

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.No.03 of 2024**

Sri Ranjit Das @ Rana,
Son of Late Shashi Das,
Resident of Ichitalugaon, P.S. Kadamtala,
District: North Tripura,

---- Appellant(s)

Versus

State of Tripura

----Respondent(s)

For Appellant(s)	:	Mr. Sankar Bhattacharjee, Adv. Mr. S. Noatia, Adv.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of Hearing	:	02.12.2024
Date of delivery of Judgment and Order	:	09.12.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal under Section 374 of Cr.P.C. is preferred challenging the judgment and order of conviction and sentence dated 04.01.2024 delivered by Learned Special Judge (POCSO), North Tripura, Dharmanagar in connection with Case No.Special (POCSO) 29 of 2019. By the said judgment and order of conviction and sentence Learned Special Judge has found the appellant guilty and convicted him under Section 354B of IPC and under Section 8 of the POCSO Act and accordingly sentenced the convict Ranjit Das under Section 354B of the IPC to suffer RI for three years with fine of Rs.5000/- in default to suffer imprisonment for

a further period of one month. Learned Special Judge further sentenced the convict to suffer RI for three years and to pay a fine of Rs.5000/- under Section 8 of the POCSO Act in default to suffer imprisonment for a further period of one month and it was ordered that both the sentences shall run concurrently.

02. Heard Learned Counsel Mr. Sankar Bhattacharjee appearing for the appellant and also heard Learned Addl. P.P. Mr. Rajib Saha appearing on behalf of the State-respondent. Taking part in the hearing Learned counsel first of all drawn the attention of this court that before the Learned court below the prosecution save and except the victim could not produce any other independent witness to support the case of the victim or her mother. According to Learned counsel for the appellant as per the FIR one Dipa Das was the eye witness of the alleged occurrence of offence who according to the prosecution informed the mother of the victim and the others but surprisingly when said Dipa Das turned up to the witness box to deposit as witness she did not in any manner supported the version of the victim or her mother, nor whispered anything against the appellant. So situated thus on the face of evidence on record of the victim and her parents there was no scope to presume the accused-appellant to be guilty for the charge. But the Learned Trial court below failed to appreciate the evidence on record and convicted the appellant accordingly.

03. Learned counsel further submitted that before the Learned court below prosecution also could not prove the birth certificate of the victim in accordance with law. Furthermore, as per Section-24 of the POCSO Act the statement of the victim was supposed to be recorded by a Women Police Officer not below the rank of Sub-Inspector. But here in the given case the statement of the victim was recorded by a Women Constable. But the Learned Special Judge did not follow the provision and in absence of cogent oral evidence on record found the appellant to be guilty for which according to the Learned counsel for the appellant the judgment of the Learned Special Judge suffers from perversity and urged for allowing this appeal by setting aside the judgment and order of conviction and sentence of the Learned court below.

04. On the other hand, Learned Addl. P.P. appearing on behalf of the State-respondent submitted that before the Learned court below the appellant did not take any plea that there was violation of the provision of Section-24 of the POCSO Act. Furthermore, the accused appellant by the trend of cross-examination of the victim and her parents could not raise any doubt to disbelieve their evidence and presumption of Section-29 would be applied in this case which the accused-appellant has failed to discharge. So Learned Addl. P.P. submitted that since the evidence of victim was un-rebutted by the appellant so there is no scope

to presume the appellant to be innocent and urged for dismissal of this appeal.

05. Learned counsel for the appellant in course of hearing of argument relied upon one citation of the Hon'ble Supreme Court of India in **Sushil Kumar vs. Rakesh Kumar** reported in **(2003) 8 SCC 673** wherein in para Nos.33 and 36 Hon'ble the Apex court observed as under:

"33. Under Section 35 of the Indian Evidence Act, a register maintained in terms of a statute or by a statutory authority in regular course of business would be a relevant fact. Had such a vital evidence been produced, it would have clinched the issue. The respondent did not choose to do so.

35.The entry of date of birth made in school admission register in terms of Section 35 of the Evidence Act should be considered from that perspective."

