

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.Appeal. No.04 of 2023

Sri Kuddos Miah
S/O: Lt Nuru Miah
Of UNC Nagar,
P.S. Sonamura,
Dist. Sepahijala Tripura

..... Appellant

Versus

1. The State of Tripura.

.....Respondent

For Appellant(s)	:	Mr. Rajib Saha, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	01.04.2024
Date of delivery of Judgment and Order	:	23.04.2024
Whether fit for Reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

This appeal is preferred under Section 374 of Cr.P.C. challenging the judgment and order of conviction and sentence dated 23.02.2023 passed by Learned Special Judge (POCSO), Sepahijala Tripura, Sonamura, in connection with case No.Special (POCSO) 03 of 2019. By the said judgment, Learned Trial Court has convicted the appellant to suffer rigorous imprisonment for 3 (three) years and to pay a fine of Rs.5,000/-(Rupees five thousand only) and in default to suffer further simple imprisonment for 3 (three) months for

commission of the offence punishable under section 8 of POCSO Act, 2012.

02. Heard Learned Counsel, Mr. Rajib Saha for the appellant and also heard Learned Additional P.P., Mr. S. Ghosh representing the prosecution. Before coming to the conclusion of this appeal, let us revisit the subject matter of the prosecution case before the Learned Trial Court.

The prosecution case in short was that on 24.05.2018, one Rojina Akter, wife of Mannan Miah of UNC Nagar, laid one written complaint to the O/C Sonamura P.S. alleging inter-alia that on 23.05.2018 at about 1600 hours, the FIR named accused namely Kuddos Miah took her minor daughter to his house by inducing her to give biscuits. On arrival to his residence, he disrobed the inner wear of the minor daughter of the informant and touched her private part. Thereafter, he tried to commit rape upon the minor daughter of the informant when the minor daughter of the complainant started hue and cry then the accused Kuddos Miah pressed her mouth and started assaulting her. On seeing the incident, the wife of accused started hue and cry and after that the accused left the minor daughter of the informant and started beating his wife. While the wife of the accused and minor daughter of Rojina Akter raised alarm, that time the local people came there and saved the minor daughter of the informant. Hence, the informant laid the FIR. O/C, Sonamura P.S. accordingly registered Sonamura P.S.

Case No.59 of 2018 under Section 376(2)(i) of IPC and Section 6 of POCSO Act and the case was endorsed to S.I. Bikash Debbarma for investigation. The I.O. after completion of investigation laid charge-sheet against the accused-appellant under Section 376(AB) of IPC and Section 6 of the Protection of Children from Sexual Offences Act, 2012 vide C/S No.24/2019 dated 10.05.2019. Before the Learned Trial Court, charge of Section 376(2)(i) IPC read with Section 4 of POCSO Act was framed against the appellant to which he pleaded not to be guilty and claimed to be tried.

03. To substantiate the charge, prosecution in this case has adduced in total 11 Nos. of witnesses and the prosecution also tendered and relied upon some documents which were marked as Exhibits:

Name of the Witnesses:

1. PW1- The Victim.
2. PW2- Rojina Akter.
3. PW3- Mannan Miah
4. PW4- Dr. Sharmistha Das.
5. PW5- Maiful Khatun.
6. PW6- Sarmila Debbarma.
7. PW7- Maiful Bibi.
8. PW8- SI Srikanta Chakraborty.
9. PW9- Sri Ramanuj Bhattacharjee.
10. PW10- Dr. Sabyasachi Nath.
11. PW11- SI Bikash Debbarma.

Exhibited Document:

Exhibit-1 : The written complaint.

Exhibit-1/1: Signature of PW-1 in the written complaint.

Exhibit-1/2: The endorsement of PW-8 on the written complaint.

Exhibit-2 : The medical report of the victim dated 24.05.2018.

Exhibit-3 : The consent letter with signature of the mother of the victim.

Exhibit-4 : The medical report of accused dated 25.09.2019.

Exhibit-5 : The formal FIR.

Exhibit-5/1: Signature of PW-8 in the formal FIR.

Exhibit-6 : The statement of the victim under Section 164(5) of Cr.P.C. recorded by PW-9.

Exhibit-6/1(as a whole): Signature of PW-9 on statement of the victim u/s 164(5) of Cr.P.C.

Exhibit-7 : The seizure list dated 03.07.2018.

