

HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) 20 of 2023

Sri Anil Das

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. A. Acharjee, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	13.08.2024.
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Mr. A. Acharjee, learned counsel appearing for the appellant also heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of Cr. P.C against the impugned Judgment of conviction and sentence dated 05.04.2023 passed by Ld. Special Judge, South Tripura, Belonia in case No. Special 11 (POCSO) of 2022 whereby and where under the appellant has been convicted U/S 6 of POCSO Act and sentenced him to suffer R.L. for 20 (twenty) years and to pay a fine of Rs.10,000/-(ten thousand) for the said offence, in default to pay fine, the appellant shall suffer further R.I. for two months.

[3] The fact of the case, in brief is that, on 01.09.2022 in the morning the informant and his husband left their house for their works keeping their two minor daughters in the house and when the informant returned home from her work, at that time her victim daughter informed her that in the noon time at about 12.30 pm accused Anil

Das forcibly committed rape on her in an abandoned hut of a rubber garden at Niharnagar. It is also alleged that due to social shame delay caused in lodging the FIR.

[4] On this, P.R. Bari P.S. Case No. 2022/PRB/038 under Sec. 376AB of IPC and section 6 of POCSO Act was registered against the accused person. The case was investigated and on completion of investigation I/O filed charge sheet against accused Sri Anil Das for commission of offence punishable under Sec. 376AB of IPC and section 6 of POCSO Act.

[5] Having received the charge sheet, the learned court below took cognizance of offence punishable under Sec. 376AB of IPC and section 6 of POCSO Act against accused Sri Anil Das. After that, learned Court below framed charges against accused Sri Anil Das for commission of offence punishable under Sec. 376AB of IPC and section 6 of POCSO Act. The contents of the charges read over and explained to the accused person, to which, he pleaded not guilty and desired to stand the trial. In total eighteen witnesses were examined by the prosecution to prove the charges against the accused person. After the process of recording the evidence of witnesses so adduced from the side of the prosecution was concluded, the accused person was subjected to examination as warranted U/S 313(1)(b) of Cr.P.C. with respect to the incriminating circumstances that surfaced against him in the evidence on record. His plea is of total denial and false implication for demanding loan amount.

[6] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence in the following manner:

“In view of the discussion stated above, I hereby sentenced convict Sri Anil Das to suffer R.I. for 20 (twenty) years and to pay a fine of 10,000/- for the offence punishable under Sec. 6 of POCSO Act, in default, to suffer R.I. for two months. If the fine money is paid, the same be handed over to the victim as compensation.

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

[7] Being aggrieved by and dissatisfied with the judgment and order of conviction, the present appeal has been preferred by the appellant.

[8] It is contended by the counsel for the appellant that PW 10 (Dr. Sabyasachi Nath) in his deposition clearly stated that on examination he opined that seminal stain/spermatozoa of human origin could not be detected in the exhibit marked as A. (ii) Semen/spermatozoa/epithelial cell of human origin could not be detected in the exhibit-X. He identified the report along with forwarding as Exbt.P-11/PW-10. But the Ld. Trial court convicted the appellant without considering the legal aspect which is very much illegal and the Ld. Court below misconceived and misunderstood the legal position of law and passed a wrong judgment. It is further contended by the counsel for the appellant that the Ld. Trial court convicted the appellant only on the basis of the evidence of PW-1, PW-4, PW- 9, PW- 14 without considering the legal aspect and believed the improved version of the PWs and the Ld. Trial Court failed to appreciate the actual facts and hence, the judgment and findings of the Court below is not tenable in the eye of law.

[9] On the other side, Mr. Raju Datta, learned Addl. PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[10] It is seen from the record that the evidence of PW 2 (the victim girl) coupled with the evidence of PW 6 (the neighbour) and PW- 9 (Dr. Pampi Nandi) who examined the victim girl, it is clear that rape was committed on her. PW-9 has examined the victim girl and prepared a medical examination report which has been marked as exhibit -9. PW-9 had deposed before the learned court below and she has indicated the nature in which the private parts of the victim were damaged. PW-9 has stated that on examination of the private part of the victim, congestion was present over the inner aspect of right labia majora. On her pre-vaginal examination rupture, tear at 10, 12, 3, 4

and 6 O' clock position was found. As per the evidence of PW-14 (Dr. Subhranil Bhattacharjee) who has conducted the potency test of the accused person, it is evident that the accused person is capable of performing sexual intercourse.

[11] A fair reading of the deposition of the PW-2, it categorically indicates that the accused person has acted in contravention of the POCSO Act and accordingly this Court finds that the accused person is guilty and thus the impugned judgment dated 05.04.2023 passed by the learned court below does not require any interference from this Court.

[12] With the above observation and direction, the present appeal stands dismissed confirming the judgment dated 05.04.2023 passed by the court of the Special Judge, South Tripura, Belonia delivered in Special 11 (POCSO) of 2022.

B.Palit, J

T. Amarnath Goud, J

