first time about the offence when he along with his wife took his daughter to Baikhora hospital and when the bleeding of his daughter started. In Baikhora hospital, Dr. Johyshree Reang referred his daughter to Santirbazar District Hospital. On query of the doctor at Baikhora hospital, his daughter

told about the commission of the offence by accused Arjun Debnath to her. Accused kept his daughter under threat and for that she did not share this information to them earlier. When his daughter told the story of the offence before the doctor he along with his wife were also present. His daughter told the doctor that her uncle committed rape upon her and her pregnancy is the result of rape committed by her uncle, Arjun Debnath. He went to Baikhora PS for informing the incident. His wife lodged FIR in the PS.

[10] PW-4, Dr. Arpan Bhattacharjee deposed that on 13.06.2021 he was posted at Medical Officer (Gynecologist) at Santirbazar District Hospital. On 12.06.2021 at 08.25 pm the patient, the victim was referred from Baikhora PHC for bleeding of vagina. In the emergency, he conducted pregnancy test and it was found positive. Then patient was admitted in gyne ward and required treatment was given. On 13th June, 2021 in morning during round duty, he saw that patient bleed profusely. So after taking guardians' consent, as she was 15 years old, he had conducted D & C of the patient to save her life. The product of conceptus was foul smell and not in a condition to preserve. After D & C, patient was stable. After the emergency procedure, they sent all routine blood investigation and USG of lower abdomen. When patient condition became stable, he had given her discharge on 15.06.2021. He identified his declaration written by him and signed by him in two sheets.

[11] PW-10, Smt. Ruma Noatia, the investigating officer. She deposed that on last 14.06.2021 on Sanjib Debnath, father of the victim verbally gave information to Baikhora PS that her minor daughter has bleeding problem. He also brought his to Baikhora PHC.

After check up at Baikhora PHC, doctor found that the minor was three months pregnant. The health condition of the minor was not very good, so she was immediately referred to Santirbazar hospital. The information was recorded in the GDE and thereafter, she herself, inspector Gopal Sukladas and SI Sourav Das went to Santirbazar hospital. When they went there, she found the minor was also there. Mother of the minor wanted to lodge FIR. So as per her dictation, SI Sourav Das wrote the ejahar in the hospital. The recorded complaint was sent to the PS. She recorded 161 statement of mother of the victim and minor victim. She returned to the PS. After coming to the PS, case was handed over to her for investigation as the case was already registered by the O/C. PW-10 also collected one certificate from panchayet secretary about the authentication of date of birth of victim. The appellant convict by the trend of cross examination could not shatter evidences of the said witnesses. Moreso, the other witnesses also supported the story of the prosecution.

[12] Mr. S. Sarkar, learned counsel appearing for the accused-appellant has submitted before this court that there were 3/4 families living in the same premises of the place of occurrence without any proper boundary wall, if such incident had occurred for last 3 years someone might have noticed the same, but no one had notice anything ever which creates a question of doubt as to the deposition of the victim and the complainant. Ld. Trial court did not consider this aspect and as such the impugned judgment and order of conviction and sentence is liable to be set aside.

[13] It is further submitted by counsel for the appellant that the victim deposed that whenever her aunty was busy in cooking,

watching TV or in pujaghar the accused used to commit rape upon her, which creates a question of doubt being in the same house how the aunt of the victim was not aware of the incident. Moreover, there were other families living in the premises but nobody hear anything at the time of the incident which creates a gross doubt in the prosecution story. Thus, from the version of the victim's deposition, it is crystal clear that the statement made by the victim before the Ld. Trial Court was totally false and concocted story implicating the name of the convicted accused persons but Ld. Trial court below did not consider this aspect and as such the impugned judgment and order of conviction and sentence is liable to be set aside. Learned senior counsel has urged to set-aside the order of conviction and sentence as passed by the learned trial court.

[14] Mr. Sarkar, learned senior counsel has placed his reliance on ***Birad Mal Singhvi vs. Anand Purohit*** reported in **1988 (Supp) SCC 604**, where the apex court has observed in the following manner:

"14. We would now consider the evidence produced by the respondent on the question of age of Hukmi Chand and Suraj Prakash Joshi. The respondent examined Anantram Sharma PW 3 and Kailash Chandra Taparia PW5. Anantram sharma PW 3 has been the Principal of New Government Higher Secondary School, Jodhpur since 1984. On the basis of the scholar's register he stated before the High Court that Hukmi Chand joined school on 24.6. 1972 in 9th class and his date of birth as mentioned in scholar's register was 13.6.1956. He made this statement on the basis of the entries contained in the scholar's register Ex. 8. He admitted that entries in the scholar's register are made on the basis of the entries contained in the admission form. He could not produce the admission form in original or its copy. He stated that Hukmi Chand was admitted in 9th class on the basis of transfer certificate issued by the Government Middle School, Palasni from where he had passed 8th standard. He proved the signature of Satya Narain Mathur the then Principal who had issued the copy of the scholar's register Ex. 8. Satya Narain Mathur was admittedly alive but he was not examined to show as to on what basis he had mentioned the date of birth of Hukmi Chand in Ex. 8. The evidence of Anantram Sharma merely proved that Ex. 8 was a copy of entries in scholar's

