

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A. (J) 21/2022

Sri Niranjan Nagbangshi

son of Manilal Nagbangshi, resident of Kuchainala, P.S. Kamalpur,
District- Dhalai, Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s) : Mr. S. Bhattacharjee, Advocate

For Respondent(s) : Mr. S. Ghosh, Addl. PP

Date of hearing and delivery of

Judgment & Order : **09.08.2023**

Whether fit for reporting : **Yes / No**

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

(Amarnath Goud, J)

Heard Mr. S. Bhattacharjee, learned counsel appearing for the appellant as well as Mr. S. Ghosh, learned Additional PP appearing on behalf of the respondent-State.

2. This appeal arises out of the judgment of conviction and order of sentence dated 10.03.2022 passed in connection with case No. Special (POCSO) 16 of 2019 by the learned Special Judge, Dhalai Judicial District, Kamalpur, whereby and whereunder the appellant has been convicted under Sections 342 and 376 AB of the Indian Penal Code read with Section 6 of the POCSO Act, and sentenced to suffer rigorous imprisonment for 20 (twenty) years and to pay a fine of Rs. 10,000/- with default stipulation under Section 6(1) of the POCSO Act, 2012 and, further sentenced him to suffer simple imprisonment for one month and to pay a fine of Rs. 1,000/- with default stipulation, for the offence committed under section 342 of the IPC.

3. The prosecution case, in brief, is that, on 18.08.2019 at about 0900 hours the minor daughter of the sister of the complainant went to the house of the

accused-appellant for washing clothes and after sometime when the son-in-law of the complainant went to the house of the accused-appellant, he found that the accused and the victim were on the bed where the accused person had pressed the mouth of the victim girl by gamcha and her panty was lying on the floor and thereafter he returned home alongwith the victim after rebuking the accused. It was the further case of the complainant that after returning home, the victim girl disclosed the complainant that while she was returning after washing clothes, the accused-appellant forcefully taken her into his house by pressing her mouth and fell down on the bed and penetrated his penis into her urinal organ causing penetrative sexual assault upon the victim-girl.

4. The said complaint was registered as Kamalpur PS case no. 67 of 2019 under Sections 342/376 AB of the IPC and section 6 of the POCSO Act, 2012. The matter was investigated by the investigating officer. During investigation, I.O. has visited the place of occurrence, prepared hands sketch map of the PO with separate index and also examined the available witnesses. The IO had also seized some articles by preparing seizure list, collected medical examination reports and also caused arrest of the accused person, and thereafter submitted charge-sheet against the accused - appellant under Sections 342/376 AB of the IPC and Section 6 of the POCSO Act, 2012. At the commencement of trial, the learned Special Judge had framed charge against the appellant to which he pleaded not guilty and claimed to be tried.

5. During trial, the prosecution to establish the charge had adduced 17 witnesses and brought on record some documents. 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. Mr. Bhattacharjee, learned counsel for the appellant has submitted that the prosecution has miserably failed to establish the charges leveled against the convict-appellant. Mr. Bhattacharjee, learned counsel has questioned the age of the victim at the time of the alleged incident. He urged that the version given by the prosecutrix is not at all believable and has no credibility. Moreover, there is no independent witness to the alleged incident and PW-5 who claimed to be eye witness to the alleged incident is the relative of the victim-girl. Hence, learned counsel for the appellant has urged this court to set the appellant at liberty

7. On the other hand, Mr. S. Ghosh, learned Additional PP has supported the findings of the learned trial court while convicting the accused. Mr. Ghosh, has also submitted that if the evidences of prosecution witnesses are read conjointly it could safely be presumed that the convict appellant had committed the alleged offence. Hence, learned Additional PP has submitted to maintain the findings of the learned trial court.

8. We have considered the submissions for learned counsel appearing for the parties. We have perused the evidences and materials on record and the judgment passed by the learned Special Judge. For purpose of appreciating the submissions of learned counsel, it would be pertinent for us to revisit the evidences let in by the relevant prosecution witnesses.

