

HIGH COURT OF TRIPURA
AGARTALA
CRL.L.P. NO.4 OF 2024
IN CRL.A. NO.07 OF 2024

Ebadul Islam

S/o late Jharu Miah Sardar,
Resident of Indiranagar, Ward No.8,
P.S.- Melaghar, District- Sepahijala,
Tripura.

.....**Appellant-Petitioner(s)**

Versus

1. Rajjib Hossain@ Rajib,

S/o Billal Miah, resident of Indiranagar,
P.S.- Melaghar, District, Sepahijala,
Tripura.

2. Billal Miah,

S/o, late Nur Miah, resident of Indiranagar,
P.S.- Melaghar, District- Sepahijala, Tripura.

3. Subhankar Dey @ Sagar,

S/o late Maran Dey, resident of Rabindranagar,
P.S.- Sonamura, District – Sepahijala, Tripura.

.....**Respondent Accused Persons(s)**

4. The State of Tripura,

Represented by the Public Prosecutor

.....**Respondent(s)**

For the Appellant-Petitioner(s) : Mr. P.K. Biswas, Sr. Advocate.
Mr. M.K. Biswas, Advocate.
Mr. R. Nath, Advocate.
Mr. P. Biswas, Advocate.
Mr. C. Mog, Advocate.

For the Respondent(s) : Mr. S. Lodh, Advocate.
Mr. R. Datta, P.P.
Mr. A. De, Advocate.
Mr. S. Majumder, Advocate.
Mr. R. Mukherjee, Advocate.
Mr. K. Roy, Advocate.

Date of hearing and delivery of
Judgment & Order : 22/04/2024

Whether fit for reporting : YES.

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

J U D G M E N T & O R D E R (O R A L)

T. AMARNATH GOUD(J)

This present application has been filed under Section 378 (4) of the Code of Criminal Procedure, 1973 for granting Special Leave to appeal from the order of acquittal vide judgment dated 30.11.2023 passed by the learned Special Judge (POCSO), Sepahijala District, Sonamura, in case No. Special (POCSO) 04 of 2020 acquitting the respondent-accused person, namely, Rajjab Ali @ Rajib Hossain from the charge of offence punishable under Sections 366-A/376(2)(i) of the IPC and under Section 4 of the POCSO Act, 2012; and also acquitting the respondent-accused person, namely, Billal Miah from the charge of offence punishable under Section 366-A of the IPC; and further acquitting the respondent-accused person, namely, Subhankar Dey @ Sagar from the charge of offence punishable under Section 366-A/279/338/304(Part II) of the IPC.

2. The brief fact of this case is that the private respondents herein were accused of kidnapping the minor victim

girl from her house by using a vehicle and causing injuries to her brother and the informant in the said process. Based on the aforesaid ejahar, Melaghar P.S. FIR No.2019MLG013 dated 03.03.20219 under Sections 366(A)/279/338/304(Part-ii)/34 OF IPC was registered against the accused persons herein. Subsequently, Section 376 of IPC and Section 4 of POCSO Act were also added. After, completion of the investigation and having found prima facie case against the accused persons herein, trial commenced. However, as stated above, the learned Special Judge (POCSO) acquitted the respondents-accused persons and stated here-in-above. Aggrieved thereby, the appellant-petitioner herein has filed this leave petition for granting special leave for preferring the appeal against the impugned Judgment dated 30.11.2023.

3. Heard Mr. P.K. Biswas, learned Sr. counsel assisted by Mr. R. Nath, learned counsel, and Mr. P. Biswas, learned counsel appearing for the appellant-petitioner as well as Mr. S. Lodh, learned counsel along with Mr. K. Roy, learned counsel appearing for the private respondents and Mr. R. Datta, learned P.P., appearing for the State-respondent.

4. Mr. P.K. Biswas, learned Sr. counsel appearing for the appellant-petitioner submits that his client being the

informant and grandfather as well as the guardian of the minor victim girl has been looking after her and taking care since the father of the minor girl is residing abroad, and thus, the appellant has the *locus standi* to prefer the instant application as he is the victim of the alleged incident being grandfather of the kidnapped and raped minor girl. Learned Sr. counsel submits that the victim girl as on the date of the incident was minor and she was recovered from Chennai along with the accused persons. As such, the consent of the victim girl does not arise. It is proven from the birth certificate that the age of the victim was less than 15 years on the date of the incident. Even the birth certificate of the victim girl was seized by the I.O., but that was not exhibited by the prosecution during the trial. Learned Sr. counsel further submits that under Section 391 of Cr.P.C., this Court has to power to adduce additional evidence. Stating thus for the sake of justice, learned Sr. counsel urged this Court to allow this leave petition as for the laches of the prosecution, the victim cannot be made to suffer.