He also relied upon another citation of the Hon'ble Apex Court in **K. Venkateshwarlu vs. State of Andhra Pradesh** reported in **(2012) 8 SCC 73** wherein in para No.9 Hon'ble the Apex Court observed as under:

"9. Several child witnesses have been relied upon in this case. The evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the court comes to the conclusion that the child understands the question put to him and he is capable of giving rational answers (see Section 118 of the Evidence Act). A child witness, by reason of his tender age, is a pliable witness. He can be tutored easily either by threat, coercion or inducement. Therefore, the court must be satisfied that the attendant circumstances do not show that the child was acting under the influence of someone or was under a threat or coercion. Evidence of a child witness can be relied upon if the court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth. It is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

06. Learned counsel for the appellant further referred another citation in **P. Yuvaprakash vs. State**

represented by Inspector of Police reported in **AIR 2023 SC 3525** wherein in para Nos.13 and 14 Hon'ble the Apex Court observed as under:

"13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;**
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;**
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.**

14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence."

Referring the same Learned counsel for the appellant drawn the attention of the court that prosecution before the Learned court below prosecution has failed to prove the charge beyond reasonable doubt. As such the

judgment and order of conviction is liable to be interfered with and urged for allowing this appeal by setting aside the judgment.

07. Herein in the case at hand the prosecution was set into motion on the basis of an FIR laid by the informant Pranati Chakraborty alleging inter alia that on 01.06.2019 at about 2.30 pm her daughter, the victim (name withheld for protecting her identity) aged about 9 years old was playing nearby the house. Then the said accused person gagged the mouth of his daughter and took her to the forest and took off the panty on her wearing and tried to abuse her sexually. That time she was returning home from M.N. Rega work. One girl namely Dipa Das of neighbouring house saw it and called out the name of the victim and that time the accused fled away and after hearing the incident from her daughter she laid the FIR. On receipt of FIR O/C Kadamtala P.S., North Tripura registered CaseNo.2019/KDL/027 under Section 354A of IPC and Section-8 of the POCSO Act and the case was endorsed to the I.O. for investigation and after completion of investigation the I.O. laid chargesheet against the appellant. Before Learned Trial Court formal charge under Section 354B of IPC and Section 8 of the POCSO Act was framed against the appellant and the same was explained to the appellant in Bengali to which he pleaded not guilty and claimed to be tried.

08. To substantiate the charge prosecution before the Learned Trial court has adduced in total 16(sixteen)

nos. of witnesses and relied upon some documents which were marked as exhibits in the case which are as follows:

A. Prosecution Witnesses:

PW.1: Smt. Pranati Chakraborty
PW.2: Smt. Debabrata Chakraborty
PW.3: Sri. Dipankar Das
PW.4: The Victim
PW.5: Sri. Gokul Chakraborty
PW.6: Smt. Lovely Shil
PW.7: Smt. Lipika Sharma
PW.8: Sri Abani Mohan Nath
PW.9: Md. Faruk Ahmed
PW.10: Smt. Anita Rani Das
PW.11: Sri Sitangshu Das
PW.12: Smt. Sonali Das
PW.13: Dr. Sandip Deb
PW.14: Dr. Arunabha Chakraborty
PW.15: SI Prajit Malakar
PW.16: Smt. Dipa Das

B. List of Exhibits on behalf of the prosecution:

Exhibit.1: Signature of PW1 on the ejahar
Exhibit.2: Signature of PW1 on the seizure list
Exhibit.2/1.: Signature of PW4 on the seizure list
Exhibit.2/2.: Signature of PW5 on the seizure list
Exhibit.3: Signature of PW11 on the medical examination report of the victim.
Exhibit.3/1: Signature of PW4 on the medical report.
Exhibit.3/2: Medical report
Exhibit.3/3: Signature of PW13 on the medical report
Exhibit.4: Signature of PW4 on the statement victim under Section 164 Cr.P.C.
Exhibit.5 as a whole: School Certificate
Exhibit.3 as a whole: Signature of PW8 on the medical report
Exhibit.6: Signature of PW8 on the seizure memo of school certificate
Exhibit.6/1: Signature of PW8 on the seizure memo of school certificate
Exhibit.6/2: Signature of PW9 on the seizure memo of school certificate
Exhibit.7 as a whole: Potency test report

