

**HIGH COURT OF TRIPURA
AGARTALA
Crl.A.(J)No.25 of 2023**

Sri Joydeb Mandal,
son of Sri Sunil Mandal,
of R.K. Ganj, P.S. Santirbazar,
District- South Tripura

-----Convict-Appellant(s)

Versus

The State of Tripura

-----Respondent(s)

For Appellant(s)	:	Mr. A. Acharjee, Adv. Ms. Marayam Chakraborty, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Hearing and Judgment & Order	:	23.07.2024
Whether fit for reporting	:	YES.

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

Judgment & Order(Oral)

[*T. Amarnath Goud, J*]

This appeal is directed challenging the judgment and order of conviction and sentence delivered by Learned Special Judge, South Tripura, Belonia in connection with Case No.Special 10(POCSO) of 2020. By the said judgment, the Learned Special Judge has convicted the appellant to suffer rigorous imprisonment for life which shall mean the imprisonment for the reminder of natural life of the convict and to pay fine of Rs.10,000/-.

2. Heard Mr. A. Acharjee, Learned counsel appearing for the appellant as well as Mr. Raju Datta, Learned P.P. appearing for the State-respondent.

3. Before coming to the conclusion of the appeal, let us discuss the subject matter of the prosecution for which this present appeal has

arisen. The prosecution was sought into motion on the basis of an FIR laid by one Jatan Das on 08.02.2020 to Officer-in-Charge, Baikhora Police Station alleging inter alia that one Joydeb Mandal, son of Sunil Mandal, resident of R.K. Ganj, P.S. Santirbazar who is the friend of his brother-in-law, Suman Das came to his residence on 07.02.2020 at about 8.30 p.m. He also told that he came to attend the Muhuripur 'Kirton' (devotional concert) and asked to spend the night to their residence. Accordingly, after the meal, they permitted Joydeb Mandal to stay at their residence. But at around 10.15/10.30 p.m., his wife and the informant woke up hearing the cry of their daughter (name withheld) aged about 10 years and found bleeding from private parts of their daughter. After query they could know that accused Joydeb Mandal committed rape upon his daughter by gagging her mouth. Accordingly, on the basis of FIR Baikhora P.S. Case No.2020/BKR/014 under Section 376(2)(i) of IPC and Section 6 of POCSO Act was registered and the case was endorsed to WSI Smt. Ruma Noatia for investigation. After completion of investigation, she laid charge-sheet against the appellant before the Court for prosecution. Accordingly, formal charge was framed by the Learned Special Judge (POCSO) under Section 376 of IPC and also under Section 6 of POCSO Act and the same was explained to him to which he pleaded not guilty and claimed to be tried. For the sake of convenience, we would like to refer herein below the charge framed by the Learned Trial Court below which is as follows:

"Firstly, that you on 07.02.2020 at 8.30 pm at night at West Muhuripur (Banbihar para) in the house of Jatan Das under Baikhora PS you committed rape upon Bristi Das, minor daughter aged about ten years, daughter of Sri Jatan Das, informant and as such you have committed an offence punishable under Section 376 of IPC and within the cognizance of this Special Court.

Secondly, that you on the aforesaid date, time and place committed aggravated penetrative sexual assault within the

meaning of section 5 of Protection of Children from Sexual Offences Act, 2012 against the aforementioned victim Bristi Das, a minor daughter (aged ten years old) of the informant and thus committed an offence punishable under Section 6 of POCSO Act, 2012 and within the cognizance of this Special Court.”

4. To substantiate the charge, prosecution has adduced in total 16 (sixteen) numbers of witnesses and certain documents were exhibited on behalf of the prosecution. The case of the accused-appellant was that of total denial of the prosecution story and as such, the appellant in course of his examination under Section 313 of Cr.P.C. pleaded innocence. He also took the plea that he had a dispute with Suman Das for money for which he has been falsely implicated in this case but denied to adduce any witness in support of his defence. Finally, on conclusion of trial, Learned Special Judge found the appellant to be guilty and convicted him accordingly and challenging that judgment, this present appeal is before us.

