

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl. A(J) No. 38 of 2022

Sri Rakesh Paul, son of Sri Narayan Paul of Sukanta Nagar, P.S.
Belonia, District; South Tripura.

.....Convict-appellant

-VERSUS-

The State of Tripura.

..... Respondent.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. A. Acharjee, Advocate.
For Respondent(s)	:	Mr. S. Debnath, Addl. P.P.
Date of hearing and delivery of judgment and order	:	13.07.2023
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER

Heard Mr. A. Acharjee, learned counsel appearing for the appellant. Also heard Mr. S. Debnath, learned Additional Public Prosecutor appearing for the State-respondent.

[2] The present appeal has been filed under Section-374 of Cr. P.C. against the impugned judgment of conviction and sentence dated 10.11.2022 passed by the learned Special Judge, South Tripura, Belonia in connection with case No. Special 08 (POCSO) of 2022 whereby and whereunder, the appellant has been convicted under Section-354B of IPC and sentenced him to suffer RI for five years and to pay a fine of Rs.15,000/- in default to pay fine, the appellant shall suffer further RI for three months and further the appellant has been convicted under Section-509 of IPC and sentenced him to suffer SI for one year and to pay a fine of Rs.3,000/- for the said offence, in default to pay fine the appellant shall suffer further SI for fifteen days.

[3] The case of the prosecution, in a nutshell, is that Sri Rakesh Paul is one trial as prosecution case was initiated on the basis of FIR lodged by the mother of the victim girl with the O/C Belonia Women P.S. alleging inter alia that on 02.07.2022 in the morning at about 9.00am the minor daughter of the informant went to the house of accused appellant for taking milk. In the meanwhile, the appellant taking the advantage of her loneliness entered his

hand inside the pent of the victim and touched her private parts and when she cried out, the appellant threatened her with dire consequence. However, the victim daughter of the informant could manage to escape from the clutches of the appellant and reached to her house. Thereafter, she informed the matter to her family members and after that the informant lodged this case.

[4] On this, Belonia Women P.S. Case No.17 of 2022 under Section-354(B) of IPC and Section-8 of the POCSO Act was registered. Inspector Swapna Bhowmik took up the task of investigation of the case and on completion of investigation she filed charge sheet against the appellant herein for commission of offence punishable under Section-354(B), Section-509 of IPC and Section-8 of the POCSO Act.

[5] Thereafter, the charges framed against the appellant were read over and explained to him, to which he pleaded not guilty and desired to stand the trial. Total ten 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 under Section-313 of Cr. P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His pleas are of total denial and false implication. However, he denied adducing any witnesses on his defence.

[6] After hearing both the parties and on perusal of the documents submitted by the prosecution, the learned Court below found that the appellant is guilty for committing offence punishable under Sections-354(B) and Section-509 of IPC and thereby sentenced as stated supra. For the purpose of reference, the observation of the Court below may be reproduced hereinbelow:

“3.In view of the discussion stated above, I hereby sentenced convict Sri Rakesh Paul to suffer rigorous imprisonment for five years and to pay a fine of Rs.15,000/- for the offence punishable under Section-354B of IPC, in default, to suffer rigorous imprisonment for three months. The convict is further sentenced to suffer simple imprisonment for 01(one) year and to pay a fine of Rs.3,000/- for the offence punishable under Section-509 of IPC, in default, to suffer simple imprisonment for fifteen days. Both the sentences shall run concurrently. If the fine money is paid, the same be handed over to the father/mother of the victim as compensation.

4. The period of detention undergone by the convict during enquiry and trial shall be set off from the sentence period.

5. Copy of this judgment shall be delivered to the convict free of cost as per provision of Section-363 of the Code of Criminal Procedure. A copy of this judgment shall also be sent to the District Magistrate of the South Tripura District as per Provision of Section-365 of the Code of Criminal Procedure.

6. In my considered opinion, victim is also entitled to compensation under the scheme of victim compensation. District Secretary, DLSA, South Tirpura, Belonia shall also be communicated about the judgment of this Court with request to take necessary step to provide appropriate compensation to the victim as per approved scheme.

7. The convict is informed about his right to appeal before the Hon'ble High Court and right of legal aid.

8. The case is thus disposed off on contest.

9. The original Birth Certificate (exhibit-P/3/PW-1) of the victim shall be released to the father/mother of the victim after expiry of the period of appeal. Destroy other alamsats after expiry of the period of appeal."

[7] Feeling aggrieved and dissatisfied with the judgment of conviction and sentence dated 10.11.2022, the accused-person preferred this present appeal before this Court.

[8] Mr. A. Acharjee, learned counsel appearing for the appellant has submitted that the learned Court below ought to have held that the alleged presence of the convict appellant at the alleged place of occurrence, alleged participation of the appellant in the commission of the alleged offence is absolutely doubtful and on the basis of such evidence the appellant could not be legally convicted for the alleged offence. The Court below by way of non reading and improper appreciation of evidence on record and the facts and circumstances of the case arrived at absolutely illegal, wrong and unwarranted findings causing grave miscarriage of justice to the appellant.

[9] He has further submitted that the Court below held the convict appellant to be guilty of alleged offence on the basis of no evidence inasmuch as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence. The learned Court below arbitrarily relied on the improved versions of all prosecution witnesses and on the basis of such improved versions, convicted and sentenced the appellant only on surmise and conjecture.