PW 1, is the Headmaster of Rampati S.B. School where the victim used to study. PW-1, proved the age certificate of the victim. PW-1 deposed that as per school admission register, the date of birth of the victim was on 31.12.2010.

PW-2, aunt of the victim is a hearsay witness who deposed that she came to learn from PW-5 that the accused had committed sexual assault upon the victim girl. She also deposed that PW-5 brought the victim to her house where she and her husband were informed about the alleged incident and thereafter she filed a complaint against the accused.

PW-3, the victim, in her deposition stated that about seven months back in the morning at about 9:00 am an old man named Niranjana asked her to wash cloth at his home and when she proceeded with the bucket, he grabbed her and gagged her mouth with a towel and after that Niranjana inserted his penis in her vagina and this incident was seen by her 'jamaibabu' (brother-in-law) and he took her away from the spot and rebuked Niranjana. She also deposed that her jamaibabu informed the matter to her aunt who then lodged a complaint.

PW-5, brother-in-law of the victim, deposed that on 18.08.2019 at 9:00 am he went to the house of Niranjana Nagbangshi (appellant herein) and when he entered into his room, he found that the appellant was raping the victim girl and he had tied the mouth of the appellant with his 'gamcha'. He further deposed that he found that the pant of the victim was opened and the appellant was naked from waist downward. He further deposed that he brought the victim at home.

PW-8, deposed that on 18.08.2019 he had examined a 9 years old victim girl. He further deposed that the mental condition of the girl was fearful and she uttered the name of Niranjana Nagbangshi as the perpetrator. He further deposed that he examined the victim girl and recorded the opinion that the victim was raped and there was sign of recent penetration or sexual intercourse and found her hymen 'old ruptured and recent congestion was found over her labial folds'.

PW-9, is the sister of the victim who deposed that the appellant had sexually assaulted the victim on 18.08.2019.

PW-19, who examined the appellant had deposed that after examining the appellant there is nothing suggested that he was incapable of doing sexual intercourse.

PW-14, is the teacher of Rampati SB School and he deposed that the date of birth of the victim girl is 31.12.2010 as per pupilage certificate.

PW-15, is a hearsay witness who has deposed that from PW-5 he came to know that the appellant had sexually assaulted the victim girl by pressing her mouth by gamcha.

PW-16, is a hearsay witness who has deposed that from PW-2 he came to know that the appellant had sexually assaulted her daughter.

9. As can be noticed from the detailed appreciation of the deposition of various witnesses that right from the beginning, in the FIR, the details have been provided, which reveal that when and how the victim was sexually assaulted by the accused-appellant. The victim went to the house of the appellant on 18.08.2019 and on her return, she was pressed by the appellant and was being raped by the appellant by pressing her mouth and the said incident of rape was witnessed by PW-5, who rescued the victim and took her to the house of the complainant where he had disclosed the fact of rape committed by the accused appellant upon the victim girl. The version of the victim (PW-3) is in consistent with the depositions of PWs-2, 5, 9, 14 and 15. There is no discrepancy between the complaint lodged by PW-2 and her evidence before the learned trial court. The defence also could not shake her evidence. The version of PW-3 and PW-5 also could not be shaken by the defence before the learned trial court as they have corroborated their versions recorded by the I.O. under Section 161 Cr.P.C. Further, the medical evidence, i.e the evidence of

PW-8, also proves that there was penetrative sexual offence upon the victim girl. Deposition of PW-19 also shows that the appellant is well capable of sexual intercourse. PW-5 is the eye witness to the alleged incident and his evidence is in total corroboration with the evidence of the victim (PW-3), the complainant (PW-2) with that of the statement of PW-9, PW-14 and PW-15. Nothing material has come out from the cross-examination of prosecution witnesses so as to disbelieve the prosecution story.