Exhibit-7/1: Signature of PW-2 in the seizure list dated 03.07.2018.

Exhibit-7/2: Signature of PW-11 in the seizure list dated 03.07.2018.

Exhibit-7 : The SFSL report dated 10.10.2018.

Exhibit-7/1: Signature of PW-10 on the SFSL report.

Exhibit-8(as a whole): The forwarding of the Director and his signature on it.

Exhibit-9(as a whole): The hand sketch map of P.O. and signature of PW-11 on it.

Exhibit-10(as a whole): The index of hand sketch map and signature of PW-11 on it.

Exhibit-11: The seizure list dated 24.05.2018.

Exhibit-11/1: Signature of PW-11 in the seizure list dated 24.05.2018.

Exhibit-12: The seizure list dated 05.08.2018.

Exhibit-12/1: Signature of PW-11 in the seizure list dated 05.08.2018.

Exhibit-13: The seizure list dated 25.09.2018.

Exhibit-13/1: Signature of PW-11 in the seizure list dated 25.09.2018.

Exhibit-M.O-1: The original Birth certificate of the victim.

Finally on conclusion of trial, after considering the evidence on record, Learned Trial Court found the appellant

to be guilty and convicted him under Section 8 of the POCSO Act for which the appellant has preferred this appeal.

04. In course of hearing, Learned Counsel for the appellant submitted that in this case, the evidence of prosecution suffers from various infirmities because none of the witnesses of the prosecution were corroborated the evidence of each other. Because according to Learned Counsel for the appellant, the evidence of informant, her husband and the victim are totally contradictory to each other. So, on the basis of contradictory evidence, no conviction can be sustained against the appellant. Furthermore, according to Learned Counsel, no independent eye witnesses or the neighbouring persons whose residences according to prosecution are in close proximity to the residence of the victim were cited as witness in this case. Learned Counsel further submitted that as per statement of the victim and her father and mother, it was revealed that the victim narrated the entire fact of incident to the Medical Officer of Matinagar PHC but in absence of any police case, no medical examination was done by the concerned Medical Officer. But unfortunately, the prosecution in the case did not examine said Medical Officer to substantiate the charge and finally, Learned Counsel for the appellant submitted that since the evidence of prosecution suffers from various infirmities and there is no medical evidence on record against the appellant, so, in absence of corroborating evidence on

record solely on basis of evidence of the victim, no punishment could be imposed against the present appellant. But the Learned Trial Court below at the time of delivery of judgment did not consider all these aspects and found him guilty and convicted him accordingly, for which interference of the Court is required and Learned Counsel also referred some citations on this issue and submitted that those citations would be very much material for decision of this case and on the basis of principles of the those citations, there is no scope to convict the appellant and urged for allowing this appeal and to set free the appellant.

05. On the other hand, Learned Additional P.P., representing the prosecution, submitted that in this case the appellant, by the trend of cross-examination could not unshake the evidence of the victim. Admittedly, there may be some contradictions on the evidence of the prosecution witnesses but for those loopholes, there is no scope to disbelieve the entire case of the prosecution and according to Learned Additional P.P., Learned Trial Court, after considering the evidence on record rightly found the appellant to be guilty and convicted him accordingly and urged for dismissal of the appeal, upholding the judgment of the Learned Trial Court.

06. To prove the case, Learned Court below at the time of delivery of judgment, determined the following points for decision of this case:

(i) Whether on 30.05.2018 at about 1600 hours at N.C. Nagar under Sonamura P.S the accused Kuddos Miah forcibly committed rape upon the victim.

(ii) Whether on the aforesaid date, time and place the accused Kuddos Miah committed sexual assault upon the victim.

07. Now, before coming to the conclusion, let us revisit the evidence on record of the prosecution on the basis of which the Learned Court below found the appellant to be guilty.

PW2, Rojina Akter is the informant of this case. She laid the FIR to O/C, Sonamura P.S., which was scribed by one Goutam Shil and she identified her signature on the bottom of Ejahar, which was marked as Exhibit1/1. She further deposed that the appellant is their adjacent neighbourer and relative also. On 23.05.2018 in the afternoon, probably at about 04:00 P.M., the alleged accused came to their house and brought her daughter to his house. After sometime, from his house (appellant) on hearing shouting her husband went therein and brought her daughter on his lap. Thereafter, being asked she (victim) stated to her that the accused after taking her to his residence closed the door and thereafter opened the wearing pant and tried to enter his male organ inside her vagina. That time, her daughter raised alarm when the accused grabbed the mouth of her daughter, after that they brought their daughter to Matinagar Hospital when the Doctor without any requisition from P.S. refused to examine her daughter and advised them

to go to police station and accordingly, on the following day they came to P.S. and laid the FIR.