5. At the time of hearing of argument, Mr. A. Acharjee, Learned counsel appearing for the appellant fairly submitted that the evidence on record does not attract the punishment under Section 6 of POCSO Act but the Learned Court below by mis-appreciating the evidence on record found the appellant to be guilty under Section 6 of POCSO Act. Learned counsel for the appellant further submitted that from the evidence on record the Learned Court below at best convict under Section 8 of POCSO Act but in absence of material evidence on record before the Learned Trial Court by the prosecution, the appellant was found guilty for which Learned counsel for the appellant urged for allowing this appeal by setting aside the judgment delivered by the Learned Court below.

6. On the other hand, Mr. Raju Datta, Learned P.P. appearing for the State-respondent has fairly submitted that there is no dispute on record in respect of the age of the victim from the side of the appellant and as such, Learned Trial Court below rightly framed the charge against the appellant under the purview of the POCSO Act. Learned P.P. further submitted that the evidence on record clearly transpires confidence of the Learned Court below to found the appellant to be guilty under Section 6 of the POCSO Act. So, Learned Trial Court rightly and reasonably convicted the appellant under the provision of Section 6 of the POCSO Act.

7. Learned P.P. also drawn the attention of this Court the evidence of the prosecution growing the confidence of the Learned Court below because the appellant by the trend of cross-examination could not raise any circumstance to disbelieve the evidence on record of the prosecution nor the appellant by the art of cross-examination could take any step to make their evidence shaky. So, finally, Learned P.P. urged for dismissal of this appeal upholding the judgment and order of conviction and sentence imposed by the Learned Trial Court.

8. Now to conclude the appeal, let us discuss the material evidence on record of the prosecution produced before the Learned Trial Court.

9. PW-1, Jatan Das is the informant of this case. He deposed that the alleged incident took place about about two years back although he could say the exact date. On that day, one friend of his brother-in-law came to his house as there was a 'kirton' to their locality and his name was Joydeb Mandol. Said Joydeb Mondol earlier also visited his with his brother-in-law namely Suman Das. On the alleged day, said Joydeb

Mandol requested him to go to 'kirton' but he denied due to his health condition. Joydeb Mandol also requested him to allow him to stay at his residence as he was informed that his brother-in-law left him. Thereafter they arranged dinner for Joydeb Mandol to their house. The victim was playing with the touch mobile of the appellant accused. After that, they went to sleep. In the night, at about 10.30/11 pm his wife suddenly listened the weeping cry of his daughter. Accordingly, both of them woke up and they switched on the light and found that that Joydeb Mandol was closing his pant chain. Thereafter his wife took their daughter into her lap. The informant and his wife came outside of the room and his wife noticed that her daughter had no panty in her body. His wife also noticed that blood was coming from the private part of her daughter. The panty of his daughter was found on the bed. Joydeb Mandol was pretending himself that he was sleeping then he asked Joydeb about this matter but he denied the said fact. He also asked his daughter but she was not in a position to tell anything. But she indicated that Joydeb Mandol committed some wrong act with her. Immediately he called his brother-in-law who came to his house. That time being asked Joydeb he did not admit his guilt. After that, they went to PS where one person wrote the ejahar as per his dictation and he put his signature in the bottom of the ejahar. He identified his signature on the ejahar marked as Exbt.P-1. Police also arranged for recording his 164 statement in the court and he gave his statement in the court. He identified his statement in the 164 statement and on identification the same was marked as Exbt.P-2. He further stated that Police also seized one Real-me mobile of the accused Joydeb Mandol in his presence by preparing a seizure list wherein he put his signature and the witness identified his signature

