

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 37 of 2024

Premananda@Premaranjan Rudra Paul

.....Appellant(s)

Versus

State of Tripura

.....Respondent(s)

For the Appellant(s) : Mr. B. Banerjee, Advocate.

For the Respondent(s) : Mr. Raju Datta, PP

Date of hearing & delivery
of Judgment & order : 03.12.2024.

Whether fit for reporting : Yes/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]

Heard Mr. B. Banerjee, learned counsel appearing for the appellant. Also heard Mr. R. Datta, learned PP appearing for the State-respondent.

[2] This present appeal is filed under Section 374 Sub Clause-2 of Criminal Procedure Code challenging the impugned Judgment of conviction and order of sentence dated 19.07.2022 passed by the Special Judge, (POCSO) West Tripura, Agartala, in case No. Special (POCSO) 28 of 2021.

[3] The brief facts of the case are that the persecution alleged that on 02.04.2021 when the informant returned from his work place at night, thereupon, his wife and the victim daughter informed him that the accused namely Premananda @Premaranjan Rudra Paul kidnapped their minor victim daughter and took her to his dwelling house, whereupon, the said accused had put fingers to her private parts and also tried to commit rape upon her. The wife of the informant further disclosed the fact to the informant that during the search of their daughter, when she reached the house of accused, at that point of time, she heard the hue and cry of their minor daughter, whereupon, she forthwith recovered their daughter and took her, to their dwelling house.

[4] Feeling aggrieved, the informant, lodged compliant before the Sidhai P.S. On receipt of the written FIR on 02.04.2021, the WSI of Sidhai Police station, registered P.S. Case No.2020/SDI/014 under Section4/8 POCSO Act and 363/375(AB) of IPC. The case was investigated and on completion of investigation, I/O filed charge Sheet against accused Premaranjan Rudra Paul @ Premananda for commission of offence punishable under Section 363/376(AB) of IPC read with Section 6 of POCSO Act. During trial, prosecution has examined as many as 16(Sixteen) witnesses. On the other hand, defence adduced 2(two) witnesses on his defence and thereafter, learned Court below passed the impugned judgment

and order of conviction and sentence on 19.07.2022, which is extracted as under:

"O R D E R

9. In the result, the convict namely, Sri Premananda @ Premaranjan Rudrapaul stands sentenced under Section-6 of the POCSO Act to suffer rigorous imprisonment for a term of 20 (twenty) years and to pay fine of Rupees 5,000/- (Five thousand). In default of the payment of fine, the convict shall suffer simple imprisonment for a further term of 2(two) months.

Again, I hereby sentence the convict Sri Premananda @ Premaranjan Rudrapaul under Section-363 of the IPC to suffer simple imprisonment for a term of 7 (seven) years and to pay fine of Rupees 1,000/- (One thousand). In default of the payment of fine, the convict shall suffer simple imprisonment for a further term of 1(one) month.

Further, I also hereby sentence the convict Sri Premananda @ Premaranjan Rudrapaul under Section-342 of the IPC to suffer simple imprisonment for a term of 1 (one) year and to pay fine of Rupees 500/- (Five hundred). In default of the payment of fine, the convict shall suffer simple imprisonment for a further term of 1(one) month.

The amount of fine, if realized, shall be handed over to the victim as compensation....."

[5] Aggrieved by the above-quoted order dated 19.07.2022 passed by the learned Court below, the present appeal has been preferred by the appellant seeking following reliefs:

"i. Admit the appeal.

ii. Call for the lower Court's records from the file of Special Judge, (POCSO) West Tripura, Agartala in case No. Special (POCSO) 28 of 2021

iii. Issue notice to the Respondent and after hearing the appeal.

iv. Set aside the impugned judgment of conviction and order of sentence against convict appellant on 19.07.2022 passed by the Ld. Special Judge, (POCSO) West Tripura, Agartala in Case No. Special (POCSO) 28 of 2021 and acquit the convict-appellant from the charges.....”

[6] Mr. B. Banerjee, learned counsel for the appellant contends that learned Court below most whimsically believing the statements of P.W.-1 & 2 i.e. the father and mother of the victim girl respectively and without considering the other aspects of the examination of witnesses, convicted the appellant herein. He further submits that learned Court below did not consider the statement of P.W.-3, the victim properly who, nowhere, stated that the accused committed any act upon her which is tantamount to sexual assault and convicted the accused on the basis of presumption. He, therefore, prays that the accused be acquitted and the impugned order dated 19.07.2022 passed by the learned Court below be set aside.

[7] On the contrary, Mr. R. Datta, learned P.P. appearing for the State opposes the submission made on behalf of the accused-appellant. He submits that the learned Court below upon hearing both the sides and on examination of all relevant evidence on records, passed the impugned order dated 19.07.2022 convicting and sentencing the accused, so, the same should not be interfered with by this Court. He, therefore, urges this Court to dismiss the instant appeal.

[8] Heard learned counsel for the respective parties. Perused the evidence on record.

[9] The deposition of the minor victim girl (P.W.-3) as recorded by the Court below, is extracted here-under:

"One day at noon I was standing in-front of gate near the road. At that time accused Premananda to who I used to call as 'dadu' came to the house of our landlord after taking Covid Vaccine. Thereafter, the accused took me with him in his house boarding me on his bi-cycle on the pretext of giving some stationery articles to me. But taking he after taking me in a room of his house he closed the door of that room. The witness stated that after the incident I accompanied my mother to the Court where some facts were asked to me by a madam and I put my signature. The witness identify her signature on the statement recorded by the Magistrate under Section-164(4) of Cr.PC. The signature of witness is marked as Exhibit-7. The witness identified the accused as 'Prema' while his picture was shown to her through a mobile phone display."

[10] On perusal of the above-quoted statement of the P.W.-3, the minor victim girl, it is opined that the said statement is insufficient for examining the prosecution case. This Court feels that proper examination ought to have been made and the Court below could have conducted the trial for eliciting the statement of the P.W.3 i.e. the minor victim girl of 6 years. In POCSO cases, the victim's statement plays a crucial role in establishing the facts. Since, the statement of the victim(P.W.-3) recorded by the Court below is incomplete, unclear, lacking in details that would substantiate the allegations, the Court below is directed to ensure that due process be followed in deciding the instant case.

[11] In view of the above, the matter is remanded back to the learned Court below for fresh adjudication and trial. Learned Court

below shall examine the matter and decide the same in accordance with law and as expeditiously as possible.

Thus, the instant appeal is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

B. PALIT, J

T. AMARNATH GOUD, J



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