During cross by the accused appellant, she was confronted with the statement that she stated in her ejahar and to the I.O. that the accused, after taking her daughter to his residence closed the door and but that portion was not found in the ejahar and also the statement of the witness recorded by I.O. She was further confronted with the statement that on hearing shouting of her daughter, her husband went to the residence of the accused and brought her daughter back at home on his lap. This portion was also not found in the ejahar and also in the statement of witness recorded by I.O. under Section 161 of Cr.P.C. She was again confronted with the statement that she stated in the ejahar and to the I.O. that after returning back to home, her daughter narrated the entire fact of incident to her. But on drawing attention the said statement was not found in the ejahar and also in the statement recorded by I.O. under Section 161 of Cr.P.C. He was also confronted with the statement that he stated in the ejahar and to the I.O. that the accused brought his daughter to his house along with his bike but the same was not found in the ejahar and also in the statement recorded under Section 161 of Cr.P.C.

08. PW3, Mannan Miah deposed that on 23.05.2018 in the morning, he went to Kamalnagar for the purpose of his daily works and at about 4 P.M. he returned back to his

home at UNC Nagar when he heard shouting of his daughter, i.e. the victim, aged about 4 years from the house of accused and accordingly, he rushed towards the house of the accused and found his daughter without any panty and in crying condition. Immediately, his wife brought his daughter to Matinagar Hospital in the evening when in presence of Doctor, his daughter stated that in the house of Kuddos when his daughter went, that time, the accused tried to insert his penis into the vagina of his daughter for which she sustained injury and pain. But the concerned Medical Officer in absence of any record of police station did not examine her and asked his wife to go to P.S. Thereafter, his wife returned back to home and narrated him everything and by this time it became night. So, on that day, they did not take any step and on the following day, his wife along with the daughter went to Sonamura P.S. and filed the case and after that by the intervention of police his daughter was medically examined and identified the accused in the Court in the dock.

During cross-examination, he deposed that his house and the house of accused are intervened by three houses. On the following day, he could know from his wife over telephone that the accused committed the crime. Further, stated that he would not be able to say the contents of the FIR laid by his wife at P.S. Again he stated that on the following day at about 4 P.M. he returned back to home from his workplace. He was confronted with the statement that he

stated to the I.O. in presence of Medical Officer, his daughter narrated that the accused tried to enter his male organ into her vagina for which she sustained injury and pain but that part of statement was not found in the statement of witness, recorded by I.O. under Section 161 of Cr.P.C. He was further put under suggestion that on the alleged day, his wife did not report him anything over phone and at Matinagar Hospital, his daughter did not divulge anything to the Medical Officer regarding causing of offence by the alleged accused. And further submitted that on the day, after returning back to home, he did not hear shouting of his daughter from the residence of Kuddos Miah and after that he did not rush to his residence and thereafter, did not find her daughter in naked condition and being in crying condition and also did not bring her to home. He was further re-examined by the prosecution and on re-examination, he identified the birth certificate of his daughter which was seized by I.O. by preparing seizure list and identified his signature on the seizure list marked as Exhibit-7/1.

09. PW1 is the victim. Before recording her examination, her veracity was tested and being found that she was capable to make statement, her evidence was recorded. She deposed that on the day of alleged incident in the evening, the accused, Kuddos Miah(Nana) came to their residence and brought her to his residence by bike, After that, he closed the door and opened his pant and tried to

enter his penis(Nantu). She raised alarm when he gagged her mouth. By this time, her father came and took her back to her residence and she disclosed everything to her mother and identified the accused in the Court in the dock.

During cross-examination, save and except denial nothing came out relevant.