10. The evidence of the victim girl, if taken conjointly, with the medical evidence as per PW-8, it would clearly establish that she was sexually assaulted by the appellant by pressing her mouth. As per the prosecution story, the alleged incident of rape was on 18.08.2019 at about 9:00 am, and the victim was medically examined by PW-8 on the same date in between 1:55 pm to 2:30 pm, and he opined that the victim was raped and there was sign of recent penetration or sexual intercourse and he found her hymen 'old ruptured'. PW-8 also deposed that the victim was in fearful condition and she uttered the name of the perpetrator as 'Niranjan Nagbangshi'.

11. Further, PW-1, Headmaster of Rampati SB School had issued the pupilage certificate of the victim girl and PW-1 has identified his signature on the said certificate. According to PW-1, the date of birth of the victim was 31.12.2010. Further from the Aadhar Card of the victim (Exbt. 5) the date of birth is of the year 2010. The deposition of PW-1 has been corroborated by the deposition of PW-14. If the date of birth of the victim is considered in the year 2010, and the commission of rape have taken place in the year 2019, thus, it can safely be presumed that during the alleged incident of rape, the victim was aged about 9 years (approx.) and the said age is also supported by the evidence of PW-2, PW-3, PW-9, PW-15 and PW-17 which clearly establishes that the victim was a minor girl at the time of the alleged offence.

12. Learned Trial Court has convicted the appellant for the offence of aggravated penetrative sexual assault. "Aggravated penetrative sexual assault" as defined in Section 5 Sub Sections (m) and (p) of the Act with respect to sexual assault on a child below twelve years and by a person in trust or authority, punishable under Section 6 of the Act. Section 5(m) of the Act defines *whoever commits penetrative sexual assault on a child below twelve years*; Section 5(p) of the Act defines *whoever being in a position of trust or authority of a child commits penetrative sexual assault on the child in an institution or home of the child or anywhere else*. The offence of penetrative sexual assault on a child, if below twelve years, would convert into aggravated penetrative sexual assault thereby inviting a higher punishment under section 6 which shall not be less than 20 years upto life.

13. Section 6 of the POCSO Act, reads as follows:

"[6. Punishment for aggravated penetrative sexual assault.- (1) Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine, or with death.

(2) The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.]"

14. From a conjoint reading of the evidences on record, it is aptly clear that the accused-appellant had committed rape upon the victim-girl against her will, who is below twelve years of age i.e. an offence punishable under Section 6(1) of the POCSO Act, which has been rightly appreciated by the learned trial court. Accordingly, the accused would be liable for a punishment for aggravated penetrated sexual assault under Section 6 of POSCO Act, punishable with rigorous imprisonment for a term not less than 20 years but extendable to imprisonment for life.

15. Further, **Section 342** of Indian Penal Code- "**Punishment for wrongful confinement**" defines that *whoever wrongfully confines any person shall be*

punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. As per the deposition of the prosecution witnesses and the entirety of the prosecution case, it is evident that the appellant had wrongfully confined the victim girl in his house for accomplishment of his illegal deed. Thus, the learned trial court has rightly arrived at a finding of conviction under section 342 of the IPC against the appellant.

16. In the instant case the victim is a minor girl and the accused, a man of 67 years of age is her neighbour for which the accused-appellant had the duty to protect the victim girl rather than exploiting her innocence and vulnerability after confining her illegally in his house. From the meticulous analysis of the evidences on record, it is surfaced that the accused had betrayed the trust of the victim by confining her illegally for causing aggravated penetrative sexual assault upon the victim-girl for which the accused-appellant does not deserve any sympathy or leniency.

17. Thus, the conviction of the appellant under section 342 of the Indian Penal Code and under Section 6(1) of the POCSO Act is confirmed and the punishment and the fine inflicted by the trial Court are not being interfered with.

18. Resultantly, this appeal fails and is accordingly dismissed. The judgment and order of conviction rendered by the learned Special Judge (POCSO) dated 10.03.2022 in Special (POCSO) Case No. 16 of 2019 stands confirmed.

Send down the LCRs.

JUDGE

JUDGE