

**HIGH COURT OF TRIPURA
AGARTALA**

**Crl.A.No.18 of 2023
along with
Crl.A.(J)No.38 of 2023**

in Crl.A.No.18 of 2023

Sri Biki Das,
son of Sri Manik Das,
resident of Barjala, Bairagi Tila,
P.S. West Agartala, District-West Tripura

.....Convict-Appellant(s)

Versus

The State of Tripura

.....Respondent(s)

For Appellant(s)	:	Mr. Samar Das, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.
Date of Judgment & Order	:	23.07.2024
Whether fit for reporting	:	NO

in Crl.A.(J)No.38 of 2023

Sri Debabrata Das,
son of Late Samir Das,
resident of South Pulinpur, Teliamura,
P.O. & P.S. Teliamura, District-Khowai Tripura

..... Appellant(s)

Versus

The State of Tripura

.....Respondent(s)

For Appellant(s)	:	Mr. D.J. Saha, Adv. Ms. Sarama Deb, Adv. Ms. Suchitra Ghosh, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P.

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

Judgment & Order(Oral)

[*T. Amarnath Goud, J*]

Both the appeals are taken up together for hearing and decision as both the appeals are filed arising out of the same judgment, although the sentences imposed in both the appellants are different.

2. Heard Mr. Samar Das, Learned counsel appearing for the appellant as well as Mr. Raju Datta, Learned P.P. appearing for the State-respondent in connection with Case No. CrI.A.No.18 of 2023. Further, we have also heard Mr. D.J. Saha, Learned counsel appearing for the appellant as well as Mr. Raju Datta, Learned P.P. appearing for the State-respondent in connection with Case No. CrI.A.(J)No.38 of 2023.

3. Before coming to the conclusion of this appeal, let us discuss about the subject matter of the prosecution. The case of the prosecution before the Learned Trial Court is that on the basis of a written complaint lodged by the informant Srinibash Sutradhar on 12.06.2020 to the West Agartala, Women P.S. with the allegation that on 10.06.2020 his minor victim girl (name withheld) let the house in the morning at about 8.30 a.m. to go to her private tutor's house at Orient Chowmohani. Thereafter, at about 12 p.m. one friend of the victim namely Nikita Deb wanted to know about the victim from the wife of the informant over telephone and in turn the wife of the victim told her that the victim went to the house of her tutor. Thereafter, said Nikita informed his wife that two boys namely Debabrata Das and Biki

Das came to meet the victim girl and then they went out elsewhere. Lateron, the informant returned back to his residence at about 2 p.m. after completion of his work when his wife told him that the victim till then did not returned back to home. On the basis of information of said Nikita i.e. the friend of the victim they called one Biki Das to come to their house and accordingly Biki came but he could not give any proper reply. Further, according to the informant, said Biki asked Debabrata over telephone as to whether victim was with him or not when said Debabrata told him that he has taken away the victim girl. After that, the informant and his wife created pressure upon the accused Biki Das to find out the victim daughter and then Biki Das gave them the address of accused Debabrata Das and left the place. Thereafter, on search, the informant and his wife went to the house of of accused Debabrata Das at Teliamura but the family members of accused Debabrata did not cooperate with them. Accordingly, they started searching vigorously for the victim girl but failed. In the ejahar it was also mentioned that the accused Debabrata might have kidnapped her daughter and accused Biki Das abetted him. Hence, he laid the FIR. The delay was explained in the FIR regarding searching of the victim daughter. On the basis of written information West Agartala Women P.S. Case No.2020/WAW/043 dated 12.06.2020 under Sections 366/109/34 of the IPC and the case was endorsed to I.O. for investigation and the I.O. after completion of investigation laid charge-sheet against both the appellants before the Court for prosecution. Thereafter, cognizence of offence was taken and the Learned Trial Court after hearing both the sides framed charge under Section 366/34 of IPC read with Section 376(1) of IPC and Section 4 of POCSO

Act against the appellant Debabrata Das and also framed charge under Section 366 read with Section 109 of IPC.

