

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A.No.14 of 2023**

Sri Kartik Dey,
son of Late Gopal Chandra Dey
of Sukantapalli, Amtali,
P.S. Amtali, West Tripura

-----Appellant(s)

Versus

The State of Tripura

-----Respondent(s)

For Appellant(s)	:	Mr. H.K. Bhowmik, Adv.
For Respondent(s)	:	Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	08.08.2024
Date of delivery of Judgment & Order	:	16.08.2024
Whether fit for reporting	:	YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order**

This appeal is directed challenging the judgment and order of sentence and conviction dated 20.07.2023 delivered by Learned Special Judge (POCSO), West Tripura, Agartala in connection with Case No. Special (POCSO) 43 of 2021. By the said judgment, Learned Special Judge found the appellant to be guilty and convicted and sentence him to suffer simple imprisonment for three years and to pay a fine of Rs.20,000/- for the offence punishable under Section 8 of the POCSO Act, in default of payment of fine, the convict shall suffer simple imprisonment for further one month and to suffer simple imprisonment for six months and to pay a fine of Rs.1,000/- for the offence punishable under Section 448 of IPC, in default of payment of fine, the convict shall suffer simple imprisonment for five days and it was further ordered that Both the sentences of imprisonment shall run concurrently.

[2] Heard Mr. H.K. Bhowmik, Learned counsel appearing for the appellant as well as Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondent.

[3] Before the Learned Trial Court the case of the prosecution was in short is that on 16.10.2021 the informant, Smt. Smriti Sarkar (Das), mother of the victim [name withheld for protecting her identity] laid one FIR to O/C, Amtali P.S. alleging inter alia that at about 10.00 a.m. she went out for usual work in a 'Bidi' factory at Hapania keeping the minor daughter i.e. the victim aged about 14 years alone in the rented house at Sukantapalli, Amtali which was owned by one Sri Tapash Debnath. According to her, her husband was also left the house on that day in the morning at about 7.00 a.m. At about 01.00 p.m. in the noon her middle daughter, Arshita Das informed her that the accused Kartik Dey of their locality entered into their house and called her younger daughter and accordingly, the victim came out from the room at Varandah and during conversation the accused entered into their room and sat on a chair and told the victim girl to give a glass of water and accordingly, the victim served water to the accused and at that point of time, the accused suddenly dragged the victim girl make her sit on his lap and touched her breast by applying force upon her when the victim somehow dispersed herself from the clutch of the accused and took shelter in another room. Accordingly, the FIR was laid and on the basis of that allegation, Amtali P.S. Case No.2021/AMT/134 dated 16.10.2021 under Section 448/354(A) of IPC and under Section 8 of POCSO Act was registered and the case was endorsed to the IO for investigation who after completion of investigation, laid charge-sheet against the appellant before the Learned Trial Court and the charge was framed under Section

448/354(A) of IPC and also under Section 8 of POCSO Act and the same was explained to him in Bengali to which he pleaded not guilty and claimed to be tried. During trial, to substantiate the charge, the prosecution has adduced 9(nine) numbers of witnesses. The defence case was that of denial and as such, the appellant during his examination under Section 313 of Cr.P.C., pleaded as innocent and desired to adduce witness in support of his defence and accordingly, on behalf of the appellant one witness namely Mrs. Laxmi Rani Dey was examined as D.W.1 and finally, after conclusion of trial, the Learned Trial Court below found the appellant to be guilty and convicted him. Challenging that judgment the present appeal is before the High Court.

[4] At the time of hearing of argument, Mr. H.K. Bhowmik, Learned counsel appearing for the appellant first of all drawn the attention of the Court referring the initial FIR dated 16.10.2021 and referring the same, Learned counsel for the appellant submitted that in the FIR no specific time was mentioned regarding alleged occurrence of offence which the prosecution has failed to explain. It was further submitted that the FIR was registered on 16.10.2021 at about 20.12 hrs. but there was no such explanation as to why there was delay in lodging the FIR since the house of the informant was situated at a distance of one and half km. which reveals from the cross-examination of PW-8, Sri Sujit Barman. Learned counsel for the appellant thereafter referred the attention of the Court referring the charge framed by the Learned Trial Court and submitted that in the charge the Learned Trial Court below mentioned the alleged date and time of offence on 16.10.2021 between 10.00 a.m. to 12.30 p.m. But according to Learned counsel for the appellant, since the FIR was totally silent about the alleged time of

occurrence of offence then how the Learned Court below came to the observation that the alleged occurrence took place between 10.00 a.m. to 12.30 p.m. on 16.10.2021, according to Learned counsel, prosecution also failed to explain this point before the Learned Court at the time of hearing of argument.