10. PW4, Dr.Sharmistha Das deposed that on 24.05.2018, she was attached to Sonamura CHC. On that day, she examined one victim aged 4 years in connection with Sonamura P.S. Case No.59 of 2018 who was brought by one woman constable and before conducting her medical examination, the consent of her mother was taken. After examination, one lacerated wound was found over anus 10 O'clock position. Dried blood sample was sent to the Forensic Laboratory along with the vaginal swab and after receipt of the report, she came to the conclusion that there was no seminal stain spermatozoa of human origin in Exhibit-B, C and D. Thereafter, he laid her report. She identified the report marked as Exhibit-2(5 sheets) on identification. She also identified the consent letter which bears the signature of the mother of the victim is marked as Exhibit-3. She also examined the accused Kuddos Miah in connection with this case and after examination, it appeared to her that the accused was not in capable of sexual intercourse. She laid her report and identified the report marked Exhibit-4.

During cross-examination she stated that she did not notice any sign of penetration of the victim.

11. PW5, Maiful Khatun deposed that she was returning back to her home from her parent's house about one and half years back when she found that Mannan Miah called his daughter from the residence of Kuddos Miah. On the following day morning, the victim went to her school and at about 11.00 A.M., she returned back to her home and told her mother about the alleged occurrence. That time, she could know from Rojina Akter and the victim that on the earlier day in the afternoon when the victim went to the residence of the alleged accused that time the accused Kuddos Miah tried to enter his male organ over the vagina of the victim. After that the informant filed the case.

During cross-examination, she deposed that Rojina Akter is her sister-in-law and her residence from the residence of Kuddos Miah would be intervened by two houses and almost after a day from the time of alleged occurrence of offence she could hear the said fact. Again she stated that her family and the family of Rojina used to reside in the same house compound. She further stated that Rojina also used to reside with her minor daughter and husband in the same house and nearby their house there were some other houses.

12. PW6, Sharmila Debbarma deposed that on 24.05.2018 she was attached to Sonamura as a women

constable of police. On that day, she brought the victim aged about 4 years to Sonamura CHC for her examination and in the afternoon, the victim was examined by Dr.Sharmistha Das after taking consent and after examination, the victim was handed over to her natural guardian.

13. PW7, Maiful Bibi deposed that the victim was her grand-daughter. The accused Kuddos Miah took her to his house and after hearing hue and cry, her father took her back from the house of Kuddos Miah and after returning back the victim told her parents that the accused tried to commit sexual assault to her by removing her pant. She heard the incident from the parents of victim. Thereafter her grand-daughter was brought to Sonamura Hospital for her medical checkup. She further stated that at the time of incident, the victim was about three years and identified the accused in the Court in the dock.

During cross, she deposed the house of Kuddos Miah is situated at a distance of 300 meters from her house and the relation between her son and Kuddos Miah was not good for a long time. Nothing more came out relevant.

14. PW8, SI Srikanta Chakraborty. He deposed that on 24.05.2018 he was working as SI of police attached to Sonamura P.S. On that day, he received one written complaint of Rojina Akter at Sonamura PS and accordingly he registered Sonamura P.S. case vide No.59/2019 under Section 376(2)(i) of IPC and Section 6 of POCSO Act. He

identified his endorsement on the original complaint marked Exhibit-1/2, 5 and 5/1 and the case was endorsed to SI Bikash Debbarma for investigation.

15. PW9, Ramanuj Bhattacharjee deposed that on 24.05.2018 he was working as JM 1st Class, Sonamura, West Tripura. On that day, one woman constable, Sharmila Debbarma produced the victim aged 4 years for recording her statement under Section 164(5) of Cr.P.C. Before recording her statement, her veracity was tested and thereafter the witness being satisfied that the victim was in a position to give her statement voluntarily and after recording the same explained the same to her in Bengali and after knowing the contents of her statement, the victim put her thumb impression on the statement recorded by the witness. He also gave certificate on the statement and put his signature. He identified the thumb impression of the victim recorded by him. He also identified his signature on the 164 statement in two pages marked as Exhibit-6 and 6/1.

During cross, he stated that in the statement the date and time of the occurrence was not mentioned. Said witness volunteered that the victim could not divulge the date and time of the alleged incident.

16. PW10, Dr.Sabyasachi Nath deposed that on 01.10.2018 he was working as Senior Scientific Officer-Cum-Assistant Chemical Examiner (Bio/Sero Division), attached to Tripura State Forensic Science Laboratory, Narisingarh and

on that day, their office received one sealed packet vide memo No.72/SDPO/SNM/18 dated 30.09.2018 from the Sub-Divisional Police Officer, Sonamura, Sepahijala Tripura and he disclosed about the details of exhibits received.