C. List of Material Objects

Exhibit. M.O.I.: Pink and black panty
Exhibit M.O.II: White top

09. The defence case was of total denial and as such the appellant during his examination under Section 313 of Cr.P.C. pleaded innocence and also denied to adduce any evidence in support of his defence. Finally on conclusion of trial Learned court below delivered the judgment as stated

above and challenging that judgment of the Learned Special Judge this appeal is preferred before the High Court.

10. I have heard detailed argument at length of both the sides and also gone through the evidence on record of the Learned court below as well as the judgment delivered by the Learned court below. Now for the sake of convenience this court thinks it would be prudent to discuss herein below the relevant synopsis of the evidence on record of the prosecution produced before the Learned trial court.

11. PW-1, Pranati Chakraborty is the informant of this case. She deposed that on 01.06.2019 at about 2.30 p.m. her daughter (name withheld) aged about 9 years while playing in front of their approach road of their dwelling hut when the accused Ranjit Das appeared and caught hold her daughter and gagged her mouth and lifted her towards the nearby jungle wherein the accused Ranjit Das forcibly removed the wearing apparel of her daughter and tried to commit rape upon her. But as one Dipa Das of their locality while going through the way nearby the spot noticed the incident so she raised alarm and upon hearing her shouting accused Ranjit Das fled away and after that her daughter returned home. She laid the ejahar written by one Sri Debabrata Chakraborty and identified the ejahar and her signature marked Exbt.1. She further stated that during investigation police seized Aadhar card of her daughter besides her wearing apparels and she identified her

signature on the seizure list marked Exbt.2, wearing apparel marked Exbt.MO-I and the white top of her daughter marked as Exbt.MO-II. She further stated that her daughter was taken to Kadamtala CHC for medical examination and during examination her consent was taken. The witness identified her signature on the medical examination report marked Exbt.3.

During cross-examination she stated that the house where they were living her brother-in-laws with their wives and children were also living there. She further stated that the accused has got some paddy land just adjacent to their paddy land. Nothing more came out relevant.

12. PW-2, Debabrata Chakraborty deposed that on 01.06.2019 at about 2.30 p.m. while the victim was playing in front of her house she was forcibly taken by the accused Ranjit Das to a nearby jungle wherein he removed her pant to rape her. But the accused failed to do anything as one of the girl of their locality namely Dipa Das noticed the incident and while she started shouting the accused fled away from the jungle. Subsequently while she (the victim) returned home he had been called by a girl of the locality to go to the spot accordingly and when he went there the matter was reported to him and he had also noticed the accused to flee away from the spot.

During cross-examination he stated that he is not the eye witness of the incident.

13. PW-3 Dipankar Das deposed that about 6/7 months back at about 02.00 to 02.30 pm upon hearing shouting, he and others rushed to the spot and found the accused Ranjit Das was fleeing away from a nearby jungle. When they talked to the victim she stated to him that the accused forcibly taken her to the jungle and tried to rape her but failed.

During cross-examination he stated that he did not say to the police that he saw the accused to flee away from the spot.

14. PW-4 is the victim of this case. She deposed that on the alleged day she was playing with few of her friends in the approach way of their house. That time the accused Ranjit Das appeared there. She had seen him on so many occasions to go through the way in front of their house. Other friends left the place while their game was over and she was alone playing 'Ranna Bati' on the pathway of their house and Ranjit Das suddenly caught hold her and gagged her mouth and removed her to a nearby jungle where he disrobed her and he touched all her private parts. He also disrobed himself and touched her breast. She had clutched with him but failed to raise any sound as her mouth was gagged by him. She further stated that while she was lifted towards the jungle one Dipa Das saw the incident as she was going to bring water at the material time. Thereafter she informed the matter to her mother and others and the accused being frightened left her in the jungle and fled

away. Later on, she returned home and narrated the incident to her mother and others. She was taken to hospital and Doctor examined her. She identified her signature on the medical report marked Exbt.3/1. She further stated that later on police took her pink panty and white and pink shaded top and took her signature on a paper and the witness identified her signature marked as Exbt.2/1. She identified her pant and top marked Exbt. MO-I and MO-II. She further stated that she was brought to the court and accordingly she narrated the entire incident. She identified her signature on her statement marked Exbt.4.