[5] It was further submitted by Learned counsel for the appellant that from the evidence of PW-1 it cannot be said what was the source of information to the informant because according to Learned counsel, from the evidence it transpired that the victim initially informed the alleged incident to her sister 'majhdi' who reported the matter to her mother but the IO in course of investigation did not seize any such mobile to substantiate the prosecution allegation. More interestingly, the IO in course of investigation did not cite the said sister of the victim in connection with this case as witness, whose evidence was material for proper adjudication of the case. Even, no independent witnesses i.e. the neighbourers were tendered for examination by the prosecution in this case.

[6] It was further submitted by Learned counsel for the appellant that the alleged incident according to the prosecution was took place on 16.10.2021 but the statement of the victim was recorded on 18.10.2021, there was no such explanation in this regard from the side of the prosecution. Learned counsel also submitted that the victim spoken in Bengali but the concerned Learned Magistrate recorded the statement of the victim in English, there was no such explanation from the side of the prosecution, even, the Certificate of the Learned Magistrate was also silent as to why the statement of the victim was recorded in English when she gave her statement in Bengali. Although,

Learned Magistrate mentioned that the contents of the statement were read over to the victim but that Certificate would not serve the purpose as to why her statement was recorded in English. Learned counsel for the appellant further submitted that PW-4 and PW-5 are the neighbouring persons. From their evidence no incriminating materials revealed against the appellant. Nothing also could reveal from whom they have heard about the fact of incident. Even, the prosecution did not cite the landlord, Tapash Debnath as witness in this case in whose house the victim used to stay and his evidence was material for decision of this case.

[7] Learned counsel for the appellant further submitted that as per seizure list the IO seized the Birth Certificate on 16.10.2021 at 20.50 hrs. But the IO has shown the place of seizure at Sukrantapalli i.e. the dwelling house of the informant. But surprisingly, the IO during cross-examination specifically stated that she visited the place of occurrence on 17.10.2021. In this regard, there was no explanation from the side of the prosecution. Even, the IO in course of cross-examination further submitted that the reason for delay was not mentioned in the charge-sheet w.e.f. 16.10.2021 to 17.10.2021 which the prosecution also failed to explain before the Learned Trial Court below.

[8] Finally, Learned counsel for the appellant submitted that the evidence of the prosecution suffers from various infirmities. Even, the issuing authority of the Certificate was not tendered for examination by the prosecution for which the age of the victim could not be proved in accordance with law for which Learned counsel drawn the attention of the Court to allow this appeal and to set aside the judgment and order of sentence and conviction of the Learned Trial Court below on the ground

that the prosecution has failed to prove the case beyond reasonable doubt against the appellant.

[9] On the other hand, Mr. S. Ghosh, Learned Addl. P.P. appearing for the State-respondent submitted that in this case, the prosecution has projected the case in such a manner before the Learned Court below that there was no room to disbelieve the evidence on record of the prosecution. Further, Learned Addl. P.P. drawn the attention of the Court that at the time of alleged occurrence apart from the victim no other persons were there in the house, so, here the victim herself is the eye witness of the alleged occurrence. The victim also deposed in such a manner before the Learned Trial Court that there was no scope to disbelieve her evidence. Even, the appellant by the trend of cross-examination of witnesses of the prosecution could not in any manner raise any circumstance to disbelieve the evidence on record of the prosecution. So, according to Learned Addl. P.P. the Learned Court below after considering the evidence on record rightly and reasonably delivered the judgment and found the appellant to be guilty for which according to Learned Addl. P.P. there is no scope to interfere with the judgment of the Learned Court below and urged for dismissal of the appeal upholding the order of conviction.