Detail of parcel and exhibits received

One sealed parcel bearing gala seals(SDPO, Sonamura) contains the following exhibits:

1. Exhibit-A: One sealed paper envelope bearing case reference, a write up 'blood sample' in sterile gauge piece of Kuddos Miah, and signature with dated (29.09.2018) and stamp seal impression of M.O in-charge Sonamura CHC, Sonamura, Govt. of Tripura contains some pieces of brownish stain gauge cloth, said to be dry blood sample of Kuddos Miah.
2. Exhibit-B: One test tube bearing a write up 'Sagarika Akter age-4 years, vaginal swab contained a stick wrapped with a small piece of cotton, said to be vaginal swab and smear of Sagarika Akter.
3. Exhibit-C: One test tube bearing a write up 'Sagarika Akter' age-4 years, urethral swab contained a stick wrapped with a small piece of cotton, said to be urethral swab and smear of Sagarika Akter.
4. Exhibit-D: One test tube bearing a write up 'Sagarika Akter' age-4 years, anal swab contained a stick wrapped with a small piece of cotton, said to be anal swab and smear of Sagarika Akter.
5. Exhibit-E: One paper packet bearing a write up "dried blood sample" contains some pieces of brownish stained gauge cloth, said to be dry blood sample of Sagarika Akter.

Results of Examination:

The above described exhibits were subjected to visual examination under different light sources, acid phosphatase test, microscopic examination. The result based on the tests, are:

- (i) Seminal stain/spermatozoa of human origin could not be detected in the exhibits- B, C and D.

The witness identified his report vide No. SFSL/801/18/BIO/SERO/162/18 dated 10.10.2018 marked as Ext.7 and 7/1 and identified the forwarding of the Director, Dr.H.K. Pratihari, Director-cum-Chemical Examiner

which was marked as Exhibit-8(as a whole). He was declined to cross-examination by the accused.

17. PW11, SI, Bikash Debbarma is the IO of this case. He deposed that on 24.05.2018 he was working as SI of Police attached to Sonamura PS. On that day, OC, Sonamura PS endorsed this case to him for investigation and accordingly he took up investigation of this case. During investigation, he visited the place of occurrence and prepared hand sketch map of P.O. marked as Exhibit-9(as a whole) and Exhibit-10(as a whole). He examined some witnesses and recorded their statements under Section 161 of Cr.P.C. and identified the original ration card and Aadhar card by preparing seizure list marked Exhibit-11 and Exhibit-11/1. He submitted a prayer before the Court for recording statement of the victim. On 03.07.2018 he seized one birth certificate of the victim and identified the seizure list marked as Exhibit-7 and his signature marked Exhibit-7/2 and seized certificate marked as Exhibit-M.O.-1. He further deposed that on 24.05.2018, he made arrangement for examination of the victim by medical officer and accordingly, she was examined and he identified the report. On 05.08.2018 he himself seized the vaginal swab, urethral swab, anal swab and dried blood sample and smear by preparing seizure list and identified the seizure list prepared by him marked Exhibit-12 and 12/1. He first arrested the accused and forwarded him before the Court and he also arranged for sending the seized

samples to the SFSL and after completion of investigation, being prima facie satisfied, he laid charge sheet-against the accused.

During cross, he deposed that he did not record the statement of R/O SI Srikanta Chakraborty and also did not examine the Doctor of Matinagar Hospital in whose presence the victim narrated the story. He further deposed that he did not seize any wearing apparels of the victim and also did not examine any person from the neighbouring houses of Jashim Miah and Abdul Mannan and also during investigation, he did not try to find out the distance between the houses of the informant and the accused. During investigation, he did not collect any injury report of the wife of the accused. He further stated that he examined the informant on 24.05.2018 when she did not state to him that on that day, the accused confined the victim to his house by shutting down the door and she also did not disclose him that her husband, after returning back to the house when he did not see his daughter, he went to the house of accused and brought her daughter and she (victim) disclosed all facts to them. She (informant) also did not disclose that accused took her daughter by motor bike. He examined Mannan Miah on 24.05.2018 and during examination he did not disclose that when he took his daughter to the Doctor in front of him he disclosed that the accused touched his penis to the vagina of the victim and tried to commit rape on her. He did not

examine the seizure witnesses and nor recorded their statements. He again stated that in course of investigation, he did not find any previous antecedent of the accused in respect of his involvement in any other offence.

