

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 30 of 2022

Sri Biplab Tripura

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant(s)	: Ms. R. Guha, Advocate.
For Respondent(s)	: Mr. S. Debnath, Addl, PP.
Date of hearing and date of judgment and order	: 22.11.2023
Whether fit for reporting	: No

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

ORDER

This is an appeal under Section 374 read with 401 and 482 of the Code of Criminal Procedure, 1973 by the appellant herein against the impugned Order of conviction, dated 22.08.2022 as well as impugned order of sentence passed on 24.08.2022 passed by the Ld. Court of Special judge, South Tripura, Belonia, in connection with the case No. Special 08 (POCSO) of 2020.

[2] The case of the prosecution is that a case was initiated on the basis of FIR lodged by the father of the victim child with the O/C, P.R. Bari P.S. alleging inter alia that, on 13.05.2018 at about 9 a.m. the informant along with his wife went to the mother's house of the informant situated in the same village i.e. at Niharnagar, Krishnabashi Para. At that time his minor daughter was alone in the house. At about 1200 hours the informant and his wife were returned to their house and found their minor daughter was not available in the house. After searching the informant came to know that accused Biplab Tripura kidnapped his minor daughter from his house.

[3] On this, P.R. Bari P.S. Case No. 2018/PRB/076 under Sec. 366 of IPC was registered. The case was investigated and on completion of investigation SI Ratan Chakraborty filed charge sheet against accused Sri

Biplab Tripura for commission of offence punishable under Sec. 366/376(i)/376(o) of IPC and section 4 of POCSO Act, 2012.

[4] Having received the charge sheet, this Court took cognizance of offence punishable under Sec. 366/376(i)/376(o) of IPC and section 4 of POCSO Act against accused Sri Biplab Tripura. After that, this Court framed charges against accused Sri Biplab Tripura under Sec 366 and 376(2)(n) of IPC and section 4 of POCSO Act. The contents of the charges read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial. In total fourteen witnesses were examined by the prosecution to prove the charges against the accused person. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the accused person was subjected to examination as warranted U/S 313(1)(b) of Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication. However, he declined to adduce any witness on his defence.

[5] Learned Special Public Prosecutor submits that in this case prosecution has examined total fourteen witnesses and total fifteen exhibits have been given in favour of the prosecution case. He also submits that all the material witnesses have supported the case of the prosecution and the opinion of expert also is in favour of the prosecution. The victim along with her father and mother have fully supported the case and some independent witnesses have also supported the case of the prosecution. On the basis of the evidence the prosecution has been able to prove the case beyond reasonable doubt against the accused person. The accused person should be convicted in this case.

[6] On the other hand, learned counsel for the accused submits that from the deposition of the victim this court can come to the conclusion that the victim herself has left her parental house and started to live with the

accused. He submits that the statement recorded under Sec. 164(5), Cr.P.C. gives a clear picture where victim has admitted that she voluntarily left her house with the accused as she had love affair with the accused and she married with the accused and thereafter she voluntarily cohabited with the accused. Learned counsel also submits that the age of the victim has not been proved beyond reasonable doubt by the prosecution because the documents which has been produced for proving the age has been taken after filing of the case. He also submits that the doctor has not given his final opinion in favour of the prosecution, rather, the opinion of the doctor gives two kinds of views, so it should go in favour of the accused. Learned defence counsel also submit that there are so many contradictions in the prosecution case and the benefit of doubt always in favour of the accused person. So, the accused person is entitled to acquittal.

[7] On the basis of divergent argument advanced, the following points emerged for discussion and decision

POINTS FOR DETERMINATION

(i) Whether accused Biplab Tripura on 13.05.2018 at about 1 pm kidnapped or abducted the victim girl (name is withheld) from her house situated at Anandapur (Krishnabashi Para) under P.R. Bari P.S. with the intent that she will be compelled to marry against her will or she will be forced or seduced to illicit intercourse?

(ii) Whether accused Biplab Tripura on 13.05.2018 in a house at Agartala and on 14.05.2018 and 15.05.2018 in the house of one Deepak Tripura situated at Bhatkhola at different times committed rape repeatedly upon the victim girl?

(iii) Whether accused Biplab Tripura on 13.05.2018 in a house at Agartala and on 14.05.2018 and 15.05.2018 in the house of one Deepak Tripura situated at Bhatkhola committed penetrative sexual assault upon the victim child, who is below 18 years of age?

[8] By the judgment dated 22.08.2022, the learned court below has observed in the following manner:

"In view of the discussion stated above, I hereby sentenced convict Sri Biplab Tripura to suffer R.I for 04(four) years and to pay a fine of Rs.5,000/- for the offence punishable under Section 366 of IPC, in default, to suffer R.I for one month and he is further sentenced 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 POCSO Act, in default, to suffer R.I for three month. Both the sentences shall run concurrently. If the fine money is paid, the same be handed over to the victim as compensation."

[9] It is seen from the record that the exhibit-7 which is the seizure list prepared by the PW 14. According to the inputs written by PW-14 (investigating officer) in the seizure list, it speaks about one genuine birth certificate. But the same is not produced before the court below. On perusal of the record, it also surfaces that there are two birth certificates issued in two different years (i.e. 2015 and 2019 respectively). This court is also surprised to know that there is no reference about these birth certificates in the seizure list as cited supra and the non marking of the genuine birth certificate and not placing the same on record creates a doubt.

[10] In view of the same, this court feels that the date of birth of the child is not proved and accordingly the accused is acquitted on benefit of doubt. Accordingly, the instant appeal stands allowed and disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

JUDGE

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