[10] I have heard argument of both the sides at length and gone through the evidence on record very carefully. Now, becoming to the conclusion of this appeal let us discuss about the synopsis of the evidence on record adduced before the Learned Trial Court. In the case at hand, Learned Court below framed charge under Section 448/354(A)1(i) of IPC read with Section 8 of POCSO Act against the appellant. Now, to substantiate the charge, the prosecution before the

Learned Trial Court below has adduced in total 9(nine) numbers of witnesses. The appellant in course of his examination under Section 313 of Cr.P.C. pleaded as innocent and also desired to adduce witness in support of his defence and accordingly, on behalf of the appellant one witness was examined as DW-1.

[11] PW-1, Smti. Smriti Sarkar (Das) is the mother of the victim. She deposed that she is the informant of this case and the victim of this case is her younger daughter. On 16.10.2021, she laid the FIR against the appellant-accused Kartik Dey before the OC, Amtali PS. She further stated that one Mr. Shom scribed her ejahar as per her version and the same was explained to her when she put her signature on it. She identified her signature on the ejahar marked as Exhibit-1/1. She further deposed that on 16.10.2021, at about 12/12.30 p.m, in the noon time, the accused entered into her dwelling house when her daughter was alone and taking the advantage of her loneliness, the accused asked her to give him a glass of water and when her daughter gave him water, that time the accused embraced her and touched the various parts of her body and molested her. On the date of offence, no one except her daughter was present in the dwelling house as her husband was out of home in connection with his work. She was also out of home in relation to work in a 'bidi' manufacturing factory at Hapania and her middle daughter was out of State as she was a student and studying in Delhi. The marriage of her elder daughter has been solemnized and at present she is residing in her matrimonial home. During investigation, police seized the original birth certificate of her daughter being produced by her and obtained her signature in the seizure list. The witness identified her signature on the seizure list marked as Exhibit-2/1 and identified the

original birth certificate seized by police marked as Exhibit-3. She stated that the date of birth of her daughter was 12.05.2007.

During cross-examination, she stated that she met with the scribe at Amtali PS and the name of the scribe was Pappu Shom. She further stated that in the ejahar she did not give any certificate that the ejahar was written as per her version or that she put her signature after knowing the contents of the same. She further stated that she produced the birth certificate to the police at Amtali PS at about 4.00/5.00 p.m. Also she stated that she is residing in a rented house for last two years and prior to that she was residing as tenant in the house of one Bikash Kar wherein the said accused was her neighbour. The house of Arjun Saha is at a distance of 4/5 houses from the house of Bikash Kar and the house of Arjun Saha is adjacent to the house of her father-in-law. She further admitted that in their absence, when the accused called them that time the victim daughter opened the door and the accused entered into her room. She also admitted that prior to the incident of the case, one day a quarrel took place in between a shop keeper namely, Dilip Shaw and her daughter and thereafter, wife of said Dilip Shaw approached her and sought apology for the said incident and accordingly the matter was settled. She could not say about the persons residing in the North, South, East and West boundary of her dwelling house.

[12] PW-2 is the victim. She deposed that on 16.10.2021, at about 12/12.30 p.m, in the noon the accused entered into her dwelling house while she was alone and taking the advantage of her loneliness, accused Kartik Dey asked her to give him a glass of water, whereupon, when she served him water, that time, the accused dragged her and sat her on his lap and touched the various parts of her body including her

private part. Somehow, she got rid from his clutches and rushed to another room to save her from his lust. At the time of occurrence of offence, she was a student of Class-VIII. After the occurrence, she immediately communicated the same to her 'majhdi' [immediate elder sister] over telephone and subsequently, she informed the incident to her mother after her arrival. Thereafter, her mother approached the Amtali PS and at the instance, case was lodged against the accused person namely, Kartik Dey. She further stated that during investigation, one day, she was produced before the Magistrate, when her statement was recorded and her signature was taken. The witness identified her signature on the statement recorded by the Magistrate which was marked as Exhibit- 4/1. She further stated that her date of birth is 12.05.2007.

During cross-examination, she stated that on 16th October, 2021, police examined her but she did not disclose her phone number, and her sister to the police during examination. She further stated that on the day of incident, the aforesaid accused came to her residence and on his call, she opened the door. She further admitted that there are so many houses adjacent to her dwelling house. She also admitted that when the accused grabbed her and sat her on his lap, she did not raise any hue and cry but she volunteered that although she did not shout but she requested him not to do so and to leave her. She further admitted that prior to the incident of the case one day she went to the shop of Dilip Shaw while he dragged her hand she pushed him back and returned back from his shop. Nothing more came out relevant.