These are the synopsis on the evidence on record of the prosecution in respect of determination of the case.

18. The appellant-accused in course of his examination under Section 313 of Cr.P.C. desired his willingness to adduce witness. Accordingly, in support of his defence, he has adduced two witnesses. DW1, Babul Miah deposed that he know the alleged accused and the informant. According to this witness, the accused had a business relation with Mannan Miah but in the year 2017, relating to their business some dispute arose amongst the accused and said Mannan Miah for which Kuddos Miah made a complaint and he was acted as Sardar. Two meetings were held and they could not settle the dispute and finally wife of Mannan Miah, Rojina Akter laid the case against the accused. During cross-examination, he stated that he has got no idea about the instant case. DW2 Ahib Miah also deposed in the same manner like DW1. During cross-examination he stated that he has got no idea about this case.

19. At the time of hearing, Learned Counsel Mr. Rajib Saha, representing the appellant submitted that in this case the prosecution could not adduce any independent witness to support the case of the victim because according to him the

evidence of the informant, victim and her father are contradictory to each other. Furthermore, referring the evidence of informant, Rojina Akter he deposed that if her evidence is considered, it would be presumed that before the Court, she made totally a new story which she did not mention in the FIR or to the IO in course of her recording statement under Section 161 of Cr.P.C. Furthermore, the father of the victim also made a new story that he was not present to the place of occurrence at the time of alleged occurrence. Rather he stated that that on the following day, after coming back to home, he could know the fact of incident from his wife. Prosecution in this case could not produce any independent witnesses who are the neighbours of the informant to support the prosecution story. Furthermore, the medical evidence on record also does not justify the conviction of the appellant. Learned Counsel further submitted that since in this case, the evidence of the informant and her husband are totally contradictory to each other, so, simply on the basis of sole evidence of the victim, which is also not free from any kind of embellishment, there is no scope to convict the appellant in this case. Furthermore, Learned Counsel also submitted that in absence of corroboration of the evidence on record of the informant and her husband i.e. PW2 and PW3, there is no scope to take any adverse inference against the appellant of this case and prayed for acquitting the appellant from the charge of this case.

20. On the other hand, Learned Additional P.P., Mr. S. Ghosh fairly submitted that in this case, the accused by the trend of cross-examination could not create any doubt to the sole evidence of the victim girl. So, there is/was no ground to disbelieve her evidence. Furthermore, Learned Counsel submitted that in this case, some contradictions are there on the evidence of the prosecution but for those contradictions there is no scope to disbelieve the evidence on record of the victim whose evidence was totally remained unshaken by the accused appellant. So, Learned Counsel prayed for dismissal of the appeal, upholding the conviction and sentence awarded by Learned Special Judge. So, finally, Learned Additional P.P. urged for upholding the conviction.

21. I have heard arguments of both the sides and gone through the record of the Learned Court below. In this case, to substantiate the charge, prosecution has adduced 11 nos. of witnesses. The synopsis of the prosecution evidence is highlighted above. After going through the evidence on record, it appears that the informant of this case during her examination-in-chief tried to support her version in the FIR but in course of cross-examination, it appears that she made some improvement in her version. Similarly, PW3, husband of the informant in course of her examination-in-chief tried to support the version of the informant but during cross-examination, although he admitted that on the following day of the incident he could know the fact from his wife but he

was again put under suggestion by the accused that on the following day, he did not hear the said fact from his wife. So, from the cross-examination part of the said witness, the appellant-accused could not derive any benefit. Other witnesses, PW5 and PW7, Maiful Khatun and Maiful Bibi, they deposed just after hearing the fact from the informant party. So, virtually there is very least scope to place any reliance upon their evidence. Now, we are to see how far the evidence of the victim is trustworthy. If we go through the evidence of the victim, PW1, it appears that during her examination-in-chief she narrated everything as to how the accused committed the crime on the alleged day. But unfortunately, during cross-examination, the appellant-accused totally failed to make any counter to disbelieve her evidence and before the Magistrate, she also narrated the same episode which was confirmed by PW9, Sri. Ramanuj Bhattacharjee, JM 1st Class who recorded the statement of the victim under Section 164(5) of Cr.P.C during investigation. The accused-appellant by the trend of cross-examination of the said witness also could not take any step to disbelieve his evidence. It is to be noted here that during examination under Section 313 of Cr.P.C., the appellant-accused desired his willingness to adduce witness and accordingly, the accused has adduced in total two witnesses in support of his evidence.