marked as Exbt.P-3. He further stated that Police also seized one dark green coloured pant of his daughter and he put his signature on the seizure list and identified his signature marked as Exbt.P-4. Further stated that Police seized the birth certificate of his daughter and he put his signature on the seizure list and on identification his signature was marked as Exbt.P-5. He identified the birth certificate of his daughter which was seized by the police and on identification the same is marked as Exbt.P-6. Police also seized one school certificate of his daughter and he put his signature on the seizure list and on identification his signature was marked as Exbt.P-7 and identified the certificate issued by Kumar Roaja Para SB School by a seizure list and on identification his signature was marked as Exbt.P-8. He also identified his signature on the consent letter for medical examination of his daughter and on identification his signature was marked as Exbt.P-9. He further identified the panty of his daughter marked as Exbt.MO(i) and identified the real-me mobile marked as Exbt.MO-(ii).

10. During cross-examination, he stated that he did not write in the FIR that at once, his wife heard the weeping of his daughter and she informed him. She also put the light on and noticed that his daughter had no panty. Nothing more came out relevant.

11. PW-2 is the victim. Before recording her evidence, her veracity was tested. She deposed that her maternal-uncle, Joydeb Mandol opened her panty and injured her on her private part by his private part. He also pressed her mouth. The blood was oozing out and she got severe pain. That time it was night. She further stated that she came to the Court but she could not say as to why she came to the Court.

12. During cross-examination, nothing came out relevant.

13. PW-3, Smt. Bhalo Rani Das deposed that the incident took place about two years back. On that day, the friend of her brother came from Santirbazar. He also earlier used to come to her residence with her brother. That time it was about 8.30 pm. He came to attend the 'kirton' in the bazaar and requested to allow him to stay to their house. They arranged dinner for him and her daughter was playing with the mobile of the accused and she asked to sleep with him. In his house, there was no any mobile and her daughter went to sleep by playing with the mobile of the accused and she herself and her husband went to sleep. They have only one room and in that room they were sleeping. She was in deep sleep. Suddenly she heard cry of her daughter and she switched on the light of her room and asked her daughter but she was not in a position to speak due to fear and found that the accused was closing his chain of the pant. She took her daughter and noticed that there was no panty on her body and she was kept on the bed. She took her daughter outside the room and checked her private part when her daughter informed her that accused pressed her mouth and opened her panty and committed rape upon her. She found that blood was oozing out from her private part. She informed the matter to her brother, Suman. Her brother came with one/two persons and police was informed. Police took the accused from her house. Police also seized one school certificate of her daughter and she put her signature on the seizure list and on identification the same is marked as Exbt.P-7/1.

14. During cross-examination, she stated that at that time, no persons of the locality came to their house and she could not say the exact date of the incident. Nothing more came out relevant.

15. PW-4, Smt. Kamita Reang deposed that on 08.02.2020 she was posted as staff nurse of Baikhora PHC. On that day, Woman SI Ruma Noatia seized swab, blood sample, saliva, pubic hair and one jeans pant of the accused Joydeb Mondol from Dr. Subhrajyoti Majumder in her presence and she put her signature on the seizure list and identified her signature on the seizure list marked as Exbt.P-10. She further stated that on the same day, WSI Ruma Noatia also seized dry gauze, vaginal swab and one envelope of hair and nail of the victim from Dr. Debasree Reang in her presence and she put her signature on the seizure list and on identification, the same was marked as Exbt.P-11.

16. In the cross-examination, nothing came out relevant.

17. PW-5, Sri Rajesh Mog deposed that on 08.02.2020 he was posted at Baikhora PS as Constable of Police. On that day he went to Muhuripur with WSI Ruma Noatia. On that day, one mobile was seized before him and he put his signature on the seizure list and identified his signature on the seizure list marked as Exbt.P-3/1. On the same day, WSI Ruma Noatia also seized swab, blood sample, saliva, pubic hair and jeans pant of the accused Joydeb Mondol from Dr. Subhrajyoti Majumder by a seizure list and he identified his signature on the seizure list marked as Ext.P-10/1.

