

HIGH COURT OF TRIPURA
AGARTALA
Crl. A. (J) 25/2022

Sri Pranajit Debnath

son of Sri Rabindra Debnath, resident of Betaga (Nath Para),
P.O. + P.S. Santirbazaar, District- South Tripura

----Appellant

Versus

The State of Tripura

----Respondent

For Appellant(s)	:	Mr. S. Lodh, Advocate
For Respondent(s)	:	Mr. S. Debnath, Addl. PP
Date of hearing & delivery of	:	30.08.2023
Judgment & Order		
Whether fit for reporting	:	Yes / No

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER

(Amarnath Goud, J)

Heard Mr. S. Lodh, learned counsel appearing for the appellant. Also heard Mr. S. Debnath, learned Additional PP appearing on behalf of the respondent-State.

2. This present criminal appeal under Section 374(2) CrPC impugns the judgment of conviction dated 20.06.2022 and order of conviction dated 22.06.2022 passed in connection with case No. Special (POCSO) 11 of 2020 by the learned Special Judge, South Tripura, Belonia, whereby the learned Special Judge convicted the appellant for commission of offence punishable under Section 366/376(3) of the IPC and under Section 4 of the POCSO Act, 2012, and sentenced him to suffer R.I. for 4 (four) years and to pay a fine of Rs. 5,000/- with default stipulation for commission of offence under section 366 of the IPC, and further sentenced him to suffer R.I. for 20 (twenty) years and to pay a fine of Rs. 15,000/- for the offence punishable under Section 4(2) of the POCSO Act, 2012, with default stipulation.

3. In short, the fact leading to institution of this appeal is that, on 01.11.2019 at about 10:00 hours, the minor daughter of the complainant [kept withheld] left her home for school, but did not return back to home and on inquiry, it was revealed that the appellant forcefully kidnapped his minor daughter. Thereafter, on 02.11.2019, the complainant, father of the prosecutrix lodged a complaint with the Officer-in-Charge of Santirbazaar police station.

4. The said complaint was registered as Santirbazaar PS case no. 67 of 2019. The matter was investigated by the investigating officer. In course of investigation, the I.O. recovered the prosecutrix and arrested the appellant and 2 others, namely, Sujan Das and Subrata Das. The I.O. has recorded the statement of the available witnesses under Section 161 CrPC and also arranged for recording of statement of the prosecutrix under Section 164(5) CrPC. After completion of investigation, the I.O. has submitted charge-sheet against the appellant under Sections 366/376 of the IPC and under Section 4 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 exhibited 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 aforesaid. Hence, this appeal before this court.

6. Mr. Lodh, learned counsel appearing for the appellant has submitted that the prosecutrix had love affairs with the appellant and the prosecutrix voluntarily had eloped with the appellant. Mr. Lodh, learned counsel has further submitted that the investigation was perfunctory. Mr. Lodh, learned counsel has also questioned the veracity of the age of the victim since no documents have been proved by the prosecution to ascertain that the victim was minor at the time of alleged offence. Learned counsel has further argued that none of the prosecution witnesses are trustworthy and there evidence has no evidentiary value, hence, learned counsel has urged this court to set the appellant at liberty. In fine, learned counsel has argued that without properly appreciating the evidences on record, the learned trial court had convicted the appellant.

7. On the other hand, learned Additional PP appearing for the respondent-State has urged to maintain the findings of the learned trial court since there is no infirmity or illegality in 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 Sessions Judge.

9. To substantiate the findings of the learned trial court, this court has perused the deposition of the prosecution witnesses. PW-1, father of the victim/prosecutrix, in his deposition stated that on the alleged date at about 6 pm, he in his mobile noticed one photograph was uploaded which shows that his daughter was wearing vermilion alongwith one person. PW-1, in his cross-examination, stated that he came to know that his daughter has eloped with the appellant by social media and he saw a photograph. PW-2, mother of the victim, in her deposition stated that at about 5:30 pm her husband (PW-1)

informed her that their daughter had eloped with the appellant with a alto vehicle. PW-2 also deposed that the medical examination of the victim was done after a long gap. Nothing material could have been elucidated from her cross examination. Deposition of PW-4 and PW-5 are not of such material. PW-6, one of the friends of PW-1, deposed that he had seen one photograph uploaded by the prosecutrix in the facebook which shows that she was wearing vermilion and conch. Nothing material has been elucidated from his cross examination. PW-7 and PW-8 were declared hostile by the prosecution. PW-9 and PW-10 are the seizure witnesses. PW-11 and 12 are the teachers of school where the prosecutrix studied, but both the witnesses have failed to establish the actual date of birth of the prosecutrix. PW-11 deposed that he could not recollect the actual date of birth mentioned in the certificate. PW-12 deposed that the said school certificate was prepared by him as per Admission Register of the School and the school registered was entered when the prosecutrix was a student of Class VI and admitted into the school with support of her certificate from primary education. PW-13, has been declared hostile by the prosecution, but this witness in her deposition stated that on 01.11.2019 the appellant alongwith the victim came to her house with an alto vehicle for the purpose of marrying each other as they love each other. Deposition of PW-14 is of no such importance. PW-15 is the Medical Officer who had conducted the medical test of the victim. PW-15 has opined that there was no mark of any injury in any of her body parts. PW-16 is the Investigating Officer, who investigated into the matter and submitted the charge sheet. PW-16 in her deposition stated that she did not give any requisition to the medical office for examining the victim whether she was sexually abused or not since the victim did not support that she was raped.

