

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.(J) 26 of 2022

Sri Asish Debnath
So/Sri Nishi Debnath
R/o. Rail Colony, PS-Kumarghat,
District-Unakoti Tripura

----Appellant

Versus

The State of Tripura

---Respondent

For Appellant(s)	: Ms. S. Chakraborty, Adv.
For Respondent(s)	: Mr. S. Debnath, Addl. PP.
Date of hearing and date of judgment and order	: 05.07.2023.
Whether fit for reporting	: YES/NO

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

Judgment & Order (Oral)

Heard Ms. S. Chakraborty, learned counsel appearing for the appellant as well as Mr. S. Debnath, learned PP appearing for the state-respondent.

[2] This appeal is directed against the judgment and order of conviction and sentence dated 08.04.2022 passed in connection with case No. Special (Child) 01 of 2019 by the learned Special Judge, Unakoti Judicial District, Kailashahar whereby the Ld. Court convicted the appellant for the commission of offence under Section 363 of IPC and to sentence suffer a simple imprisonment for 4(four) years and also pay the fine of Rs.5000/- only i.d, to pay the fine he shall undergo further simple imprisonment for 3(three) months. And for the offence under Section 376D of IPC shall suffer rigorous imprisonment for a term of 20 years and to pay fine of Rs.10,000/- only i.d. to undergo further rigorous imprisonment for 1(one) year. It was further directed that both the sentences shall run concurrently.

[3] The case of the prosecution, in a nutshell, is that on 19.12.2018 at about 1315 hours an FIR was filed by the complainant Sri Indrajit Das with the O/C, Kumarghat, PS alleging that on 18.12.2018 two persons, namely, Ashish Debnath and Sri Prajit Malakar have taken his minor daughter 'X' (name withheld) from nearby the house of the complainant by an ALTO car bearing registration No.TR-02-C-0533 without his consent. Thereafter, both the accused persons with ill intention compelled the minor girl 'X' to consume alcohol and thereafter taken her in an isolated place, opened her wearing apparels and pant

forcibly committed rape upon his minor daughter 'X' by pressing her mouth against her will. It is also represented by the prosecution that the accused persons on the same date and place as mentioned above committed penetrative sexual assault upon minor victim 'X'.

[4] The complaint petition was registered as KGT PS case No.113/2018 dated 19.12.2018 under Section 376DA/34 of IPC and Section 4 of the POCSO Act, 2012 and the case was endorsed to SI for investigation. In course of investigation the IO visited the PO, prepared hand sketch map of the PO with separate index, recorded statement of available witnesses, arranged for medical examination of the victim, arranged for recording statement of the victim U/s 164 of CrPC, arrested the accused persons and also arranged for their potency test sent the seized samples/exhibits of the victim and the accused to SFSL, Narsingarh, also seized the wearing apparels, School certificate of the victim.

[5] After completion of investigation IO submitted CS against the accused person namely Prajit Malakar and child in conflict with law Ashish Debnath vide KGT PS Case Cs No.03 of 2019 dated 31.01.2019 U/S 363/376DA/34 of IPC and Section 6 of POCSO Act, 2012,

[6] As Ashish Debnath was aged about 16 years 10 months and 16 days, as per Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 the instant case is triable by the learned Children's Court, hence on receipt of charge sheet procuring the attendance of the aforesaid accused persons, complying provision of Section 207 of CrPC vide order dated 21.02.2019 the then Ld. Principal Magistrate, Unakoti District, Kailashahar sent the case record to this Court for trial. On 25.02.2019 this court received the case record, juvenile in conflict with law Ashish Debnath on bail appeared before this Court prayed to remain on previous bail and was allowed and on 09.04.2019 after hearing both sides the then Learned Special Judge, Unakoti District, Kailashahar framed charged against the child in conflict with law Ashish Debnath for commission of offences U/Ss 363/376(D) of IPC and Section 4 of POCSO Act, 2012 explaining the contents of the charge to the CCL in Bengali to which he denied the allegation and claimed to be tried.

[7] After considering the submission made the counsel for the parties, the learned court below has raised the following three points for determination.

- (i) whether the child in conflict law committed the offence of kidnapping U/S 363 of IPC.
- (ii) Whether the victim girl 'X' was below the age of 18 years at the time when she went along with the child in conflict with law?
- (iii) Whether the child in conflict with law on 18.12.2018 had sexual intercourse with the victim girl 'X'.

[8] After dealing with the above points the learned court below has observed that the convicted child along with other accused person kidnapped minor victim girl 'X' out of the custody of her parents and forced her to consume liquor and then they gang raped upon her forcibly against her will. Finally by the judgment and order of conviction and sentence dated 02.09.2019, the learned court below has observed in the following manner:

18. Hence, in the result, I do hereby sentence the convict child in conflict with law Ashish Debnath for commission of offence punishable U/S 363 of IpC to suffer Simple Imprisonment for 4(four) years and also to pay a fine of Rs.5,000 (rupees five thousand) only i.d. to pay the fine he shall undergo further simple imprisonment for 3(three) months. The convict Shri Ashish Debnath is also sentenced to suffer rigorous imprisonment for a term of 20(twenty) years and also to pay a fine of Rs.10,000/- (rupees ten thousand) only i.d, to undergo further rigorous imprisonment for 1 (one) year for commission of offence U/S 376D of IPC.

[9] Aggrieved by the impugned judgment & order dated 08.04.2022, the appellant has approached this court seeking suspension of the impugned judgment and order of conviction and sentence dated 08.04.2022 passed by the Ld. Trial Court and also release the present appellant to go to bail till disposal of the present criminal appeal. The appellant has also sought for setting aside the impugned judgment and order of conviction and sentence dated 08.04.2022 and acquitting him from the charges.

[10] Today, at the very outset when the matter is taken up for consideration, Mr. S. Debnath, learned Addl.PP appearing for the state-respondent has apprised this court that the present criminal appeal is squarely covered by the judgment and order dated 22.12.2021 passed by this court in Crl.A.(J) 68 of 2019 which is filed by Accused No.1. It is apposite to extract herein below the relevant portion of the judgment and order dated 22.12.2021 for ready reference.

"29.Since the victim girl was found along with the accused in a car, this Court feels that Section-4 of the POCSO Act attracts since both accused and victim girl were found undressed in the car. Thus, in our considered opinion, following the doctrine of proportionate punishment, justice would be made, if the sentence of 20 years as imposed by the learned trial court is reduced to 10 years. Accordingly, the judgment and order of conviction and sentence dated 02.09.2019, declaring the sentence against the accused-person to suffer R.I. for 20 years is modified and reduced to 10 (ten) years."

[12] In view of the judgment passed in Crl.A.(J) 68 of 2019, the impugned judgment and order of conviction and sentence dated 08.04.2022 declaring the sentence against the accused-person to suffer R.I for 20 (twenty) years is modified and reduced to 10(ten) years.

[13] With the aforesaid observation and direction, the appeal stands partly allowed to the extent as indicated above. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

JUDGE



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