18. Nothing came out relevant from his cross-examination.

19. PW-6, Dr. Subhankar Nath deposed that on 25.02.2020 he was posted as Deputy Director, DNA Typing Division, SFSL, Tripura. On that day, Office of the Director received one sealed parcel in connection with Baikhora PS case No.2020/BKR/014 dated 08.02.2020 under Section 376(2)(i) of IPC and Section 6 of POCSO Act which was forwarded by SDPO., Santirbazar, South Tripura and brought by special

messenger of Baikhora PS. The Director endorsed him the sealed parcel for examination and opinion. The period of examination was 25.02.2020 to 23.03.2020. The sealed parcel contained 10 (ten) numbers of exhibits which are as follows:

- “1) Exhibit-P blood sample of victim girl,
- 2) Exhibit-Q contained three exhibits and in the laboratory they were marked as Q1, Q2 and Q3. Q1- vaginal swab of the victim, Q2- cervical swab of the victim and Q3- blood sample of the victim,
- 3) Exhibit-R nail sample of the victim,
- 4) Exhibit-S one dark green colour pant of the victim girl,
- 5) Exhibit-A it contains three exhibits and in the laboratory they were marked as A(i), A(ii) and A(iii) respectively. A(i)- swab of prepuce of accused, A(ii)-swab of shaft of penis of accused. A(iii)- swab from glans penis of accused.
- 6) Exhibit-B blood sample of accused Joydeb Mondol,
- 7) Exhibit-C blood sample of EDTA vial of accused Joydeb Mondol,
- 8) Exhibit-D saliva of accused Joydeb Mondol,
- 9) Exhibit-E sample of pubic hair of accused Joydeb Mondol and
- 10) Exhibit-F jeans pant of accused Joydeb Mondol. The details of exhibits are given in page No.3, 4, 5 and 6 of the present report.”

Blood stain examination:

The exhibits marked P, Q1, Q2, S, A(i), A(ii), A(iii), B and F were examined as per standard protocol for detection of blood. The details of protocol is given in the present report in page No.6.

Semen/spermatozoa examination:

The exhibits marked Q1, Q2, R, S, A(i), A(ii), A(iii) and F were as per standard protocol for detection of seminal stain/spermatozoa of human origin. The details of the protocol are mentioned in the present report in page-7.

Saliva examination:

The exhibits marked-D was examined by salivary amylase test for detection of saliva.

Hair examination:-

Exhibit-R and E were examined visually and microscopically for hair examination.

After examination the following are the opinion:

- “(i) Blood stain was not detected in exhibits marked Q1, Q2, S, A(i), A(ii) and A(iii).**
- (ii) Blood stain was detected in exhibits marked P, B and F.**
- (iii) Seminal stain/spermatozoa of human origin was not detected in exhibits marked Q1, Q2, R, A(i), A(ii), A(iii) and F.**
- (iv) Seminal stain/spermatozoa of human origin was detected in the exhibit marked-S.**
- (v) Exhibit-R was cut human scalp hair and all the hairs are morphologically and morphometrically similar in nature.**
- (vi) Saliva stain was detected in the exhibit marked-D.”**

DNA examination:

DNA test was conducted from exhibit-P (source: blood sample of victim), exhibit-S (semen stain detected in the dark green colour pant of the victim), exhibit-B(blood sample of accused), exhibit-D(saliva sample of accused Joydeb Mondol) and exhibit-F(jeans pant of accused Joydeb Mondol) as per standard protocol. The details methodology of DNA examination are given in page No.7 and 8 in the present report.

After DNA test, six observations are made in the present report of page No.8. On the basis of the above observation, it is concluded that semen stain detected in exhibit-S (source: one dark green colour pant of victim minor girl) originated from single source of exhibit-B (blood sample of accused Joydeb Mondol). The resultants alleles distribution for the studied loci of the different exhibits is shown in Annexure-10 and 11. The report was prepared by me in ten sheets and signed by me in each page dt.23.03.20 and the same was forwarded by the Director, Dr. H.K. Pratihari vide No.2600, dated 23.03.2020 to the forwarding authority SDPO, Santirbazar. This is the report in ten sheets and forwarding in another sheet, on identification the report along with forwarding is marked as Exbt.P-12.

