

**HIGH COURT OF TRIPURA
AGARTALA
CRL. APP.(J) NO.23 OF 2022**

Sri Sujan Barman,
Son of Sri Sushil Barman,
Resident of Village,
Camper Bazar, S.D. Mission,
P.S.- A.D. Nagar, District-West Tripura.

..... **Convict-Appellant-Petitioner(s)**

Vs.

The State of Tripura.

..... **Respondent(s).**

For the Appellant(s) : Mr. B. Debbarma, Advocate.

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

Date of hearing and delivery of
Judgment & Order : 19.07.2023

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This appeal has been filed under Section 374 Read with Section 401 of the Code of Criminal Procedure, 1973 against the impugned Judgment and Order of conviction and sentence dated 21.05.2022, passed by the learned Special Judge,(POCSO), West Tripura, Agartala in Case No. Special(POCSO)44 of 2015, whereby and whereunder, the appellant has been convicted under Section 4 of the POCSO Act and thereby sentenced to suffer Rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- with default stipulation.

2. The brief fact of this case is that on 29.06.2015, a written complaint was lodged by the informant against the accused person herein for having committed an offense punishable under Section 376(1)506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act('POCSO' in short). The complainant stated that about 10 months back from the date of FIR, the accused-appellant herein who is an adjacent neighbour of the informant used to visit her house in her absence and used to forcefully commit rape upon the victim daughter on several occasions taking advantage of the absence of other family members of the house. The accused person also used to threaten the said victim girl that if she discloses the said incident of rape to anyone, then he would kill her. The victim out of fear did not disclose the said fact to anyone. Thereafter, the victim became pregnant due to the rape committed by the accused upon the victim, and on 26.05.2015 she delivered a boy child at AGMC & GBP hospital.

3. Based on the FIR, a criminal case numbered 2015/WAW/037 dated 29.06.2015 was registered, and subsequently, the investigation was commenced. The investigating agency on completion of perfunctory investigation submitted the charge sheet against the accused-appellant herein under Section 376(1)/506 of the IPC and Section 4 of the POCSO Act. Thereafter,

charge-sheet having been laid against the petitioner, the trial of the case commenced.

4. The accused-appellant herein was examined under Section 313(1)(b) of the Cr.P.C. on the aforesaid accusation, to which he pleaded innocence, and claimed to be tried. The prosecution with the view to bring home the offence, examined as many as 10 witnesses, namely:-

- i. P.W.-1- Smti. Shefali Sarkar, Informant/mother of the victim.
- ii. P.W.-2- Victim.
- iii. P.W.-3- Sri Mukunda Sarkar(father of the victim).
- iv. P.W.-4- Smti. Sampa Sarkar(elder sister).
- v. P.W.-5- Sri Jhutan Paul(Scribe).
- vi. P.W.-6- Sri Sudhir Das.
- vii. P.W.-7- Dr. Pradipta Narayan Chakraborty(MO).
- viii. P.W.-8- Smt. Paramita Saha(1ST IO).
- ix. Smt. Mukta Ghosh, (2nd IO).
- x. P.W-10, Dr. Nikendra Debbarma(MO).

5. The learned Trial Court after examination of the evidence vide Judgment and Order dated 21.05.2022 convicted the accused-appellant herein as mentioned herein-above.

6. Being aggrieved by and dissatisfied with the impugned Judgment of Conviction and Sentence dated 21.05.2022, the appellant herein has preferred this present appeal seeking to set aside the impugned Judgment and Order of Conviction and sentence.

7. Heard Mr. B. Debbarma, learned counsel appearing for the appellant herein as well as Mr. S. Ghosh, learned Addl. P.P. appearing for the State-respondent.

8. Mr. Debbarma, learned counsel appearing for the appellant submitted that the allegation as put forth by the prosecution is totally false. Prosecution witnesses have manipulated the whole story. Learned counsel further submitted that the birth certificate of the victim has not been examined by any authority and as such the age of the victim is doubtful. Stating thus, learned counsel urged to allow this appeal.

9. On the other hand, Mr. S. Ghosh, learned Addl. P.P., urged this Court that the impugned Judgment of Conviction and Sentence dated 21.05.2022 is just and proper and needs no interference.

10. Heard both sides and perused the evidence on record. It is seen from the record that Exbt-4 i.e., the Birth Certificate of the victim which is the primary evidence to prove the age of the victim has not been examined by any concerned authority. In the evidence of P.Ws.-1, 2 & 3 i.e., the mother, victim, and father, there are discrepancies with regard to the age of the victim which has not been proved. Further to prove that she was a student of Class VIII, no school record has been produced. So in view of the above discussion, the benefit of the doubt is extended to the appellant herein and he is acquitted of all the charges leveled against him. The appellant is to be released forthwith if not released already on bail or wanted in any other case.

11. With the above observation and direction, this present appeal stands allowed. Stay if any stands vacated. Pending application(s) if any also stands closed.

JUDGE

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SUHANJIT
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SUHANJIT SINGHA
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