

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 35 of 2023

1. Angyajai Mog (70 years), son of late Mangmoi Mog, resident of Briguram Para, Jagabandhu, P.S. Gonda Twisa, District: Dhalai Tripura.

.....Appellant

-VERSUS-

1. The State of Tripura.

..... Respondent.

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

For Appellant(s)	:	Mr. S. Das, Advocate.
For Respondent(s)	:	Mr. R. Datta, Public Prosecutor.
Date of hearing & delivery of judgment and order	:	19.06.2024
Whether fit for reporting	:	YES/NO

JUDGMENT & ORDER [ORAL]

[T. Amarnath Goud, J]

Heard Mr. S. Das, learned counsel appearing for the appellant also heard Mr. R. Datta, learned P.P. appearing for the respondent-State.

[2] This is an appeal filed under Section-374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction dated 28.09.2022 and sentence dated 29.09.2022 passed in Special (POCSO) 10 of 2019 by the learned Special Judge, Dhalai Judicial District, Ambassa whereby and whereunder, the learned Court convicted the appellant to suffer rigorous imprisonment for life for the commission of an offence punishable under Section-6 of the POCSO Act, and also liable to pay a fine of Rs.20,000/- and in default of payment further liable to undergo rigorous imprisonment for two years.

[3] The brief facts, leading to this case, is that one Shri Mangla Mog, son of late Ramananda Mog, of Briguram Para, Police Station Gonda Twisa, District-Dhalai Tripura, lodged a written ejahar with the Officer-in-

Charge of Gonda Twisa P.S. to the effect that about nine years ago the accused person namely Angyajai Mog got married to widow woman namely Smti. Krafu Mog, the mother of the victim and started living their conjugal life happily. At that time, the age of the victim was seven years old and when she turned about fifteen years old, the accused had illicit sexual intercourse with his step daughter (victim) by putting her in fear of death in several occasions. As a result, the victim conceived seven month pregnancy and on 23.09.2019 gave birth of female child. While the villagers came to know about the incident, the accused fled away from the place of occurrence.

[4] After taking up the investigation of the case, the Investigating Officer visited the place of occurrence, prepared hand- sketch map with separate index, examined available witnesses and recorded their statements under Section-161 of the Code of Criminal Procedure, 1973 (hereinafter referred Cr.P.C.). During as investigation, he also arrested the accused from Laxmipur area and forwarded him before this Court with a forwarding letter. Thereafter, on 13.08.2019 he took accused Angyajai Mog to Gonda Twisa Sub-Divisional Hospital for his medical examination including sexual potency test. During investigation, he also seized the blood sample of accused Angyajai Mog by preparing a seizure list. Thereafter, on 14.08.2019 he took the victim to Gonda Twisa Sub-Divisional Hospital for her medical examination and also seized the blood sample of the victim by preparing a seizure list. During investigation, on 20.08.2019 he produced the victim before the Court of learned Sub-Divisional Judicial Magistrate, Gonda Twisa, Dhalai Tripura with a prayer for recording the statement of the victim under Section 164(5) of Cr.P.C. and her voluntary statement was recorded by the learned Sub-Divisional Judicial Magistrate, Gonda Twisa, Dhalai Tripura under Section 164(5) of Cr.P.C.

[5] During investigation, he also collected the medical reports of the accused and the victim from Gonda Twisa Sub-Divisional Hospital.

During investigation, on 23.09.2019 he came to learn from the Medical Officer of Gonda Twisa Sub-Divisional Hospital that the victim gave birth of a female baby at Gonda Twisa Sub-Divisional Hospital. Thereafter, on 03.10.2019 he seized the original School Certificate of the victim by preparing a seizure list. Subsequently, on 15.10.2019 he produced the victim and her newly born baby to the Medical Officer, Emergency Block of Gonda Twisa Sub-Divisional Hospital with a requisition to collect blood sample of the baby of the victim and on the same day he seized the blood sample of the baby of the victim from Gonda Twisa Sub-Divisional Hospital by preparing a seizure list in presence of the witnesses and sent the blood samples of the accused, the victim and the new born baby of the victim to the Director, Tripura State Forensic Science Laboratory, Narsingarh through Sub-Divisional Police Officer, Gonda Twisa for the purpose of DNA Test. During investigation, he also collected the DNA Test Report of the newly born baby of the victim from Tripura State Forensic Science Laboratory.