20. He was declined to cross-examination.

21. PW-7, Dr. Subhrajyoti Majumder deposed that on 8.2.2020 he was posted at Baikhora PHC. On that day, one Joydeb Mondol was

brought in connection with Baikhora PS case No.14/20 dated 08.02.2020 under 376(2)(i) of IPC and under Section 6 of POCSO Act by the police and he was examined on the day. On his examination, linien abrasion about 5 cm situated right anterolateral aspect of neck. His genital was found well developed and sexual character found well developed. On examination, he found that there was nothing to be suggested that accused cannot perform sexual intercourse under normal circumstances. He further stated that penile swab, blood sample sample, sample of pubic hair are collected and handed over to the police for FSL examination to rule out any resent sexual intercourse happened or not. On the basis of report No.F.15(1)/DTE/SFSL/2010/2600 dated 23.03.2020 of the SFSL, the semen stain detected in the exhibit-S(source: one dark green colour pant of victim minor girl) originated from single source of Exbt.B(source: blood sample in dry gauge of accused Joydeb Mondol). On the basis of report of the SFSL, he gave his final opinion that although the lab investigation report are negative for presence of seminal stain/spermatozoa of human origin in vaginal swab. However, possibility of recent sexual intercourse cannot be ruled out and he identified his report marked as Exbt.P-13. He further stated that the WSI Ruma Noatia in his presence seized the swab-glans penis, prepuce and shaft of penis, blood sample, saliva, pubic hair and one jeans pant of the accused Joydeb Mondol from my possession in presence of witnesses and he put my signature as a possessor by a seizure list and put his signature on the seizure list marked as Exbt.P-10/2.

22. In the cross-examination he specifically stated that it cannot be ruled out that accused committed any sexual intercourse on that day.

23. PW-8, Smt. Bina Rani Das deposed that on 02.03.2020 she was posted at Baikhora PS. On that day, one school certificate of the victim from Rajkumar Roaja SB school was seized from the house of complainant and she was present at the time of seizure and she put her signature on the seizure list as a witness and identified the signature marked as Exbt.P-7/2.

24. During cross-examination, nothing came out relevant.

25. PW-9, Dr. Debasree Reang deposed that on 08.02.2020 she was posted as Medial Officer in-charge of Baikhora PHC. On that day, she examined the victim aged about 10 years who was brought to the PHC by WSI Ruma Noatia and her examination was conducted in presence of WSI Ruma Noatia and Kamita Reang, Staff Nurse. She was brought in connection with Baikhora PS case No.14/20 and the victim was examined by her on the same day from 6.20 am to 7.20 am. Her general examination was found normal and breast was found not developed, axillary hair not developed, pubic hair not developed. On examination of her private parts, abrasion was present on either side of labia majora approx 4 X 0.5 cm, reddish in colour and fresh in duration. Her hymen was found intact, her blood sample, vaginal swab were collected. She gave her opinion on the basis of physical examination that there is evidence of recent attempted penetration. Abrasion present on either side of labia majora approx 4 x 0.5 cm reddish in colour and fresh in duration, but hymen is intact. However, vaginal swab, cervical swab blood, nail, hair samples were collected and handed over to the police to rule out any sexual intercourse. After getting the SFSL report No.149/2020/DNA DIV No.27 of 20 dated 23.03.2020 she gave final opinion that on the basis of physical examination, there is evidence of

recent attempted penetration. Abrasion present on the either side of labia majora appx. 4X 0.5 cm reddish in colour, fresh in duration, but hymen is intact. On the basis of forensic report, semen stain detected in Exbt.S (source one dark green colour pant of victim minor girl) originated from single source of Exbt.B(source blood sample in dry gauze of accused Joydeb Mondol). There are sign suggestive of attempted of forceful sexual intercourse. She identified her report in two sheets which was marked as Exbt.P-14. She further stated that WSI Ruma Noatia seized the blood sample, vaginal swab, cervical swab hair and nail samples for victim from her possession by a seizure list and she identified her signature on the seizure list marked as Exbt.P-11/1/PW-9. Being asked by the Court she deposed that there was sign of penetration in the private part of the victim.