PW 16 also deposed that the victim had admitted that she had physical access with the appellant. Deposition of PW-17 is of no such importance.

Now, let us visit the deposition of the prosecutrix who deposed as PW-3. PW-3 in her deposition stated that according to birth certificate her date of birth is 30.12.2003 and according to her Aadhar card her year of birth is 1930. She further deposed that she known the appellant and had love affairs with him for about two years. She further deposed that when she fled away with the appellant with one Alto vehicle his two friends also accompanied them and on that date she did not go to school. She also deposed that on that date they were waiting for her on road and when she was going to school they asked her to board the vehicle and she boarded. Thereafter she changed her school dress and wore saree, blouse and thereafter went to Melaghar in a relative's house of Sujan and spent one night in that house. She further deposed that in that house she wore vermilion and conch, but they have got no formal marriage solemnization. She further deposed that in the relative's house of Sujan she had physical relationship with the appellant. She further deposed that out of threat, she allowed the appellant to cohabit with her and she had no consent in sexual intercourse with the appellant.

Further, PW-1, the prosecutrix, in her examination under Section 164(5) before the Judicial Magistrate, 1st class, Belonia, South Tripura, which was recorded after a long gap, had deposed that she had love affairs with Pranajit Debnath and on 01.11.2019 at about 10-10.30 am as per her knowledge when she reached near the Shantirbazar Girls' School, Pranajit Debnath with other two persons namely Sujan Das and Subrata Das came in front of her by riding a Alto care and taken her with them by saying that if she does not go with him, he will commit suicide and thereafter, they proceeded towards Melaghar

side and stayed there in the house of Sujan's relative. She also deposed that at night on the same date Pranajit Debnath, S/o Rabindra Debnath had sexual intercourse with her.

10. On appreciation of the evidences of prosecution witnesses, it is evident that the age of the prosecutrix is not proved by the prosecution. As per deposition of PW12, it is confirmed that the victim took admission in the school in Class VI with support of certificate from primary education, which she took from another school and that certificate to prove her actual age was not brought on record by the prosecution. The prosecution witness simply has proved the certificate as per police requisition. Further, both PW-11 and PW-12, officials of the concerned school failed to establish the actual age of the victim and also the school register which can prove her actual age. PW-11 and PW-12 also did not disclose as to where from they have obtained the School Certificate of the victim. The Admission Register of the school in which the victim first attended, would be a relevant piece of evidence for determining her date of birth, but the same has not proved by the prosecution. On the other hand, neither the bone ossification test of the victim has been done for age determination of the victim nor the school register of the victim and the entry in academic record of the victim have been proved by the prosecution which would have precedence over her medical age determination. Thus, the significance of victim's medical age determination creates serious doubt onto the prosecution case, as per which, it can be opined that the victim was a major on the date of the incident. Thus, it is not proved with preponderance of probabilities that victim was minor on the date of incident and as the date of birth recorded in school record of victim is not free from doubt.

11. The birth certificate (Exbt. 9) was issued by the school and in support of the same, the Head Mistress(PW-12), in her statement has categorically indicated that at the request of Investigating Officer, she had issued the birth certificate and the information is available in the School Admission Register, but the said School Register has not been placed on record before the learned trial court, and accordingly, this court reasonably presume that the certificate had been prepared at the request of the Investigating Officer since the date of birth of the victim has not been proved beyond reasonable doubt, and concerned officials were not examined.

12. However, if we peruse the documentary evidence, which is available on record, in the instant case, it appears that no certificate regarding age of the victim girl has been exhibited by any of the prosecution witnesses to prove the age of the victim girl. What has been exhibited as Exbt.- 9 is only a seizure list by which one school certificate of the victim is shown to have been seized. However, said birth certificate was neither exhibited nor it is available on record, and no explanation is given as to why the said birth certificate was not produced before the learned trial Court during trial as a documentary evidence to prove the age of victim girl. Failure on the part of the prosecution side to produce the birth certificate, if it was available, would only lead to the adverse presumption against the prosecution side. Under no stretch of imagination, the seizure list, which is exhibited as Exbt.- 9, may not be regarded as a substitute of the birth certificate as a documentary evidence.