22. Even from the evidence of the accused also it appears that the appellant-accused through his evidence could not take any step to disbelieve the prosecution story. Rather DW1 and DW2, in course of their evidence very specifically stated that they had got no idea about the instant case. In course of their examination-in-chief, although they tried to say that due to some business affairs the relation between the appellant and the husband of the informant became strain but from their evidence it cannot be said that present prosecution was the outcome of the said dispute. So, legally there is no scope to place any reliance upon the evidence of the appellant-accused.

23. Learned Counsel for the appellant, in course of argument relied upon few citations:

In **Chhagan Dame vs. State of Gujarat** dated 23.03.1993 reported in **(1994) AIR SC 454**, Hon'ble the Supreme Court in para No.4 observed as under:

"4. Since this is a regular appeal, we have gone through the evidence of PW 2, PW 3, PW 4 and PW 6 meticulously. PW 2 was aged about 8 to 10 years and by way of cross-examination to a question put to her, she stated that if she tells a lie, the police will beat her and she was afraid of police. She stated that at about 7.30 a.m. when her mother was going for work and on the way her father, namely, the appellant came and started giving blows with a knife. She also saw accused 2 inflicting knife-blows on the deceased. Thereafter, the father ran away. She further deposed that as soon as her father started running away, Jakalben and one Maharaj (PW 4) came there. She sent her brother (PW 3) to inform the grandmother. In the cross-examination, she admitted that she was afraid of the police personnel and that before informing the Court, one police officer and two other policemen told her to tell only whatever she had seen and that the police officer

recorded her statement and they went on saying that she had to give her evidence according to her statement already recorded. She further admitted that the police first recorded the statement of her maternal grandmother and then her statement. She does not say that she informed anybody nor mentioned about her father having stabbed the deceased to PW 4. Having considered the answers given by her, namely, that she was made to give evidence according to her statement under Section 162, creates doubt whether she could have been tutored. In the case of a child witness, the Court has to carefully consider whether the child was under the influence of any tutoring. In the case, her answers to the questions in the cross-examination clearly indicate that she was tutored and she was made to give evidence in accordance with the earlier statement recorded under Section 162. Therefore, we find it highly unsafe to place reliance on her evidence. PW 3 was another child eyewitness and the son of the appellant and the deceased. He deposed that on the day of incidence, he was going to the residence of PW 6 along with the deceased and PW 2 was also there and they were going with their mother when their father, namely, the appellant came there with two more persons with cycles and started beating the deceased. He then went to his grand-mother and told her that his father had killed the deceased. In the cross-examination, he admitted that he was informed by one lady about the incident and that was how he indicated to his grandmother. Further, he clearly admitted that the said lady told him that someone was beating the deceased and he ran towards the place of incident and when he reached the place of incident, the accused had run away from the place of occurrence. These answers would indicate that he went to the scene of the occurrence only after the accused had run away and therefore he could not have seen the appellant inflicting any injury on the deceased. PW 3 further implicated 3 more persons including accused No. 2. In these circumstances, we find it highly unsafe to rely on the evidence of the eye-witnesses. PW 3 also admitted in the cross-examination that the police personnel met him and that he was afraid of the police and had given the evidence as told by the police personnel. This again shows that he was under the influence of the police and the possibility of tutoring cannot be excluded. If the evidence of these two witnesses is excluded, then PW 4's evidence is of no consequence. However, he deposed that he heard some cries and came out from his cottage and saw a lady lying and only saw one person having a knife in his hand. He further said that he saw a girl at the scene of occurrence who told him that the person

having a knife was her father. But PW 2 in her evidence nowhere stated that she told PW 4 that the person holding the knife was her father. Under these circumstances, PW 4's evidence also becomes highly doubtful. The learned Sessions Judge has considered all evidence in detail and given good reasons for rejecting the same. The view taken by him cannot be said to be unreasonable and does not call for any interference in an appeal against acquittal by the High Court. For all these reasons, the conviction and sentence awarded to the appellant are set aside and his bail bonds shall be cancelled."