26. During cross-examination, she stated that she has not mentioned in her report that there was sign of penetration. Abrasion was found fresh, but she has not mentioned at the time of abrasion. She further stated that such type of abrasion is not possible only by itching because there may be some other indication also if in the case of itching. Nothing more came out relevant.

27. PW-10, Sri Prafulla Das deposed that two years back Joydeb Mandal came to his daughter's house at West Muhuripur. Joydeb Mandal works with his son, Samir Das. He also used to go to his daughter's house with his son. On that day, there was a kirton at Muhuripur market. Joydeb Mandal went to the kirton on that day. After attending the kirton, Joydeb Mandal came to his daughter's house in the night at 10.30 pm. Her daughter, Bhalo Rani Das informed him in the night and called him to come to her house as Joydeb Mandal has come to her house. He along

with his son, Samir Das and one Nemai Baishnab, auto driver went to the house of his daughter. She saw her daughter and her husband were weeping. She asked the victim aged about 10 years that what happened. When she informed her that Joydeb Mandal after opening her panty and pressing her mouth, raped her. He along with her son-in-law and his son brought Joydeb Mandal to the PS and his son-in-law lodged the FIR. The victim was also with them. After lodging of the FIR, the victim was brought to hospital for medical checkup and thereafter he returned back.

28. In the cross-examination, he stated that he was examined by police. On drawing attention he admitted that he did not say to IO that Joydeb Mondol used to visit his daughter's house and he works with his son. He further admitted that he did not say to IO that on that particular day accused after attending the kirton at Muhuripur market went to his daughter's house. His further attention was drawn to the fact that his son-in-law Jatan Das called him and not his daughter but that part of statement was not found in his statement recorded by IO. He further stated that his son Samir Das resides with him in the same house. When call was received, at that time his son and his wife were together and they were having their dinner. It took 30 minutes from his house to go to the residence of his daughter. He could not say the time when he reached the house of his daughter and also could not say the time when they arrived at P.S. because the incident took place about two years back. He further stated that there were no other local persons in the house of his son-in-law when they reached there. Nothing more came out relevant.

29. PW-11, Sri Samir Das deposed that the incident took place two years back. The incident happened to the house of his sister. Joydeb

Mondol works with him. Earlier he has visited his sister's house. On that day, there was kirton occasion at Muhuripur market. His sister in the night about 10.30/11 pm informed him that Joydeb Mondol has come to her house and she called them. She along with her father and others went to the house of his sister. She saw his sister and her husband were weeping when his sister and husband informed them that Joydeb Mondol committed rape upon his niece. They went to the PS and case was lodged against Joydeb Mondol.

30. During cross-examination, he stated that he did not say to IO that he reached to his sister's house. That time his sister and brother-in-law did not tell him that his niece was raped by Joydeb Mondol. He further stated that Phone was received at 10 pm and he returned to his house and they went to the residence of his sister by a vehicle. Nothing more came out relevant.