[13] PW-3, Sri Pappu Shome deposed that on 16.10.2021, the informant approached and requested him to scribe an ejahar.

Accordingly, he scribed the ejahar as per her version and after writing of of ejahar the same was read over and explained to her and after going through the contents written therein, the informant signed it. He also signed the same as scribe. The witness identified the ejahar marked as Exhibit-1 and his signature marked as Exhibit-1/2.

During cross-examination, he stated that he scribed on the ejahar as per version of the informant but there was no certificate by the informant, as to the fact that the said ejahar was read over and explained to her and after going through the contents therein, the said informant has put her signature. Nothing more came out relevant.

[14] PW-4, Smti. Bajali Banik deposed that she know the informant namely Smti. Smriti Sarkar (Das) and she (informant) laid one complaint against the accused Kartik Dey. She heard that last year, after the festival of Durgapuja, the accused person molested the victim, daughter of the informant.

During cross-examination, she stated that the accused is a resident of their locality and she know him prior to the incident. After four days of the incident, police examined her in connection with this case but, she did not disclose anything about this incident to the police as she had no personal knowledge about the incident and she just heard about the incident.

[15] Similarly, PW-5, Smt. Subhadra Das also deposed in the same manner like PW-4.

[16] PW-6, Akul Das deposed that the informant is his wife and the victim is his daughter. He has three daughters. On 16.10.2021, one of his daughter namely Arshita Das informed him over telephone that one person namely Kartik Dey entered into the dwelling house and

molested the victim i.e. his younger daughter. Subsequently, he returned back to home when his daughter and his wife informed the aforesaid incident to him and stated that the accused committed the offence.

During cross-examination, he stated that he did not directly witness the occurrence of offence but he deposed after hearing the same from his daughter. He was examined by the police in connection with this case. At present, he is a tenant and residing to the residence of his landlord namely Tapash Bhowmik. Prior to the alleged occurrence different offence took place at the grocery shop between the victim and grocery shop owner. But the dispute was amicably settled as the wife of the accused(grocery shop owner) begged apology from them.

[17] PW-7, Rakesh Sarkar is the maternal uncle of the victim. He deposed that on 16.10.2021, the informant communicated him over telephone that one person namely Kartik Dey of their locality entered into their dwelling house and molested her younger daughter who is the victim in the present case. Upon receiving the said information, he reached the dwelling home of the informant and came to know the aforesaid incident from his niece as well as from his elder sister i.e. the informant. During investigation, police seized the original birth certificate of his niece by preparing a seizure list and obtained his signature. The witness identified his signature on the seizure list marked as Exhibit.2/2.

During cross-examination, he deposed that police examined him and recorded his statement under Section 161 of Cr.P.C. He further admitted that during investigation, he stated that the police seized the birth certificate of his sister. He could not say about the contents mentioned in the seizure list.

[18] PW-8, Sri Sujit Barman deposed that on 16.10.2021 he was posted at Amtali PS as Inspector of Police. On that day, one written complaint was laid by Smti. Smriti Sarkar (Das) against Kartik Dey. Accordingly, being IC-OC of the PS, he registered Amtali PS Case No. 2021/AMT/134, dated 16.10.2021 under Sections-448/354A of the IPC and Section 8 of the POCSO Act. He identified his signature on the margin of FIR along with his signature marked as Exhibit-1/3 and Exhibit-1/4 respectively. He filled up the printed FIR form which bears his signature and identified the same marked as Exhibit-5 and Exhibit-5/1 respectively. He endorsed the case to WSI Smti. Aparna Das for investigation.

During cross-examination, he deposed that the FIR was received at 20.12 hrs. on 16.10.2021 and distance between the place of occurrence and the police station was one and half km. and the reason for delay in lodging the case has not been mentioned in the printed FIR form.

[19] PW-9, Smti. Aparna Das is the IO who laid charge-sheet against the accused. On 16.10.2021, she was posted as WSI of police in Amtali PS. She stated that this case was endorsed to her for investigation. During investigation, he examined the complainant and the victim and the witness Akul Das on 16.10.2021. He identified the seizure list dated 16.10.2021 marked as Exhibit-2 and his signature as witness over the seizure list marked as Exhibit-2/3. He also visited the place of occurrence and prepared hand sketch map with separate index. He identified the hand sketch map of the place of occurrence and identified the same marked as Exhibit.6 and the signature of the witness over the same marked as Exhibit.6/1. The separate index attached to

the hand sketch map marked Exhibit.7 and his signature of the witness over the same marked as Exhibit.7/1. He further deposed that on 18.10.2021 she produced the victim for recording her statement under Section 164(5) of Cr.P.C. and after completion of investigation, laid charge-sheet against the accused.