register. His testimony does not show as to on what basis the entry relating to date of birth of Hukmi Chand was made in the scholar's register. Kailash Chandra Taparia PW 5 was Deputy Director (Examination) Board of Secondary Education, Rajasthan, he produced the counter foil of Secondary Education Certificate of Hukmi Chand Bhandari. a copy of which has been filed as Ex. 9. He also proved the tabulation record of the Secondary School Examination 1974, a copy of which has been filed as Ex. 10. In both these documents Hukmi Chand's date of birth was recorded as 13.6.1956. Kailash Chandra Taparia further proved Ex. 11 which is the copy of the tabulation record of Secondary School Examination of 1977 relating to Suraj Prakash Joshi. In that document the date of birth of Suraj Prakash Joshi was recorded 11.3.1959 Kailash Chandra Taparia stated that date of birth as mentioned in the counter foil of the certificates and in the tabulation form Ex. 12 was recorded on the basis of the date of birth mentioned by the candidate in the examination form. But the examination form or its copy was not produced before Court. In substance the statement of the aforesaid two witnesses merely prove that in the scholar's register as well as in the Secondary School examination records the date of birth of a certain Hukmi Chand was mentioned as 13.6.1956 and in the tabulation record of Secondary School Examination a certain suraj Prakash Joshi's date of birth was mentioned as 11.3.1959. No evidence was produced by the respondent to prove that the aforesaid documents related to Hukmi Chand and Suraj Prakash Joshi who had filed nomination nation papers. Neither the admission form nor the examination form on the basis of which the aforesaid entries relating to the date of birth of Hukmi Chand and Suraj Prakash Joshi were recorded was produced before the High Court. No doubt, Exs. 8, 9. 10. 11 and 12 are relevant and admissible but these documents have no evidentiary value for purpose of proof of date of birth of Hukmi Chand and Suraj Prakash Joshi as the vital piece of evidence is missing, because no evidence was placed before the Court to show on whose information the date of birth of Hukmi Chand and the date of birth of Suraj Prakash Joshi were recorded in the aforesaid document. As already stated neither of the parents of the two candidates nor any other person having special knowledge about their date of birth was examined by the respondent to prove the date of birth as mentioned in the aforesaid documents. Parents or near relations having special knowledge are the best person to depose about the date of birth of a person. If entry regarding date of birth in the scholars register is made on the information given by parents or some one having special knowledge of the fact, the same would have probative value. The testimony of Anantram Sharma and Kailash Chandra Taparia merely prove the documents but the contents of those documents were not proved. The date of birth mentioned in the scholar's register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar's register regarding date of birth is made in the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value. Merely because the documents Exs. 8, 9, 10. 11 and 12 were proved, it does not mean that the contents of documents were

also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouch safe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted."

[15] Mr. S. Sarkar, learned counsel has also placed his reliance on another judgment of the apex court in ***Alamelu And Another vs. State*** reported in **(2011) 2 SCC 385**, where the apex court has observed in the following manner:

42. Considering the manner in which the facts recorded in a document may be proved, this Court in the case of Birad Mal Singhvi Vs. Anand Purohit¹, observed as follows:-

"14. The date of birth mentioned in the scholars' register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined....Merely because the documents Exs. 8, 9, 10, 11, and 12 were proved, it does not mean that the contents of documents were also proved. Mere proof of the documents Exs. 8, 9, 10, 11 and 12 would not tantamount to proof of all the contents or the correctness of date of birth stated in the documents. Since the truth of the fact, namely, the date of birth of Hukmi Chand and Suraj Prakash Joshi was in issue, mere proof of the documents as produced by the aforesaid two witnesses does not furnish evidence of the truth of the facts or contents of the documents. The truth or otherwise of the facts in issue, namely, the date of birth of the two candidates as mentioned in the documents could be proved by admissible evidence i.e. by the evidence of those persons who could vouchsafe for the truth of the facts in issue. No evidence of any such kind was produced by the respondent to prove the truth of the facts, namely, the date of birth of Hukmi Chand and of Suraj Prakash Joshi. In the circumstances the dates of birth as mentioned in the aforesaid documents have no probative value and the dates of birth as mentioned therein could not be accepted."

[16] On the other hand, Mr. Raju Datta, learned Public Prosecutor, appearing for respondent-State, vehemently objected the submissions advanced by the learned counsel for the appellant contending that there are enough incriminating materials against the

accused-appellant establishing his involvement in the alleged crime and the learned Sessions Judge has rightly passed the judgment and order of sentence. Accordingly, he contends that there is no error in the impugned judgment passed by the learned trial Court calling for any interference and prays for dismissal of the present appeal.