31. PW-12, Smt. Radharani Das deposed that the incident took place two years back. On that day, they went to attend one ceremony at Muhuripur market in the night at about 10/11 pm. At that time of returning when they reached near the house of Jatan Das, he heard some weeping sound from the house of Jatan Das. At that time, her granddaughter i.e. the victim and her mother both were weeping. She went inside the house and asked them what had happened. That time, Jatan Das and his wife informed that the victim was raped by Joydeb Mondol. He accompanied them to the PS. One panty of the victim was seized by police before her by preparing a seizure list and she identified her seizure list marked as Exbt.P-4/1. She further stated that the Police seized blood sample and vaginal swab etc. before her by a seizure list and identified and identified her signature on the seizure list marked as

Exbt.P-11/2. She further stated that one birth certificate of the victim was also seized before her and she put her signature on the seizure list as one of the witnesses marked as Exbt.P-5/1. She identified the green coloured panty which was marked as Exbt.MO(i).

32. During cross-examination, she stated that the informant is her nephew (son of my elder brother-in-law). She has good relationship with the informant. She was examined by the police. She could not say the exact date of birth of the victim. Nothing more came out relevant.

33. PW-13, Sri Krishna Baishnab @ Nemaï deposed that the incident took place about two years back. He was available at his residence. His neighbour, Prafulla Das and his son, Samir Das called him in the night at about 10.30 pm. They requested him to go to West Muhuripur. He went with them to West Muhuripur by an auto in the house of the granddaughter of Prafulla Das. He noticed that the members of the family were weeping. The granddaughter of Prafulla Das was raped by one Joydeb Mondol. He also noticed Joydeb Mondol there. Thereafter, they brought victim, her father, Prafulla Das and Samir Das along with Joydeb Mondol to Baikhora PS. One FIR was lodged there and thereafter, they went to Santirbazar hospital on the same day.

34. During cross-examination, he stated that he was examined by the police but he could not remember what he stated to the police. Nothing more came out relevant.

35. PW-14, Sri Shyamundar Hazari @ Manik Hazari could not say anything on the prosecution. His witness was declared hostile by the prosecution and his portion of statement was marked as Exbt.P-15.

36. He was declined to cross-examination by the accused.

37. PW-15, Smt. Chimrou Mog Choudhury deposed that on 08.02.2020 she was posted at Baikhora PS as woman constable. On that day, she accompanied WSI Ruma Noatia to the house of the victim. One dark colour panty of the minor victim was seized by WSI Ruma Noatia by preparing a seizure list and she identified her signature on the seizure list marked as Exbt.P-4/2. She again accompanied with WSI Ruma Noatia and went to the house of the informant where one birth certificate of the victim was seized by IO by preparing a seizure list and she put her signature on the seizure list and identified the signature marked as Exbt.P-5/2.

38. PW-16, WSI Ruma Noatia deposed that on 08.02.2020 this case was endorsed to her by SI Rajib Saha, O/C Baikhora PS for investigation. She identified the signature and hand writing of SI Rajib Saha on the FIR marked as Exbt.P-1/1. She identified the printed FIR form along with signature of Rajib Saha which was marked as Exbt.P-16. She visited PO, prepared hand sketch map with index and identified the hand sketch map along with index marked as Exbt.P-17. During investigation, she examined some witnesses and recorded their statements and after completion of investigation being prima facie satisfied she laid charge-sheet against the accused for his prosecution before the Court. She identified her signature on the consent form given by the father of the victim marked as Exbt.P-9/1. She identified the seizure list of seized vaginal swab and blood sample of the victim marked as Exbt.P-11/3. She identified another seizure list marked as Exbt.P-10/3. She identified the seizure list in respect of seizure of mobile phone marked as Exbt.P-3/2. She identified the seizure list in respect of seizure of one dark green coloured panty of the victim from the PO and

the same is marked as Exbt.P-4/3. She seized the birth certificate of the victim in presence of witnesses and identified the seizure list marked as Exbt.P-5/3. She seized one school certificate of the victim by a seizure list and identified the seizure list marked as Exbt.7/3. She further stated that she arranged for age determination of the victim at District Hospital, Udaipur, Gomati District and identified the age determination report marked as Exbt.P-18. She had sent the seized vaginal swab and blood sample etc. of the victim and accused to the SFSL through SDPO, Santirbazar, South Tripura and she collected the report of SFSL through SDPO, Santirbazar.