24. In **Pradeep vs State of Haryana** dated 05.07.2023, reported in **(2023) SCC OnLine SC 777**, Hon'ble the Supreme Court in para No.9 observed as under:

"9. It is a well-settled principle that corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. A child witness of tender age is easily susceptible to tutoring. However, that by itself is no ground to reject the evidence of a child witness. The Court must make careful scrutiny of the evidence of a child witness. The Court must apply its mind to the question whether there is a possibility of the child witness being tutored. Therefore, scrutiny of the evidence of a child witness is required to be made by the Court with care and caution."

25. In **Dattu Ramrao Sakhare vs. State of Maharashtra** dated 08.05.1997, Hon'ble the Maharashtra High Court in para No.5 observed as under:

"5. The entire prosecution case rested upon the evidence of Sarubai (PW 2) a child witness aged about 10 years. It is, therefore, necessary to find out as to whether her evidence is corroborated from other evidence on record. A child witness if found competent to depose to the facts and reliable one such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the question and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. The only precaution which the court should bear in mind while assessing the evidence of a

child witness is that the witness must be reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record. In the light of this well-settled principle we may proceed to consider the evidence of Sarubai (PW 2)."

26. Referring the said citations, Learned Counsel for the appellant submitted that in this case, excepting the evidence of the victim there is no other corroborating evidence to sustain conviction against the appellant and even, if the evidence of victim is carefully analyzed, it can be seen that her evidence is also not trustworthy to sustain conviction against the appellant and urged for acquitting the appellant from the charge of this case. Here in the given case, the victim in course of her examination, made statement in such a manner from which it appears that there is no room to disbelieve her evidence and furthermore, as already stated the appellant also by the trend of cross-examination could not even raise a single doubt to disbelieve her evidence. Although there is some contradiction to the evidence of informant but from the trend of cross-examination of PW3 i.e. the father of victim, it appears that the appellant could not derive any benefit in support of his defence and more so, by adducing defence witness, the appellant could not project any case to disbelieve the prosecution story rather the witnesses of the appellant very

specifically stated that they have/had no idea about the case and from their examination-in-chief it cannot be said that the present prosecution was the outcome of the enmity in between the appellant and the father of the victim.

27. Further in Ganesan vs. State represented by its Inspector of Police dated 14.10.2020 reported in **(2020) 10 SCC 573**, Hon'ble the Supreme Court in para No.10.1 observed as under:

"10.1.*****

11. In State of Punjab v. Gurmit Singh:(1996) 2 SCC 384, this Court held that in cases involving sexual harassment, molestation, etc. the court is duty-bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21)

"8. ... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.... The courts must,

while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case.... Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.... Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. ...

xxx xxx xxx

21. ... The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend *assurance* to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

(emphasis in original)

12. In *State of Orissa v. Thakara Besra*: (2002) 9 SCC 86, this Court held that rape is not mere physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination

even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In *State of H.P. v. Raghubir Singh*: (1993) 2 SCC 622 this Court held that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity.

A similar view has been reiterated by this Court in *Wahid Khan v. State of M.P.*: (2010) 2 SCC 9 placing reliance on an earlier judgment in *Rameshwar v. State of Rajasthan*, AIR 1952 SC 54.

14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

From the aforesaid principal of law laid down by the Hon'ble Apex Court, it appears that here in the case, the evidence of the victim is so trustworthy that there is no scope to disbelieve her evidence and the presumption of guilt lies in favour of the prosecution of this case, showing the appellant to be guilty for the alleged offence for which the appellant was charged and found to be guilty.

28. Thus, from the discussions, it appears that the appellant of the present case has failed to prove that the judgment of the Learned Trial Court below suffers from infirmities and is perverse. So, I find no scope to acquit the appellant from the charge of this case.

29. In the result, the appellant fails being devoid of merit. The judgment and order of sentence and conviction passed by the Learned Special Judge (POCSO) in Special (POCSO) No.03 of 2019 is affirmed and accordingly it is upheld.

Pending application(s), if any, also stands disposed of.

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

JUDGE



सत्यमेव जयते

**SABYASACHI
BHATTACHARJEE**

Purnita

Digitally signed by SABYASACHI
BHATTACHARJEE
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