

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.16 OF 2023**

Raju Chakma,
S/o. Sri Sushanta Chakma,
Of Harijan Colony, Sukantanagar,
P.S.- Kumarghat,
District- Unakoti Tripura.

.....**Convict-Appellant(s)**

Versus

The State of Tripura,

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

For the Appellant(s) : Mr. V. Poddar, Advocate.

For the Respondent(s) : Mr. R. Datta, Public Prosecutor

Date of hearing and delivery of
Judgment & Order : 06/02/2024

Whether fit for reporting : NO.

**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 appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973 against the Judgment and Order of conviction and sentence dated 31.03.2022 passed by the learned Special Judge, Fast Track Special Court, Unokoti Judicial District, Kailashahar, in connection with Case No. Special (POCSO) 17 of 2019 convicting the appellant in the following manner:-

i. To suffer rigorous Imprisonment (RI) for a period of 12(Twelve) years and to pay a fine of Rs. 20,000/- (Rupees Twenty Thousand) only in default to suffer R.I for 6 (Six) months for the commission of the offence punishable under Section 6 of POCSO Act, 2012.

ii. To suffer rigorous imprisonment (R.I) for a period of 1 (One) year and to pay a fine of Rs. 500/- (Five Hundred) only in default to suffer rigorous imprisonment (R.I) for 1 (One) month for commission of the offence punishable under Section 448 of the Indian Penal Code.

iii. To suffer rigorous imprisonment (R.I) for a period of 1 (One) year and to pay a fine of Rs. 500/- (Five Hundred) only in default to suffer R.I.for 1(one) a month for the commission of offence punishable under Section 506 of the Indian Penal Code.

2. The brief fact of this case is that the convict-appellant visited the house of the complainant at different times for a period of about five months when the minor daughter of the complainant i.e. victim was aged about 14 years old and was alone in the house. Convict-appellant during such visits would not allow the victim to go her school. It is further alleged that he used to indulge in sexual relations with her. It is also alleged that when the victim refused, the convict-appellant threatened to kill her parents and committed rape upon her on several

instances. Consequent to this, the victim became pregnant and subsequently gave birth to a child. Noticing the physical change of the victim, her mother enquired and then came to know from her that the convict-appellant committed rape upon her and caused the pregnancy. Thus, the complainant filed this case on 13.08.2019 before Officer-in-Charge Kumarghat PS.

3. On receipt of FIR, police registered the case as Kumarghat PS Case No. 39 of 2019 dated 13.08.2019 under Section 376(3) of IPC and 6 of POCSO, 2012. Thereafter, the investigation was started against the accused person i.e. the appellant herein. After completion of the investigation, the investigating officer submitted a charge-sheet vide KGT P/S Case No. 56 of 2019, dated 12.09.2019 Under Section 376 (2)(F)(N) 376(3) 506 of IPC and Section 6 of POCSO Act, 2012 against the appellant herein.

4. Charge-sheet was received on 27.09.2019 by the Court of Learned District and Sessions Judge being the Court of the Special Judge, (POCSO). Subsequently, the case was transferred to Fast Track Special Court, on 31.10.2019 for trial as per law. Thereafter, upon hearing of both sides on the point of framing of charge and considering prima-facie material on record, charge under Sections 448/376(2)(i)(n)/506 of IPC and Section 6 of POCSO Act, 2012 were framed against the accused-

appellant herein to which he pleaded not guilty and claimed to be tried in open Court.

5. To prove the charge, the prosecution examined 19(nineteen) prosecution witnesses and also exhibited some documents. On the other hand, convict appellant did not adduce any defense witnesses.

6. After examination of P.W.s, the convict appellant was examined under section 313 of Criminal Procedure Code, 1973. After hearing the argument of both sides on 03.02.2022, the learned Special Judge, Fast Track Special Court, Unakoti Judicial District, Kailashahar passed the impugned judgment of conviction and sentence dated 31.03.2022 convicting the convict appellant as mentioned herein above.

7. Being aggrieved and dissatisfied with the impugned Judgment and Order of Conviction and Sentence dated 31.03.2022, the convict-appellant has preferred this present appeal praying to set aside and quash the impugned Judgment and Order of Conviction and Sentence dated 31.03.2022.