[6] Thereafter, on completion of investigation being prima- facie satisfied on 19.12.2019 he submitted charge-sheet against the accused Angyajai Mog for the commission of offences punishable under Section-376 of IPC read with Section-4 of POCSO Act. Upon hearing both sides on the point of framing of charge and being prima-facie satisfied, charge under Section-376 of IPC read with Section-6 of the POCSO Act was framed against the accused Angyajai Mog. Contents of the charge were read over and explained to the accused in Bengali in open Court to which he pleaded not guilty and claimed to be tried.

[7] To substantiate the charge, the prosecution adduced as many as 19 [Nineteen] witnesses including the complainant and also exhibited certain relevant documents and materials [Exbts.2 to 19]. Thereafter, the accused-appellant was examined separately under Section-313 of Cr.P.C. for having his response in respect of the incriminating materials those surfaced in the evidence as adduced by the prosecution.

[8] After hearing both sides, the learned trial Court delivered the judgment and order of conviction and sentence dated 28.09.2022 wherein, the accused-appellant has been convicted as under:

“Hence, in the light of the aforesaid discussions, this Court opined that prosecution nicely led their evidence to prove the charges for the commission of offences under Section-376 of IPC and Section-6 of the POCSO Act, 2012, labelled against the accused Angyajai Mog beyond all reasonable shadow of doubt and thereby considering all aspects of this case aforesaid points are decided in affirmative against the accused person. Accordingly, the accused Angyajai Mog is found guilty for the commission of offences punishable under Section-376 of IPC read with Section-6 of the POCSO Act, 2012 and he is convicted accordingly for the said offences.”

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

[10] Mr. S. Das, learned counsel appearing for the appellant has submitted that the learned Court below has failed to appreciate the evidence of PW-17 who issued the birth certificate of the victim without scrutinizing any documents or medical examination thus comes to perverse findings which is liable to be set aside. It has been further stated that the Head Master of Bhiguram Choudhury Para SB School to test the genuineness of the school certificate and thus comes to perverse findings need to be quashed.

[11] The argument as advanced by the learned counsel appearing for the accused appellant is a weak piece of argument. In our considered opinion, the argument so placed, cannot be entertained. Since the child is not a stranger and she is the stepdaughter staying along with the accused person who is the stepfather of the child residing in the same house, authentication of age proof is not necessary to be established. More so, the reasoning as given in the judgment passed by the learned Court below is more than sufficient to confirm the conviction of the accused person. The other point made for reduction of the sentence needs no consideration as the sentence as imposed by the learned Court below, according to the provision, is just and proper. On the legal perspective, hands of the Court are tied for any interference.

[12] This Court observed that the crime committed in this case is undoubtedly a heinous one and the conduct of the convict is very reprehensible. It is revealed that the convict had no control over his mind and motivation; however, after treating the case with the touchstone of the guidelines laid down by the Hon'ble Apex Court in different judgments, this Court opined that if the convict is spared, it will also adversely affect the society. Considering all the balancing factors, this Court found that the balance of justice tilts towards the prosecution, thus, it is opined that it is not necessary what is just but also as to what the convict deserves keeping in view the impact of the sentence on the society at large.

[13] It is settled proposition of law that the court is not supposed to give undue importance to omissions, contradictions and discrepancies which do not go to the heart of the matter, and shake the basic version of the prosecution witness. Thus the court must read the evidence of a witness as a whole, and consider the case in light of the entirety of the circumstances, ignoring the minor discrepancies with respect to trivial matters, which do not affect the core of the case of the prosecution. The discrepancies as mentioned should not be taken into consideration, as they cannot form grounds for rejecting the evidence on record as a whole.

[14] In our ultimate analysis and having regard to the evidences on record, it is crystal clear that there is no doubt that the question of sentence is a matter of discretion and such discretion has to be exercised along with accepted judicial lines. To impose adequate punishment according to law is not only the duty of the Court, but it is social obligation clearly enjoined upon it keeping in mind not only the crime but also the criminal. In the case in hand, the convict proved to have committed the offence and as such his plea of innocence cannot have any significance.

[15] As such, we do not find any infirmity in the findings arrived at by the learned Special Judge, Dhalai Judicial District, Ambassa, while convicting and sentencing the accused-appellant. Accordingly, the judgment and order of conviction and sentence as declared by learned

Special Judge, stands affirmed and upheld. Consequently, the present appeal preferred by the convict-appellant shall stand dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs forthwith.

B. PALIT, J

T. AMARNATH GOUD, J

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HIGH COURT OF TRIPURA



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