During cross-examination, she deposed that she visited the place of occurrence on 17.10.2021. She seized the birth certificate of the victim at the place of occurrence on 16.10.2021 from the dwelling house of the complainant. She further stated the reason for delay of one day since 16.10.2021 to 17.10.2021 was not mentioned in the charge-sheet. She further stated that she did not record the statement of owner of the house namely Tapash Debnath. She also did not collect the telephone numbers of the sister of the victim namely, Arshita Das. Also stated that she did not record the statement of the witness Amar Chandra Karmakar under Section 161 of Cr.P.C. Also stated that she did not conduct any investigation to find out the genuinity of the seized birth certificate of the victim. Also stated that she did not conduct any investigation to find out whether the victim girl used to study in any School at that time and also whether the School was opened at that time or not. The ejahar was received in the P.S. on 16.10.2021 at 08.12 p.m. Nothing more came out relevant.

These are the sum and substance of the evidence on record of the prosecution to substantiate the charge levelled against the accused-appellant.

[20] As already stated, the appellant in course of his examination under Section 313 of Cr.P.C. desired to adduce witness in support of his defence. Accordingly, on behalf of the appellant, one Mrs. Laxmi Rani

Dey was examined as DW-1. She deposed that she knows both the parties of this case and the informant Smti Smriti Sarkar (Das) used to stay in the residence of Tapash Bhowmik and Tapash Bhowmik stays in a separate house nearby that house. The husband of the informant Akul Das is a driver of a public vehicle and the accused is also a driver of a Learned Advocate of the Agartala Court. About 5/6 years back, the informant used to work somewhere but presently she is not doing any work. On 16.10.2021, during evening hours the accused was taken away by the police and she heard that the accused Kartik Dey went to the house of the informant and there took place some incident relating to the younger daughter of the informant with the accused. She further stated that the accused Kartik Dey goes out for his work as a driver of the Learned Advocate every day except the Sundays and the holidays and he goes out for work at about 9:30 to 9:45 a.m. and returns back about 4:30 pm of the day. The victim daughter is a school going girl and she goes to her school every day. She further stated that she heard from the accused that the husband of the informant Akul Das took some loan from the accused Kartik Dey for the education purpose of his daughter and thereafter, their relationship deteriorated. The wife of the accused person namely Smti Shikha Dey runs a grocery shop in front of their house. Further, she stated that regarding payment of money some dispute cropped up between Akul Das and the husband of the informant and the wife of the accused person and she denied about hearsay of prosecution allegation.

During cross-examination, she stated that she could not say when the money was taken by the father of the victim from the accused. She also could not say as to whether Akul Das buys any articles from the

shop of Shikha Dey or not. Again admitted that during Durga Puja Offices and Courts remain closed.

This is the evidence on record of the appellant in support of his defence.

[21] I have heard arguments of both the sides at length and gone through the record of the Learned Court below including the evidence on record of the prosecution as well as the accused-appellant. Admittedly, in this case excepting the victim no other persons were present to the residence when the occurrence took place. Prosecution to substantiate the charge has adduced in total nine numbers of witnesses. PW-1, PW-2 and PW-7 are the victim and the parents of the victim. Those witnesses in course of their examination deposed in such a manner that the appellant by the trend of cross-examination could not in any manner discard their evidence regarding the prosecution allegation. Even on meticulous examination of the evidence of the said witnesses it is crystal clear that the appellant by the trend of cross-examination even could not make any contradiction also to disbelieve their evidence. Other witnesses i.e. PW-4 and PW-5 although are outsiders but they admitted that they have heard some incident took place. Meaning thereby, they supported the case of the prosecution regarding the prosecution allegation. It is the settled position of law that FIR is not a substantive piece of evidence. So, for non-mentioning of time in the FIR, as submitted by Learned counsel for the appellant it cannot be said that the prosecution was case has become doubtful. It was on the basis of FIR the prosecution was set into motion and the IO after completion of investigation, laid charge-sheet against the present appellant. The appellant in this case in spite of thorough cross-examination of the witnesses of the prosecution could