8. Heard Mr. V. Poddar, learned counsel appearing for the convict appellant as well as Mr. Raju Datta, learned P.P., appearing for the State-respondent.

9. Mrs. V. Poddar, learned counsel appearing for the convict-appellant submits that evidence so adduced by the

prosecution in respect of the age of the victim cannot be relied upon. The birth certificate cannot be considered as conclusive evidence to determine the age of the victim when it does not disclose its source of information. P.W.-13, the Headmaster of the School stated that "*I do not know on what basis Singcherra J.B. School mentioned the date of birth of Sagarika Chakma*". Learned counsel submitted that in so far as Sections 448 and 506 of the Indian Penal Code are concerned, the victim in her statement given under Section 164(5) of Cr.P.C. stated that "*At that time, Rahul Chakma, the son of my uncle(jethu) visited our home and engaged in unwanted and illicit sex.....*". Learned counsel further submitted that there was a consensual relation between the victim and the convict appellant as she did not disclose anything to her parents after the first instance.

10. On the other hand, Mr. Raju Datta, learned P.P., appearing for the respondents opposed the said submission of the learned counsel appearing for the petitioner and relied upon the principles given by the Hon'ble Apex Court in Judgment and Order reported in (2018) 17 SCC 658 titled as State of Madhya Pradesh Vs. Preetam dated August 29, 2019. Learned P.P., urged this Court to dismiss this present appeal and confirm the Judgment and Order passed by the Court below.

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

12. In so far as the case of the convict-appellant is concerned, the point which has been ventilated before this Court is that the school certificate issued by the headmaster which cannot be relied upon as the same is not supported by the production of any register(s) and also, a categorical statement is not made indicating the register(s), the page numbers and other things. As such, learned counsel appearing for the convict-appellant prayed before this Court to not give any relevance to the said age proof as the prosecution could have adopted some other means.

The arguments advanced by the learned counsel for the convict-appellant has been opposed by the learned Public Prosecutor and to support his argument, learned P.P., relied upon the State of Madhya Pradesh Vs. Preetam(supra) and prayed before this court to dismiss the present appeal and confirm the order passed by the Court below.

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

14. This Court in the exercise of its discretion draws a conclusion that though the victim is a minor under the POCSO Act 2012, but, considering the submission of the learned

counsel for the convict-appellant and the family background responsibilities of the convict-appellant, invoking of Section 6 the POCSO Act, 2012 prior to the POCSO (Amendment) Bill, 2019 is taken into consideration. Accordingly, the punishment of the convict appellant under Section 6 of the POCSO Act, 2012 is modified.

15. The punishment of 12 years of rigorous imprisonment of the convict-appellant under Section 6 of the POCSO Act, 2012 is reduced to 10 years since the offence pertains to the year dated 01.03.2019 to 12.08.2019 and the amendment came to effect in 16.08.2019, wherein, prior to the amendment, the minimum punishment of the said offence was 10 years of imprisonment. Subsequently, after the amendment of 2019, it became 20 years to life imprisonment.

In view of the same, this Court considers the case prior to the amendment of 2019 and, accordingly, the 12 years R.I., is reduced to 10 years of R.I.

16. The victim-girl in her statement made under Section 164 of Cr.P.C stated that *the convict-appellant, the son of her uncle visited their house*. The learned counsel also highlighted this point. So, in terms of the above, this Court is of the view that the punishment of the convict-appellant under Section 448 of IPC is liable to set aside the same is set aside.

Further, this Court finds force in the submission of the learned counsel appearing for the appellant-counsel that the victim did not disclose anything about the relation in the first instance and only after the pregnancy was discovered by her mother, she divulged the relationship. Though she stated that convict-appellant threatened her but in that long period of 5(five) months, she kept mum. The said action of the victim cast shadow of doubt over the punishment given to convict-appellant under Section 506 of IPC. As such, the crime of the convict-appellant under Section 506 of IPC is not proved beyond reasonable doubt and the same is also set aside.

17. With the above observation and direction, this present criminal appeal is partly allowed and modified to the extent indicated above. As a sequel, stay if any stands vacated, pending application(s) if any, also stands closed.

Send back the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J

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