During cross-examination she stated that she could not recollect whether she has stated to the court and to the police that Ranjit Das touched her breast and she had clutches with him or not.

15. PW-5 Gokul Chakraborty deposed that on 01.06.2019 at about 2.30 pm while he was taking bath in their pond that time he was called by his wife who reported him that her cousin sister was taken by a person towards the jungle and his wife came to know about the incident from Dipa Das who was their neighbour. Immediately she went towards the jungle to find out her sister and that time he found that the accused Ranjit Das was fleeing away towards the tilla land opposite to their house and as he concealed himself in the locality he could not be traced out. After that, mother of the victim brought her to the house from the jungle. Later on, her aunt lodged the case. During

investigation police came to their house and seized Aadhar card of her cousin sister besides her pant and white top and the witness identified his signature on the seizure list which was marked as Exbt.2/2. He identified the Aadhar card and the panty and top i.e Exbt.MO-I and Exbt.MO-II. He was confronted with the statement that he stated to the police that while he was taking bath to their pond that time his wife informed him that his sister was taken by a person towards the jungle and his wife came to know that the incident from Dipa Das but on drawing attention, the same statement was not found in his statement recorded by I.O. under Section 161 of Cr.P.C. He was further confronted with the statement that he stated to the police that immediately he went towards the jungle and heard that the accused was fleeing away towards the tilla land of opposite to their house and he concealed himself somewhere in the locality but he could not be traced till 06.00 p.m. Attention was further drawn, but the said statement was not found in the statement of witness recorded by I.O. under Section 161 of Cr.P.C.

16. PW-6, Lovely Shil deposed that on 02.06.2019 she was posted as a Constable of Kadamtala Police Station. On that day in the morning as per direction of Sub-Inspector, Sri Prajit Malakar she went to Das Tila of Bakbaki and recorded the statement of the victim as per the narration and handed over the same to the I.O. and

thereafter the victim was brought to Kadamtala Hospital for medical examination. The victim was handed over to her guardian after the examination.

During cross-examination she stated that she did not give any endorsement on the statement of the victim and witness Dipa Das that she recorded their statements as per instruction of the Investigating Officer.

17. PW-7, Leepika Sharma deposed that on 10.06.2019 she was posted as Headmistress of Bakbaki High School, Dharmanagar, North Tripura and on that day as per requisition of I.O. she issued the school certificate of the victim girl, daughter of Ananta Chakraborty and Pronati Chakraborty of Bakbaki, Kadamtala. She further stated the school certificate was filled up by her in her own hand writing which bears her signature and as per the admission register of the school the school certificate was prepared and her date of birth was shown as 13.01.2010 and on 10.06.2020 the victim was a student of Class-IV. She identified the school certificate which was marked Exbt.5. She further stated she handed over the school certificate to the Investigating Officer who seized the same in presence of Abani Mohan Nath and Faruk Ahamed, the teachers of their school. She identified her signature on the seizure list marked Exbt.6.

During cross-examination nothing came out relevant.

18. PW-8, Abani Mohan Nath deposed that the I.O. seized the school certificate of the victim in presence of him issued by Headmistress Leepika Sharma and identified the school certificate marked Exbt.5(as a whole). He identified her signature on the seizure list marked Exbt.6/1.

During cross-examination nothing came out relevant.

19. PW-9, Md. Faruk Ahmed also deposed in the same manner like PW-8 and identified the school certificate marked Exbt.5(as a whole) and his signature on the seizure list marked Exbt.6/2.

During cross-examination nothing came out relevant.