not in any manner could raise any doubt or cloud to disbelieve evidence on record of the prosecution. Learned counsel for the appellant in course of hearing of argument although drawn the attention of the Court that from the FIR there was no allegation that the appellant touched the private part of the victim but in course of examination, she deviated from the statement laid in the FIR. In this regard, it is submitted that the informant herself was not present to the place of occurrence at the time of alleged occurrence. She deposed and laid the FIR after hearing the said fact from the victim daughter. Now, if we meticulously gone through the evidence of the victim it is clear that the accused on the alleged day after entering into the dwelling house of the informant committed the offence, touched different parts of the body of the victim. The appellant in spite of thorough cross-examination could not make any cloud to disbelieve the evidence of the victim girl. Other discrepancies are not fatal for the case of the prosecution. Rather, if we gone through the evidence of DW-1, it appears that the witness of the accused tried to draw the attention of the Court that on the alleged day, the appellant was busy in driving of Senior Advocate of Agartala Court but surprisingly, the accused have failed to adduce said Learned Advocate to substantiate that on that day, he was busy otherwise to discard the prosecution evidence. Furthermore, the witness of the accused also took the plea that some money was due to the father of the victim for which this case has been manufactured but in this regard, no satisfactory evidence could be laid by the accused to counter the prosecution allegation. So, on perusal of the evidence of DW-1 I do not find any scope to believe the defence story rather on perusal of the evidence on record of the prosecution, it appears that here in this case, the

prosecution has projected the allegation in such a manner that there is no room to disbelieve the evidence on record of the prosecution and the appellant also failed to discard the evidence on record of the prosecution. It was alleged that the prosecution did not adduce the owner of the house where the victim used to reside. In this regard, it is submitted that the witness of the accused herself admitted that the house owner of the victim used to stay in a separate house and since, at the time of alleged occurrence, excepting the victim no other person were present to the house. So, it is quite natural and it was already stated that except the victim there is no other witness who witnessed the occurrence of offence. So, for non-production of the neighbouring persons, there is no scope to disbelieve the evidence on record of the victim and the informant of this case. More so, on the basis of materials on record collected by IO during investigation, the Learned Court below framed the charge mentioning the time in between 10.00 a.m. to 12.30 p.m. on 16.10.2021. So for non-mentioning of time in the FIR, it cannot be said that the prosecution case is baseless and concocted.

[22] In course of hearing of argument, Learned Addl. P.P. referred few citations. In **CIDCO versus Vasudha Gorakhnath Mandevlekar** reported in **(2009) 7 SCC 283** in para-18 Hon'ble the Apex Court observed as under:

"18. The deaths and births register maintained by the statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that same was recorded at the instance of the guardian of the respondent [See Birad Mal Singhvi v. Anand Purohit [1988 Supp SCC 604]."

Referring the same, Learned Addl. P.P. drawn the attention of the Court that since the Birth Certificate produced by the prosecution

is a public document which is admissible in terms of Section 35 of the Evidence Act. So, the Birth Certificate of the victim submitted by the prosecution was a genuine one and there was no contrary evidence on record that on the alleged day the victim was major. Furthermore, in course of cross-examination, even there was no suggestion from the side of the appellant that the Birth Certificate which was relied upon by the prosecution and marked as Exhibit-3 was not correct and even the parents of the victim in course of their examination, specifically stated about the date of birth. So, the parents are the best person to disclose about the exact date of birth of their daughter. So, here in this case, since the parents have disclosed the date of birth of the victim, so, there is no scope to disbelieve their evidence and furthermore, the Birth Certificate issued by the appropriate authority which was also admissible under Section 35 of the Evidence Act being issued by the statutory authority and there was no such scope to disbelieve and discard the same.