4. To substantiate the charge prosecution before the Learned Trial Court adduced in total 8(eight) numbers of witnesses and relied upon some documents which were marked as Exhibits in this case and finally, after completion of trial, Learned Trial Court below found both the appellants to be guilty and sentenced the convict Debabrata Das under Section 4 of POCSO Act to suffer rigorous imprisonment for 10(ten) years and to pay fine of Rs.20,000/- in default to suffer simple imprisonment for 2(two) months and to suffer rigorous imprisonment for 3(three) months and to pay fine of Rs.10,000/- for the offence punishable under Section 366 read with Section 34 of IPC, in default to suffer simple imprisonment for 1(one) months and it was further ordered that both the sentences shall run concurrently. No sentence against the said appellant was imposed under Section 376(1) of IPC and the appellant Biki Das was sentenced to suffer rigorous imprisonment for 3(three) years and to pay fine of Rs.10,000/- for the offence punishable under Section 366 of IPC read with Section 34 of IPC in default to suffer simple imprisonment for 1(one) month. Challenging that judgment, both the appellants have preferred appeal before the High Court.

5. In course of hearing of argument Mr. D.J. Saha, Learned counsel appearing for the appellant in CrI.A.(J)No.38 of 2023 fairly submitted that the prosecution has miserably failed to prove the charge levelled against the appellant, Debabrata Das under Section 366 of IPC or under Section 4 of POCSO Act but Learned Trial Court below misconstrued the evidence on record passed an erroneous

judgment for which the interference of the Court is required. It was further submitted that the victim had love affair with the appellant Debabrata Das and from her deposition before the Learned Trial Court and also from the statement made before the Magistrate it will transpire that she made contradictory statements, so, no charge could be made out against the said appellant but the Learned Trial Court below without proper appreciation of evidence on record wrongly found him guilty and imposed punishment.

6. On the other hand, Mr. Raju Datta, Learned P.P. appearing for the State-respondent in respect of said appellant namely Debabrata Das submitted that there was no scope to disbelieve the evidence on record of the prosecution in respect of the charges framed against the appellant. So, the Learned Court below rightly and reasonably found the appellant to be guilty and convicted him thereon. So, according to Learned P.P., there is no material in the appeal filed by the appellant and urged for dismissal of the appeal upholding the judgment and order of sentence and conviction passed by the Learned Trial Court.

7. In respect of another appellant namely Biki Das, Learned counsel Mr. Samar Das has submitted that from the evidence on record it is clear that the prosecution has miserably failed to prove the charge levelled against the appellant under Section 366/34 of IPC but the Learned Court below failed to appreciate the evidence on record properly and convicted him without any basis for which Learned counsel urged for interference of this Court by allowing the appeal and also by setting aside the judgment and order of sentence and conviction.

8. Per contra, Mr. Raju Datta, Learned P.P. appearing for the State-respondent submitted that as already stated by him that the Learned Court below framed charges separately against both the appellants and after considering the evidence on record of the prosecution found the appellant to be guilty and both the appellants before the Learned Court below by the trend of cross-examination could not raise any doubt to shatter the evidence on record of the prosecution and thus, Learned P.P. urged for dismissal of this appeal filed by the appellant and prayed for upholding the order of sentence and conviction imposed by Learned Trial Court.

Heard both the sides.

Considered.

9. Now before coming to the conclusion let us discuss the evidence on record of the prosecution.

10. PW-1, Srinivash Sutradhar is the informant and he is also the father of the alleged victim of this case. According to him, on 12.06.2020, he raised one written complaint to accused persons namely, Biki Das and Debabrata Das. According to him, on 10.06.2020, his daughter went to take private tuition at about 8.30 am at Orient Chowmohani but did not return home till 2.00 p.m. and when she returned back to home at 2.00 p.m. that time his wife informed him that their daughter did not returned back home from the private tuition. After that, they called one Biki Das to inquire about his daughter who thereupon, called another accused Debabrata Das who replied that the victim was with him at Teliamura. Accordingly, the informant along with his wife went to Teliamura PS whereupon the maternal uncle and sister of the accused appellant Debabrata Das