13. Taking into consideration the testimony of PW-3, the prosecutrix, who is the victim-cum-eye witness to the alleged incident, her deposition does not inspire confidence. She in her deposition and 164(5) statement admitted that

she had love affairs with the appellant and she voluntarily eloped with her and there is no evidence left to prove that she was kidnapped by the appellant. Further from the deposition of the investigating officer, it is revealed that the victim did not support any rape to have been committed by the appellant. From the deposition of PW-6, it is evident that the victim herself had uploaded her photograph having vermilion on her forehead and conch in her wrist in the facebook, which establishes that she out of love affairs had married the appellant. The medical evidence also do not support any sign of rape committed upon the victim. The victim in her statement under section 164(5) Cr.P.C., had made a different version to that of her evidence before the learned trial court, which seems to have been tutored. The fact that she narrated different versions of the incident at different stages also makes her testimony unreliable. Thus, this court is of considered opinion that the relationship between the appellant and the victim was consensual. Since prosecution could not establish with certainty that prosecutrix was a minor and she was raped after kidnap, conviction of appellant under the impugned Sections is liable to be interfered with. That apart, the accused and victims are married and led conjugal life for a short period, but for the interference of the parents, it is turned as a criminal case.

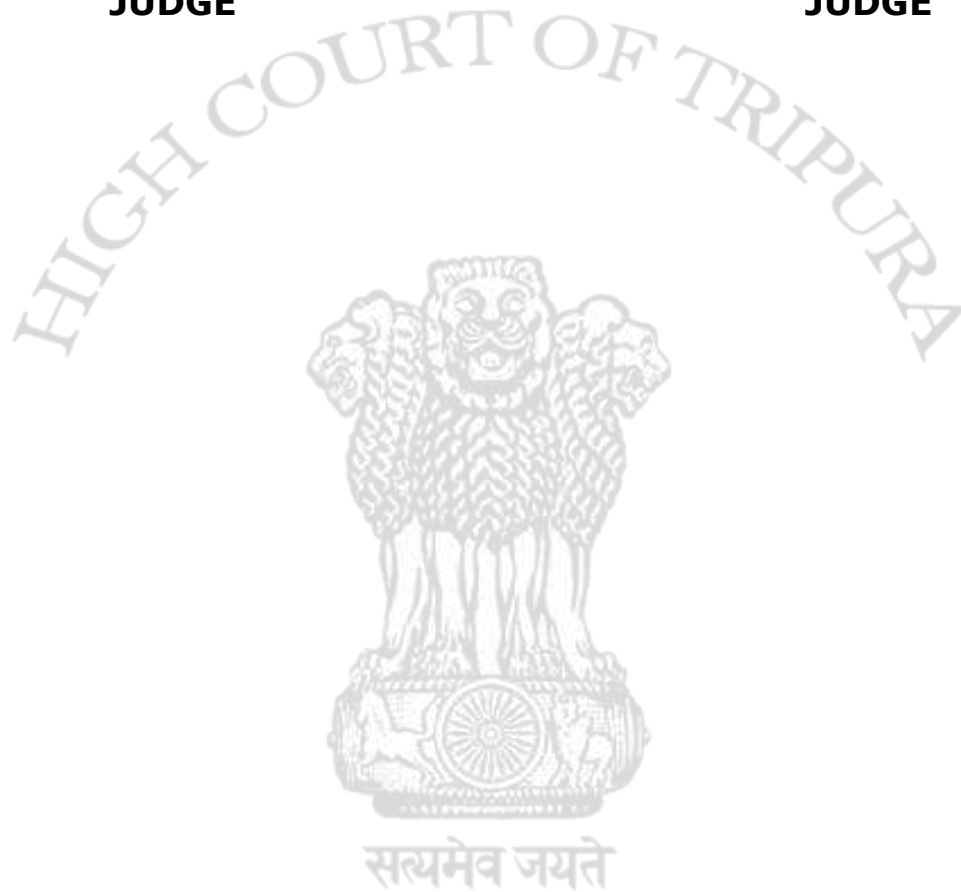
14. Thus, in view of discussions and reasons cited above, this court is constrained to hold that the prosecution has miserably failed to prove the charges beyond reasonable doubt, and the appellant is entitled to get a clear acquittal.

15. Accordingly, the conviction and sentence of the present appellant by the impugned judgment and order of conviction and sentence dated 20.06.2022

and 22.06.2022 passed in connection with Special (POCSO) 11 of 2020, is hereby set aside and quashed. The accused appellant be set at liberty forthwith unless he is required to be detained in connection with some other case. Send down the LCRs.

JUDGE

JUDGE



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