39. During cross-examination, she had stated that she had written 161 statement of the victim that she felt pain and further volunteered that the victim indicated her parts of her body but she did not mentioned this. She further stated that FIR was lodged on 08.02.2020 at about 2.35 am. After registration of the FIR, she arranged for medical examination of the victim. Nothing more came out relevant.

These are the sum and substance of the evidence on record of the prosecution to substantiate the charge.

40. We have heard detailed argument of both the sides and gone through and gone through the record of the Learned Court below including the evidence on record. Admittedly, in this case there is no dispute on record in respect of the fact that the victim on the alleged day was a minor. So, according to us, Learned Court below rightly framed the charge against the appellant. Now, to substantiate the charge as already stated, prosecution has adduced in total 16(sixteen) numbers of witnesses. Out of sixteen numbers of witnesses, some of the witnesses are parents of the victim and the near relatives of the victim and the

other witnesses are the police personnel and the IO including the Medical Officer. Now, if we go through the evidence of PW-1 i.e. the informant, PW-2 i.e. the victim and PW-3 i.e. the mother of the informant it appears to us that those witnesses very categorically during their statement stated that on the alleged day and time the present appellant committed the crime. The appellant by the trend of cross-examination of those witnesses could not in any manner raise any circumstance to disbelieve their evidence regarding the commission of offence by the accused. Now, if we go through the evidence of other witnesses those who are the relatives and neighbours of the informant it appears that those witnesses on their arrival to the PO or to the residence of the informant although, they deposed the said fact after hearing of incident from PW-1 and PW-3 so, to some extent hearsay witnesses. However, the appellant by the trend of cross-examination also could not raise any doubt to disbelieve their evidence. Now, if we go through the medical examination report of the victim it is crystal clear that the Medical Officer clearly opined that on the alleged day after examination of the victim it appears that the victim was subjected to penetration by the appellant. The appellant by the trend of cross-examination could not raise any doubt to discard the medical evidence on record of the victim.

41. In course of hearing of argument, Learned counsel for the appellant had drawn the attention of this Court that there was no evidence on rape which emerges from the evidence of PW-7, Dr. Subhrajyoti Majumder, PW-9, Dr. Debasree Reang and PW-6, Dr. Subhankar Nath. But if we meticulously go through the evidence on record it is crystal clear that there was evidence of attempted penetration upon the victim by the alleged accused on the day. In the

case at hand, charge was framed under Section 6 of the POCSO Act by the Learned Trial Court below and accordingly he was convicted under the aforesaid Section. Section 5 provides for aggravated penetrative sexual assault. Now let us see what is penetrative sexual assault. Penetrative sexual assault is defined in Section 3 of the POCSO Act which provides as under :

"3. Penetrative sexual assault.- A person is said to commit "penetrative sexual assault" if-
(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or
(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or
(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or
(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person."

From the aforesaid definition it appears that the prosecution before the Learned Trial Court could establish from the evidence of the victim and also from the evidence of PW-1 and PW-3 and also by adducing medical evidence on record that on the alleged day and time of occurrence, the alleged accused appellant committed aggravated penetrative sexual assault upon the victim being a minor for which she sustain severe pain and bleeding. As already stated, the appellant in spite of thorough cross-examination of the witnesses of the prosecution could not make out any defence case to disbelieve the evidence on record of the prosecution that he has been falsely implicated in this case. Situated thus, on the face of evidence on record, we are of the considered opinion that the Learned Trial Court below rightly and reasonably delivered the judgment found the appellant to be guilty and convicted him thereon.

42. In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment dated 25.08.2022 as well as the order of conviction and sentence dated 30.08.2022 delivered in Case No.Special 10(POSCO) of 2020 is hereby upheld and accordingly it is affirmed.

Send down the LCRs forthwith along with a copy of the judgment.

JUDGE

JUDGE

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.07.31 10:41:09 +05'30'

Sabyasachi. B