[10] PW-10, the I/O of the case in her examination in chief, nowhere stated regarding the medical examination of the victim and the I.O. has not

been collected any medical report of the victim minor girl or she has not arranged for medical examination of the victim during investigation. The I.O, at the time of filling charge-sheet nowhere written regarding medical examination of the victim. But the learned Court convicted the appellant under Section-354B and 509 of IPC which is very much illegal and the learned Court below misconceived and misunderstood the legal position of the law and passed a wrong judgment.

[11] In the charge sheet no doctor was cited as witness regarding the medical examination of the victim and no doctor was examined during trial. But the learned Court below has failed to appreciate the same and the judgment and findings of the Court below is not tenable in the eye of law.

[12] Now, let us decide together whether the victim was disrobed by the accused, insult the modesty of the victim girl and utters bad words by the accused intending that such words shall be heard and intrudes upon the privacy of the victim girl and committed sexual assault upon the victim child by touching her private parts with sexual intent.

[13] At the time of cross-examination of PW-1 it has been admitted that she started to purchase milk from the house of Narayanl Pal from 01.06.2022 and the payment of the milk is not made daily basis. She also admits that she used to go to the house of Narayan Pal for bringing milk, her mother-in-law also used to go and sometime her daughter also used to go as and when her school was closed. She also admits that the distance of the house of Narayan Pal is of 5/10 minutes from her house and in the way, both sides of the road, there are houses. She admits that the water tank is in the house compound of Narayan Pal. When her daughter went to collect the cow-dung, at that time, mother of Rakesh Paul was also there.

[14] The witness also admits that there are banana trees at the place where cow-dung are kept, outside of the house of accused and from the gate of the accused, the place of cow-dung kept, can be visible. She also admits that her daughter did not object the accused as she was carrying in one hand cow-dung and in another hand milk and only one hand of her daughter with cow-dung and in another hand milk and only one hand of her daughter with cow-dung and there was no other spot in her body from the cow-dung.

[15] Now let us see the evidence of PW-2, the victim girl. She deposed that on 02.07.2022 she went to the house of the accused appellant for bringing milk and when she entered in his house, she found him standing near his bathroom. She took milk from the mother of Rakesh Paul. She called her as grandmother. She asked from the mother of the appellant that whether cow-dung can be taken by her. Thereafter, she collected the cow-dung near the banana trees. Subsequently, the appellant came from his bathroom at the place where she was collecting the cow-dung at that time the appellant asked her why her grandfather does not run his shop.

[16] When after collecting cow-dung and milk, she was about to go to her house, at that time, the appellant caught her hand and asked why her nails are long. She asked him that when her father will come he will cut. He touched her breast and asked her that her breast is developed. He also entered his hand in her panty. When she cried, the appellant left her. By holding her hand he asked her that whether she will disclose this fact to her mother subsequently, she disclosed the entire episode to her mother.

[17] PW-6 is one of the independent witnesses of this case. He deposed that the day was 02.07.2022 and he was working as a painter in the house of the victim. He came forward of the house after hearing the weeping of the victim. His other helper was also with him and he also came after hearing weeping sound of the victim. The victim was crying by holding her aunty. She was not in a position to speak at the time due to weeping. She disclosed something to her aunty, but he could not understand.

[18] PW-7 has deposed that this is the incident of 02.07.2022 and he was in his shop as his usual work. He noticed that the victim child was returning with milk and cow-dung. He also noticed that after sometime, mother of the victim child was going to the house of the appellant. The mother of the victim returned from the house of the appellant and stopped near his shop and she called him to her house. He also noticed that the victim was weeping. Due to weeping, she was not in a position to speak. She told that the appellant hold her hand and later on he heard that mother of the victim lodged one case and during cross by the defence the witness has admitted that mother of the victim returned from the house of the appellant after 5/7 minutes.

[19] Learned counsel appearing for the appellant has taken a plea of defence that no one could see the incident alleged by the victim against the appellant, there was dispute for balance milk amount between both the families and lastly the prosecution has two stories as per the versions of PWs.6 and 7.

[20] Though the evidences in the present case have not been demolished by the counsel for the appellant, the circumstantial evidence read in the light of prosecution witnesses, the evidence has relevance to hold the accused-person, the appellant herein as guilty, but this Court feels it is not a case for 354(B) of IPC as the crime is not proved beyond reasonable doubt. The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial. Thus, this Court is of the considered opinion, following the doctrine of proportionate punishment, justice would be met, if the conviction of 5 years as imposed by the learned Court below under Section-354B is reduced to 3 years under Section-354 of the IPC. Accordingly, the judgment and order of conviction and sentence dated 10.11.2022, declaring the sentence against the accused-appellant to suffer R.I. for 5 years is modified and reduced to 3 years.

[21] Consequently, the conviction as imposed by the impugned judgment of the Court below shall stand substituted by the sentence of rigorous imprisonment for three years. The period of detention undergone by the convict during investigation, trial and sentence passed vide impugned judgment dated 10.11.2022 be set off from the period of sentence as passed hereinabove. The conviction as imposed under Section-509 of IPC shall remain unaltered.

[22] With the modification in the above terms, the instant appeal stands partly allowed and thus, disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

JUDGE

A.Ghosh

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