20. PW-10 Anita Rani Das deposed that on 01.06.2019 when she was at her residence that time she heard some chaos from the residence of Ananta Chakraborty who is her neighbour and later on she went to their house and could know that Ranjit Das forcibly taken away the victim to the nearby jungle and disrobed the minor girl and also removed her wearing apparels. Subsequently when the mother of the victim went towards the jungle accused Ranjit Das fled away.

During cross-examination nothing came out relevant.

21. PW-11 Shitangshu Das deposed that at about two years back while he was working in his paddy land that time he could notice that accused Ranjit Das was fleeing

away through the paddy land and the wife of Ananta Chakraborty asked her to detain Ranjit Das to talk with him as to why he committed misdeed with her daughter and while he asked Ranjit Das to go with him he denied and left the paddy land. Later on, he returned home and came to know that where the daughter of informant was playing in front of their dwelling hut. That time she was forcibly taken by the accused to a nearby jungle by the accused who disrobed the victim in the jungle and removed his wearing apparel and when the mother of the victim went towards the jungle the accused fled away.

During cross-examination nothing came out relevant.

22. PW-12 Sonali Das deposed that on 03.06.2019 she was posted as Constable of police at Kadamtala PS. On that day she took the victim to Dharmanagar district court for recording her statement and after recording the statement the victim was handed over to her mother.

During cross-examination nothing came out relevant.

23. PW-13 Dr. Sandip Deb deposed that on 03.06.2019 he was posted as Medical Officer, Kadamtala CHC. He was discharging his duty as Emergency Medical Officer. When the victim was brought to him he obtained consent of the mother of the victim for medical examination of the victim in presence of staff Nurse, Smt. Eden Darlong. But during examination he did not find any injury on her

private parts or any parts of her body. He identified his report marked Exbt.3/2 and also identified the signature of the witness on the medical examination report marked as Exbt.3/3.

During cross-examination he stated that he did not mention the history given by the victim in the medical examination report.

24. PW-14, Dr. Arunabha Chakraborty deposed that that on 23.09.2019 he was posted at Kadamtala Community Health Centre as In-charge Medical Officer and on that day the I.O. produced the accused for medical examination and accordingly he examined the accused and gave the report. He identified his report marked Exbt.7 (as a whole).

During cross-examination he stated that in the report he did not mention the particular finding of the examination done upon accused.

25. PW-15, Prajit Malakar is the I.O. who laid the chargesheet against the accused. He identified the hand sketch map with index which were marked as Exbt.8(as a whole) and Exbt.9 (as a whole). He identified the seizure list marked Exbt.2/3 and Exbt.2/4. He also produced the victim for recording her statement under Section 164(5) of Cr.P.C. He identified another seizure list marked Exbt.6/3 and Exbt.6/4. He stated that he examined the Headmistress of the Bakbaki High School. He further stated that on 23.09.2019 FIR named accused Ranjit Das surrendered at

Kadamtala Police Station when he arrested him(the accused) and after that he laid the chargesheet.

During cross-examination he stated that he did not examine the father of the victim. He did not examine Sri Kukil Das whose house has been indicated in the hand sketch map of the P.O. as "D". Witness volunteered that he examined the wife of said Kukil Das. He did not verify the seized Aadhar card of the victim girl. He could not seized any other birth certificate of the victim. He did not seized the school admission register. Nothing more came out relevant.

26. PW-16 Dipa Das deposed that one day about three years back some people of their locality told that an incident had taken place with the victim in their locality and they were asked to stay inside the house. She could not say anything furthermore about this case.

During cross-examination nothing came out relevant.

These are the sum and substances of the evidence on record of the prosecution in respect of determination of the charge levelled against the appellants.