were also present in the PS. At the PS we did not find our victim daughter, then they returned back to home. On 12.06.2020, he laid a written complaint before the West Agartala Women PS against the accused persons. According to him, his ejahar was scribed by one person sitting at the PS but he cannot recollect the name of that person. He put his signature on the FIR and identified his signature marked Exhibit-1/1. He further stated that after lodging of the ejahar, police seized the original birth certificate of his daughter being produced by him and the police obtained his signature on the seizure list which was marked as Exhibit-2/1 on identification. According to him, the date of birth of his daughter was 23.04.2003 and identified the birth certificate marked as Exhibit-3. Later on, on 16.06.2020, police recovered his victim-daughter and the police of West Agartala Women PS informed him about the recovery of his daughter and handed over the victim-daughter to him. Thereafter, on query with his daughter, she told them that the accused Debabrata Das kidnapped her with the aid of another accused Biki Das.

11. During cross-examination he stated that the distance of Ramnagar TOP his house was about 1 km. He further stated that after recovery of the victim she was produced before the Magistrate whereupon her statement was recorded. He also could not say as to whether his daughter i.e. the victim stated before the Magistrate that on 10.06.2020 one Madhusudhun Das, the maternal uncle of the accused Debabrata Das informed him over telephone that the victim was lying in his house and to take her back but he denied or not. He further stated that on 11.06.2020 he went to Teliamura P.S. He further stated that one Nikita Debnath is the close friend of his

daughter and she used to visit her home prior to the incident. He also could not say as to whether his daughter stated before the Magistrate that on 10.06.2020 she over telephone requested his wife to take her back when her mother gave the phone to Nikita Debnath who thereupon informed the victim that his wife asked her to go with anybody wherever she wants or not. He further stated that prior to 12.06.2020 he did not lodge any missing diary or written complaint either to the Ramnagar TOP, West Agartala Women P.S. or Teliamura P.S. He was confronted with the statement that he stated to police that he along with his wife went to Teliamura P.S. whereupon the maternal uncle and the sister of Debabrata Das were present and at present, they did not find the victim daughter but this portion of statement was not found in the statement recorded by IO under Section 161 of Cr.P.C. He also could not as to whether his daughter took shelter in the house of Madhusudhun Das or not. He admitted that on 16.06.2020 he got one telephonic information from Teliamura P.S. about the alleged recovery of his victim daughter. He also stated that his sister's house is situated at Teliamura. He further stated that in the ejahar he did not mention the name of the tutor and the location of the residence of the tutor. Further stated that accused Biki Das is his next door neighbour.

12. PW-2, the victim stated that her father lodged the instant case on 12.06.2020. On 10.06.2020 at about 11.30 a.m. she went to attend her private tuition class at Ker Chowmohani that time the accused persons i.e. the present appellants kidnapped her and took her to the dwelling house of Debabrata Das at Teliamura and thereupon he snatched away her mobile phone due to which she failed

to communicate with her parents. Thereafter, the accused appellant Debabrata Das committed forceful intercourse with her in his dwelling house. On 12.06.2020 the police of Telimura P.S. recovered her from the house of the maternal uncle of the accused Debabrata Das and handed her over to the West Agartala Women P.S. wherefrom her parents took her to their dwelling house. During investigation, one day she was produced before the Magistrate when her statement was recorded. She identified her signatures on the statement marked Exhibit-4/1 series. She further stated that one day in connection with this case, she was sent to IGM Hospital, Agartala for her medical examination where her medical examination was done. Her signature on the consent form was marked as Exhibit-5/1. She also stated that her date of birth is 23.04.2003.

13. During cross-examination she stated on 17.06.2020 she was produced before the Magistrate when her statement was recorded and on the day of recording, she was under threat/pressure from the accused persons and therefore she could not disclose the facts exactly what she disclosed before the Court. She further stated that she did not stated before the Magistrate that the accused Debabrata threatened her. She further stated that her statement was recorded before the Magistrate as per her version and again she stated that she did not say to Magistrate that she was kidnapped by accused persons or she did not say to Magistrate that she was kidnapped from Ker Chowmohani. She was confronted with the statement that she was unable to recollect as to whether she stated to police that the accused appellants kidnapped her or not but on drawing attention to her statement recorded by IO under Section 161 of Cr.P.C. the same