5. On the other hand, Mr. S. Lodh, learned counsel appearing for the respondent-accused persons on the inception of the argument quoted Section 372 of Cr.P.C., wherein it is stated that '*No appeal shall lie from any judgment or order of a Criminal*

Court except as provided for by this Code or by any other law for the time being in force.[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.] Thereafter, learned counsel referred to the definition of 'victim', wherein it is stated that *"Victim" means a person who has suffered any loss or injury caused by reasons of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or legal heir*'. After quoting the same, learned counsel submits before this Court that the appellant-petitioner before this Court is not the actual grandfather of the alleged victim girl, he is the alleged victim's mother's uncle. As evident from the record, both the mother and father of the alleged victim girl are alive. But both the guardian of the alleged victim girl did not approach before the Court. Learned counsel further submits the appellant-petitioner cannot file the leave petition under Section 378(4) of Cr.P.C., as the complainant can prefer an appeal if the case is instituted as a compliant case and not as a police report case. As

such, this appeal preferred by the appellant-petitioner who is not a guardian nor a victim is not maintainable.

On merit, learned counsel submits that the birth certificate was not exhibited. Further, the mother of the victim i.e., P.W.-9 is silent about the date of birth of the alleged victim girl and the complainant is also silent about the date of birth. The birth certificate seized was taken on bail and the same was not produced in the trial, the same amounts to adverse inference.

On the point that this Court has the power to adduce additional evidence under Section 391 of Cr.P.C., learned counsel cited **para-12** of the Hon'ble Supreme Court Judgment reported in **(2016) 14 SCC 671** titled as **Rajvinder Singh Vs. State of Haryana**. The same is produced here-in-under:-

"12. At the outset, we must deal with submissions as regards application for leading additional evidence at the appellate stage. It has been the consistent defence of the appellant that the dead body found in agricultural fields in District Muzaffar Nagar was that of Pushpa Verma and he went to the extent of producing photograph of the dead body in the present trial. He also examined Brahm Pal Singh, Sub-Inspector and other witnesses. It was certainly possible to examine Forensic Expert at the trial court stage itself and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage. Nonetheless, we have gone through the report of said Forensic Expert engaged by the appellant. The exercise undertaken by that expert is to start with the admitted photograph of Pushpa Verma on a computer, then remove the "bindi" by some process on the computer, then by same process remove her spectacles and by computer imaging change the image as it would have looked if the lady was lying down in an injured condition. The computer image so changed was then compared with the photograph of the dead body. We have seen both the images and we are not convinced at all about any element of similarity. We do not therefore see any reason to differ from the view taken by the High Court.

[Emphasis supplied]"

Accordingly, learned counsel submits that the prosecution could have produced the birth certificate before the Trial Court, but, they could not adduce the same now. Stating thus, learned counsel submit that on the ground of merit and also on the question of maintainability, this petition is not maintainable.

6. Heard both sides and perused the evidence on record.

7. As evident from the submission of the learned counsel appearing for the parties, the appellant-petitioner herein being the grandfather of the victim girl i.e., uncle of the alleged victim's mother, has approached this Court seeking leave to appeal against the impugned judgment and order of acquittal passed by the Trial court.

8. Now let us produce the definition of the term 'victim' as given in Cr.P.C:-

"Victim" means a person who has suffered any loss or injury caused by reasons of the act or omission for which the accused person has been charged and the expression "Victim" includes his or her guardian or legal heir'

9. Upon perusal of the records and considering the submissions made by the learned counsel for the parties, it is noted that both the mother and father of the alleged 'victim' girl

and also the alleged '*victim*' girl herself are alive. But the petitioner herein who is the uncle of the mother of the alleged victim has filed this petition. Further, nothing is on the record to show that the petitioner herein has taken any legal requirements for the guardianship of the alleged victim. As such, this Court is of the opinion that the petitioner herein has no *locus standi* to prefer this present petition as guardian of the alleged '*victim*'. Furthermore, in terms of Section 378(4) of Cr.P.C., the complainant can prefer an appeal if the case is instituted as a compliant case and not as a police report case.

10. On merits, it is observed that the age of the victim, who was alleged to be a minor, has not been proved beyond reasonable doubt. The birth certificate, which could have been a crucial piece of evidence to establish the age of the victim, has not been proved before this Court. Additionally, the witnesses who could have thrown light on the age of the victim have failed to do so, as they remained silent on this crucial aspect. More so, the victim girl as on the date of the crime was under 15 years during 2019 and now in year 2024, at the time of appeal is major around 20 years and when complainant can go the Advocate to prefer the appeal, the victim girl could have filed the same in compliance with Section 372 of Cr.P.C.

11. Further in terms of the ***Rajvinder Singh Vs. State of Haryana(supra)***, as the birth certificate has not as exhibited as evidence in the Trial Court, the same is not admissible before this Court as additional evidence.

12. In view of the above observation and foregoing, the present leave petition is hereby rejected. The connected appeal and well as the miscellaneous petition(s), if any, shall also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J



सत्यमेव जयते

suhanjit

RAJKUMAR
SUHANJIT
SINGHA

Digitally signed by
RAJKUMAR SUHANJIT
SINGHA
Date: 2024.04.25
14:47:06 +05'30'