27. I have heard detailed argument of both the sides and gone through the evidence on record very carefully. Here, in the case at hand from the evidence it appears that on the alleged day at the time of alleged occurrence excepting the victim only Dipa Das noticed the alleged occurrence upon the victim. The informant, i.e the mother

of the victim did not see anything about the occurrence of offence. Some other witnesses although stated that they found that the accused flee away from the alleged P.O. Although in course of examination-in-chief before the court they made the statement, but during the cross-examination stated that they did not say the said statement to the I.O. during investigation meaning thereby they have improved their statements and they have made their statement for the first time before the court. But surprisingly when said Dipa Das turned up to the witness box before the court to depose as a witness she totally remained silent about the prosecution story. Only she heard that something happened. Prosecution although adduced in total 16 nos. of witnesses, but here in the given case only the evidence of the victim and said Dipa Das are material to determine/decide the case. Learned court below at the time of delivery of judgment relied upon the evidence of the victim and her statement and ultimately found the appellant to be guilty for the alleged charges. Admittedly in this case Section-24 was not complied with by the I.O. but for non-compliance of the provision of Section-24 there is no scope to presume that the prosecution case is totally doubtful. Moreso, in this case from the evidence of Medical Officers it is clear that in course of their examination they did not find any injury on the person of the victim. The mother of the victim, i.e. the informant also appeared to the P.O., later on. I have also seen the birth certificate issued by the

Headmistress of the school who turned up to the witness box to depose as a witness and after going through her evidence and the exhibited document it appears that on the alleged day the victim was a minor. Although Learned counsel for the appellant tried to draw the attention of the court that the same was not duly proved. But in my considered view there was no scope to disbelieve the said evidence of PW-7, Leepika Sharma and Exbt.5. The accused-appellant by the trend of cross-examination could not raise any doubt to disbelieve that part of evidence. The citation as relied upon by the Learned counsel for the appellant cannot be applied in this case, since the evidence of the prosecution regarding proof of the birth/age certificate of the victim was duly proved. Now here in the case at hand it appears that excepting the victim only PW-16 i.e. Dipa Das was the eye witness of the alleged occurrence but unfortunately said Dipa Das did not in any manner supported the version of the victim regarding causing of offence by the accused-appellant on the alleged date and time. Situated thus, on the face of evidence on record in my considered view although the Learned court below convicted the appellant and found the appellant to be guilty but in my considered view the prosecution in the case at hand had failed to prove the charge beyond reasonable doubt against the appellant for which he is liable to be acquitted on benefit of doubt. As submitted by Learned Addl. P.P. appearing for the State-respondent I would like to

mention herein below the relevant provision of Section-29 of POCSO Act which provides as under:

"29. Presumption as to certain offences.- Where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections 3, 5, 7 and Section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

From the aforesaid provision of law it appears though the burden lies upon the accused to rebutt the prosecution case, but here in the given case from the facts and circumstances it appears that the prosecution has failed to discharge the burden beyond reasonable doubt against the appellant. Moreso, the Learned Magistrate who recorded the statement of the victim was not produced by the prosecution before the court. Although the victim identified her signature on the said statement recorded under Section 164(5) of Cr.P.C. but in absence of marking exhibit of the contents there is no scope to place any reliance upon the said statement of the victim girl recorded by I.O. Moreso, if the prosecution could produce the Learned Magistrate who recorded the statement of victim girl and could prove the contents of the statements recorded under Section 164(5) of Cr.P.C. still in that case a doubt will remain since the alleged eye witness Dipa Das who according to the victim rescued her on the relevant point of time did not whisper a single word showing implication of the alleged appellant with the alleged crime. Thus it appears that the evidence of the prosecution suffers from infirmity and on the face of evidence on record there is no scope to presume the

accused-appellant to be guilty and as such the appellant is liable to be acquitted from the charge on benefit of doubt.

28. In the result, the appeal filed by the appellant is hereby allowed. The judgment and order of conviction and sentence dated 04.01.2024 delivered by Learned Special Judge (POCSO), North Tripura, Dharmanagar in connection with Case No. Special (POCSO) 29 of 2019 is hereby set aside. The accused-appellant is hereby acquitted on benefit of doubt and he is set at liberty. His surety also stands discharged from the liability of the bail bond.

Send down the LCR along with a copy of this judgment.

Pending application, if any, stands disposed of.

JUDGE



**MOUMITA
DATTA**

Moumita

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MOUMITA DATTA
Date: 2024.12.10
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