statement was not found. She could not say at what time the accused kidnapped her. She further stated that on the day of incident she was 17+. She further stated that accused Debabrata was known to her and she had conversation with him over telephone. Again she stated that she did not say to Magistrate accused Debabrata was not inclined to take her with him and she stated to Magistrate that her mother told her to accompany with the accused Debabrata Das and she and her father will not take any information about her. She further stated that since 16.06.2020 to 30.06.2021 she never disclosed the fact to the police or Magistrate that the accused threatened her not to disclose the actual fact. She again stated before the Magistrate on 10.06.2020 when she reached at Teliamura in the house of Debabrata's uncle that time the uncle informed her father over telephone to take her back and on 12.06.2020 she herself called upon her father to take her back from the house of Debabrata. She further stated to police that she had lover affair with the accused Debabrata for eight months prior to incident. She further admitted to police that she loved Debabrata very much.

14. PW-3, Smti. Kabita Das the mother of the informant. She deposed that on 12.06.2020 her husband lodged the case against the accused namely Debabrata Das and Biki Das. On 10.06.2020 the accused kidnapped her daughter from Ker Chowmohani when she went to attend her private tuition. She received the information from one Nikita about 2.00 p.m. and after that she called Biki Das who is her neighbour and enquired the matter who thereupon called Debabrata as to whether victim daughter was with him or not. That time Debabrata replied that the victim was with him and after taking the address of

the house of Debabrata Das through Biki, they went to Teliamura on 11.06.2020 to the house of Debabrata Das. But the relatives of the accused Debabrata Das did not co-operate with them and thereafter, on 16.06.2020, police informed that their victim-daughter was recovered and take her back from the PS. Accordingly, she along with her husband went to the West Agartala Women PS and took the victim daughter back to their residence. She further stated that after recovery of her daughter, she disclosed that the accused Debabrata forcefully kidnapped her. Along with the victim- daughter she went to IGM Hospital for medical examination and prior to medical examination she consented for the same and signed in the consent form and identified in the consent form stands marked as Exhibit-5/2. She further stated that during investigation, police seized one original birth certificate of her daughter by preparing a seizure list and obtained her signature as a witness. The witness identified her signature on the seizure list stands marked as Exhibit-2/2.

15. During cross-examination, the witness was confronted with the statement that she stated to police that on 10.06.2020, the accused appellants kidnapped her daughter from Ker Chowmohani but on drawing attention the said statement was not found in her statement recorded by IO under Section 161 of Cr.P.C. She was further confronted with the statement that she received the information about her daughter on the alleged day from Nikita at 2.00 p.m. but that portion of statement was also not found to the statement of witness recorded by IO. She further stated that she did not say to IO that on 11.06.2020 she along with her husband went to Teliamura in the house of accused Debabrata Das but they did not find

their daughter in the house of accused Debabrata. She further stated that she did not say to IO that after recovery of her daughter she disclosed that the accused forcefully kidnapped her. She also did not say to IO the name and address of the tutor where her daughter used to take private tuition. She further stated that her husband is a day labourer.

16. PW-4, Dr. Subhankar Nath deposed that on 14.09.2020, he was posted as Dy. Director, SFSL, Tripura. On that day the O/o. The Director, SFSL, received one sealed parcel in connection with West Agartala Women PS Case No.2020/WAW/043, dated 12.06.2020 under Sections-366/109/34 of IPC which was forwarded by Dy.SP(CAW), Agartala, West Tripura vide Memo No.896/A/SP(CAW)/AGT/2020 dated 08.09.2020. The Director endorsed me the exhibits along with papers for examination and opinion. The period of examination was 14.09.2020-22.09.2020.

The sealed parcel contain the following 8 exhibits :-

- 1) Exhibit-A, Wet vaginal Swab of victim girl.**
- 2) Exhibit-B, Dry Vaginal Swab of victim girl.**
- 3) Exhibit-C, pubic hair sample of victim girl.**
- 4) Exhibit-D, scalp hair sample of victim girl.**
- 5) Exhibit-E, nail sample of victim girl.**
- 6) Exhibit-F, blood sample of victim girl.**
- 7) Exhibit-G, urine sample of victim girl.**
- 8) Exhibit-H, Saliva sample of victim girl.**

The details of parcel of exhibits mentioned in page Nos.3 and 4 of the present report.