[17] To support his contention, learned PP has placed his reliance on a judgment of the apex court in **Lachhmi Narain Singh (Dead) Through Leal vs. Sarjug Singh (Dead) Through Legal** reported in **(2022) 13 SCC 746**. Where the apex court has observed in the following manner:

25. In view of the foregoing discussion, it is clear that plea regarding mode of proof cannot be permitted to be taken at the appellate stage for the first time, if not raised before the trial court at the appropriate stage. This is to avoid prejudice to the party who produced the certified copy of any original document without protest by the other side. If such objection was raised before the trial court, then the party concerned could have cured the mode of proof by summoning the original copy of document. But such opportunity may not be available or possible at a later stage. Therefore, allowing such objection to be raised during the appellate stage would put the party (who placed certified copy on record instead of original copy) in a jeopardy and would seriously prejudice interests of that party. It will also be inconsistent with the rule of fair play as propounded by Ashok Bhan. J. in R.V.E. Venkatachala.

[18] Reliance also has been placed on another judgment of the apex court in **State of Madhya Pradesh vs Preetam** reported in **(2018) 17 SCC 658**, where the apex court has observed in the following manner:

11. In our considered view, the approach of the trial court was not correct. In each and every case the prosecution cannot be expected to examine the person who has admitted a student in the school. The school registers are the authentic documents being maintained in the official course, entitled to credence of much weight unless proved otherwise. In our view, considering the evidence of Headmaster, Bhaulal (PW8), and the school certificate produced by him i.e. Ext.P/13-A, age of the victim has to be taken as 12 years at the time of occurrence.

[19] The deposition of the informant (PW-1), the victim (PW-2) and her father (PW-3) get strength from the deposition of PW-4 the

medical officer who examined the victim and found her pregnant and also found that her condition was very critical as such she was hospitalized. In the finding, PW-4 has specifically mentioned that she was committed sexual intercourse and after that she was pregnant. The victim has specifically stated the name of the accused-appellant Arjun Debnath and this fact is also established by the depositions of PW-1 and PW-3 that they reside in the same compound where the accused resides. So there is easy access for the accused to come into touch with the victim because they reside in the same compound and the parents for the victim go outside of house for their works. In view of the close relationship between the accused and the victim, there was no reason for the minor not to raise any hue and cry. Moreover, the minor girl was being threatened by the accused-appellant uncle with dire consequences. The conduct of the accused did not give rise to any suspicion by any one as the victim and the accused-appellant were related.

[20] In support of the case of the prosecution to prove the age of the victim girl as minor Exbt P2 is placed on record. According to Exbt P2 which is the birth certificate of the victim girl issued on 27.09.2006 by the Addl. District Registrar of Birth and Death, (B.D.O) Bagafa Block, the date of birth of the victim girl is 16.08.2006. Another document as Exbt-P-16 has also been placed on record which is issued by the Panchayet Secretary, West Charakbai G.P Jolaibari, RD Block, Santirbazar, Tripura (S) on 25.06.2021. As per his version, the date of birth of the victim girl, PW2 is 16.08.2006. According to him, the birth certificate as issued by the Addl. District Registrar of Birth and Death, (B.D.O) Bagafa Block, is genuine. A bare reading of

both the exhibits shows that the victim girl did not attain her majority when she was raped by the accused-appellant. The counsel for the appellant has not rebutted the same and no objection has been raised to the said document .PW-4, Dr.Arpan Bhattacharjee has marked the medical report of the victim girl as exhibit P8 which states that PV examination was done to the victim. The victim was bleeding profusely. The doctor has also done D & C to save the life of the patient. According to PW-4, the victim was subjected to sexual intercourse and after that she was pregnant. According to the pregnancy report of the victim, the victim took MTP Pill for pregnancy termination. In the emergency, medical officer conducted pregnancy test and it was found positive. PW-5, Dr. Rakesh Das has marked the medical report of the accused person as Exbt-P10 which states that he is capable of performing sexual intercourse. Moreover, the accused has not given any specific reply to deny the case of the prosecution to prove his innocence. Even during examination of accused appellant under Section 313 of the CrPC no material came out to disbelieve the prosecution story.

[21] So we are of the view that the victim was raped by the accused-appellant Arjun Debnath and none else. The offence committed by the accused-appellant cannot be seen lightly when the life of a girl is at stake. It appears to this court that the accused-appellant not only breached the trust of an uncle but also committed a heinous crime which attracts the intervention of the law for doing justice to the victim.

[22] Having considered thus, we come to this conclusion that the prosecution has been able to establish the prima facie case

beyond reasonable doubt by proving the age of the victim, place of the offence and also beyond reasonable doubt that the accused has committed the offence. Accordingly, this court is of the view that the trial court has rightly convicted the appellant based on material evidence produced by the prosecution and there is no infirmity in the impugned findings regarding conviction.

[23] In view of foregoing analysis, in our view, the learned trial court has appreciated the evidence on permissible legal parameters and reached to a plausible conclusion. The prosecution could establish its case beyond reasonable doubt. Thus, we find no reason to interfere in the impugned judgment as passed by the learned trial court convicting the appellant to suffer rigorous imprisonment for 20 years.

[24] Accordingly, the appeal fails and the same is hereby dismissed. Send down the LCRs. Pending application(s), if any, also stands disposed.

JUDGE

JUDGE

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