[23] Learned Addl. P.P. in course of his argument referred another citation in **State of Uttar Pradesh versus Krishna Master and Others** reported in **(2010) 12 SCC 324** the Hon'ble Apex Court in para-29 observed as under :

"29. At this stage, it would be well to recall to the memory the weighty observations made by this Court as early as in the year 1988 relating to appreciation of evidence and the duties expected of a Judge presiding over a criminal trial. In State of U.P. v. Anil Singh, AIR 1988 SC 1998, it is observed as under :

".....in the great majority of cases, the prosecution version is rejected either for want of corroboration by independent witnesses, or for some falsehood stated or embroidery added by witnesses. In some cases, the entire prosecution case is doubted for not examining all witnesses to the occurrence. The indifferent attitude of the public in the investigation of crimes could also be pointed. The public are generally reluctant to come forward to depose before the Court. It is, therefore, not correct to reject the prosecution version only on the ground that all witnesses to the occurrence have not been examined. It is also not proper to reject the case for

want of corroboration by independent witnesses if the case made out is otherwise true and acceptable. With regard to falsehood stated or embellishments added by the prosecution witnesses, it is well to remember that there is a tendency amongst witnesses in our country to back up a good case by false or exaggerated version. It is also experienced that invariably the witnesses add embroidery to prosecution story, perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the Court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform."

Referring the same, Learned Addl. P.P. submitted that for non-production of the neighbouring person as witnesses there was no scope to disbelieve the evidence on record of the prosecution. Since the evidence of the victim and her parents are so trustworthy that there was no scope to disbelieve the evidence on record of the prosecution which the appellant has failed to shatter their evidence during cross-examination.

[24] Finally, Learned Addl. P.P. in course of his argument referred another citation in **Harpal Singh and Another versus State of Himachal Pradesh** reported in **(1981) 1 SCC 560** the Hon'ble Apex Court in para-3 observed as under :

"3. In the instant case the prosecution has proved the age of the girl by over whelming evidence. To begin with, there is the evidence of Dr. Jagdish Rai (PW 14) who is a radiologist and who, after X-Ray examination of the girl found that she was about 15 years of age. There is corroborated by Ex. PF which is an entry in the admission register maintained at the Government girls High School, Samnoli (where in the girl was a student) and which is proved by the Head Master. That entry states the date of birth of the girl as 13thOctober, 1957. There is yet another document, viz,, Ex. PD, a certified copy of the relevant entry in the birth register which shows that Saroj Kumari, who according to her evidence was known as Ramesh during her childhood, was born to Lajwanti wife of Daulat Ram on 11.11.1957. Mr. Hardy submitted that in the absence of the examination of the officer/chowkidar concerned who recorded the entry, it was inadmissible in evidence. We cannot agree with him for the simple reason that the entry was made by the concerned official in the discharge of his official duties that it is therefore clearly admissible under Section 35 of the Evidence Act and that it is not necessary for the prosecution to examine its author. From whatever angle we view the evidence, the conclusion

is inescapable that Saroj Kumari was below 16 years of age at the time of the occurrence. Accordingly we agree with judgments of the courts below and see no merit in this appeal which is dismissed."

Referring the same, Learned Addl. P.P. submitted that there was no scope to disbelieve Exhibit-3 being a public document for non-examination of his authority who issued the Certificate in view of Section 35 of the Evidence Act.

[25] Learned Addl. P.P. further submitted that from the evidence on record it appears that in this case the total presumption goes against the appellant under Section 29 and Section 30 of the POCSO Act and the appellant by the Act and conduct and also by the trend of cross-examination has failed to rebut that presumption in this case. As such, there is no merit in the appeal and urged for dismissal of this appeal.

[26] From the evidence on record of the prosecution as well as from the evidence of the appellant and also from the citations referred by Learned Addl. P.P. appearing for the State-respondent it appears that here in this case the prosecution has projected the allegation against the appellant in such a manner that there was no room to disbelieve the evidence on record of the prosecution and in my considered view, the Learned Court below after considering the evidence on record has rightly and reasonably found the appellant to be guilty and convicted him accordingly. As such, I do not find any scope to interfere with the judgment passed by the Learned Trial Court below.

In the result, the appeal filed by the appellant stands dismissed being devoid of merit. The judgment and order of conviction and sentence dated 20.07.2023 in connection with Case No.Special(POCSO) 43 of 2021 delivered by Learned Special

Judge(POCSO), West Tripura, Agartala is hereby upheld and accordingly it is affirmed.

The convict is to surrender before the Learned Court below to serve out the sentence immediately.

Send down the LCR along with a copy of the judgment.

JUDGE

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.08.20 11:39:05 +05'30'

Sabyasachi B