Biological Examination:-

a) Blood Examination: The exhibits marked-A, B, D, E, F and G were examined under different light sources, TMB Test,

Phenolphthalein Test and Takayama Test for detection of blood.

b) Semen/Spermatozoa Examination: The exhibits marked A, B, C, E and G were examined by visual examination under different light sources, acid phosphatase and microscopic examination for detection of semen stain/ spermatozoa of human origin.

c) Hair Examination: The exhibits marked C and D, were examined by visual examination and microscopic examination for hair.

d) Saliva Examination: The exhibit marked H, was examined by salivary amylase test for detection of saliva.

Results:-

1) Blood stain was not detected in the Exhibits marked-A, B, D, E and G.

2) Blood stain of human original was detected in the Exhibit marked-F.

3) Seminal stain/spermatozoa of human origin was not detected in the Exhibits marked-A, B, C, E and G.

4) The Exhibit marked - C was cut human pubic hair and all the hairs are morphologically and morphometrically similar in nature.

5) The Exhibit marked - D was cut human scalp hair and all the hairs are morphologically and morphometrically similar in nature.

6) Saliva stain was not detected in the Exhibit marked-H.

Since, blood stain / seminal stain was not detected in the victim's exhibits, hence, the DNA Profiling of controlled blood sample of victim (Exhibit- F) has been dispensed with.

This is the report submitted by him in 4 sheets which on identification is marked as Exhibit-6 and my signatures thereon are marked as Exhibit-6/1 series.

He was declined to cross-examination by the appellants.

17. PW-5, Smti. Monti Marak is a seizure witness. She deposed that on 17.06.2020 she was posted as Women Constable of Police at West Agartala Women PS. On that day, she produced vaginal swab (wet and dry), pubic hair, scalp hair, nail, blood sample, urine sample,

saliva sample of the victim girl (name withheld) to the IO namely, Smti. Sampa Das, WSI of police. The IO on receipt of the said samples from her and obtained her signature on the seizure list dated 17.06.2020 which on identification by the witness stands marked as Exhibit-7/1.

18. She was declined in the cross-examination by the accused.

19. PW-6, Dr. Manashree Debbarma deposed that on 17.06.2020 she was posted as a Medical Officer on duty to the Department of Obstetrics and Gynecology, IGM Hospital, Agartala. On that day, she conducted medical examination of the victim in connection with West Agartala Women PS Case No.2020/WAW/043, U/S 366/109/34 of IPC. Upon examination, she gave the report that *'In my opinion the act of rape neither can be confirmed nor can be ascertained. Hymen is resembling that of married, nulliparous woman'*. The said report of the victim girl as identified by the witness is marked as Exbt. 8 as a whole and the signatures of the witness over the same are marked as Exbt. 8/1 and 8/2 respectively.

To court: Nulliparous woman means a woman who is married but who has not given birth to any child.

20. During cross-examination she deposed that after examination of the victim she opined that she has sexual relationship in the past and the act of rape could not been ascertained from my clinical examination. She further stated that Nulliparous woman is used for a woman who had elective abortion or pregnancy loss. She also admitted that in the report she had mentioned that the victim previously knew the accused person.

PW-7, Smt. Ritu Das deposed that on 17.06.2020 she was posted as Woman Constable of police at West Agartala Women PS. On that date, the IO of this case seized several swabs and other samples of the victim girl by preparing a seizure list and obtained her signature and she identified her signature marked as Exbt. 7/2.

21. During cross-examination she deposed that on the basis of GD Entry they performs their duty.

22. PW-8, Smti. Sampa Das is the IO who laid charge-sheet against the appellants. She deposed that on 12.06.2020 she was posted as WSI of police in the West Agartala Women PS. On that day, this case was registered by OC on the basis of the FIR laid by one Sri Srinivash Sutradhar. She identified the registering note along with the signature of Smti. Mina Denbbarma i.e. the then OC on the written FIR which was marked as Exhibit-1/2. The printed FIR form filled in by Smti. Mina Debbarma as identified by the witness, marked as Exhibit-9 as a whole and the signature of Smti. Mina Debbarma as identified by the witness over the same marked as Exhibit-9/1. The case was endorsed to her. During examination, she recorded the statement of witnesses under Section 161 of Cr.P.C. She seized the original birth certificate of the victim girl by a seizure list and identified the seizure list marked as Exhibit-2 and her signature marked. She further stated that she produced the victim to the Court for recording her statement under Section 164(5) of the Cr.P.C. by the Learned Magistrate. On the same date, she arranged for the medical examination of the victim girl from IGM Hospital, Agartala. She also send the vaginal swabs and other samples by preparing a seizure list and identified the seizure list marked as Exhibit-7, her signature marked as Exhibit-7/3. She

identified the hand sketch map with separate index marked Exbt. 10 as a whole and the signature of the witness over the same is marked Exbt. 10/1. The separate index attached to the hand sketch map is marked Exbt. 11 as a whole and the signature of the witness over the same is marked as Exbt. 11/1. She further stated that on 14.09.2020, the seized samples were sent to the SFSL, Narsingarh for forensic examination. On 21.09.2020, she collected the medical report of the victim girl from the IGM Hospital, Agartala. She also collected the SFSL report and after completion of investigation she collected the Potency Report of accused from the AGMC & GBP Hospital, Agartala.

23. During cross-examination, she stated that in the statement of the victim girl there was no allegation against the appellant Biki Das. She further stated that in the statement of the victim girl recorded by the Learned Magistrate under Section 164(5) of the Cr.P.C, there was no allegation against the accused Debabrata Das @ Bura for the ingredients of under Section 376(3) of the IPC and Section 4 of the POCSO Act. She further stated that there is no eye-witness of the alleged kidnapping of the victim girl from Ker Chowmohani under West Agartala P.S. The distance between Ker Chowmohani, Agartala and the house of the accused Debabrata Das at Teliamura is about 65 kms. She further stated that during investigation, nothing came to her by what conveyance the victim girl was taken from Agartala to Teliamura. She did not verify any CCTV Footage at Ker Chowmohani. She did not record any statement that the accused Biki Das instigated or assisted Debabrata Das nor she recorded the statement of private tutor of the victim girl. During investigation it has not come out to her that the victim girl was

kidnapped within the span of 0830 hours to 1100 hours. The victim also did not tell her the exact time of her alleged kidnapping. In the column No.8 of the printed FIR form, the reason for delay was written as 'due to search' but during investigation nothing came out in this regard. She did not seized the mobile phone of the accused Biki Das nor she verified the mobile phone call details of the said accused. During investigation, she did not find any materials under Section 109 of IPC against the accused Biki Das. She also did not arranged for medical examination or ossification test of the victim girl regarding determination of age nor she examined the issuing authority of the birth certificate, nor she seized any school certificate of the victim girl. She further stated that in the statement of the victim recorded under Section 164(5) of the Cr.P.C the victim girl has stated that on 10.06.2020, her mother told her friend namely, Nikita Deb that she should not return to her house and she (victim girl) and she shall go along with accused Debabrata Das nor she recorded the statement of Nikita Deb. She further stated that the victim in course of her statement before the Magistrate stated that the maternal uncle of the accused asked her father over telephone to take her back but her father did not make any call nor make any respond nor take her back. During investigation she did not seize any kind of vehicle. She also did not examine Madhusudhan Das who handed over the victim girl to Teliamura PS and the victim also did not tell her that the accused Debabrata and accused Biki Das kidnapped her. The victim also did not tell me the exact time when she was actually kidnapped as well as the spot also. During investigation, it has not come out that the accused

persons threatened the victim girl not to disclose the actual fact to anyone.

24. The appellant Debabrata Das in course of his examination under Section 313 of Cr.P.C. pleaded as innocence and desired to adduce his witnesses in support of his defence. Accordingly, on his behalf one Madhusudhan Das appeared before the Court as D.W.1. He deposed that about two and half years back one day at about 2/ 2:30 pm, the victim girl (name withheld) came to their house and inquired from him about the house of the accused Debabrata Das. Then he asked the victim as to why she wants to go to the house of Debabrata to which she replied that her mother has asked her to go to the house of the accused Debabrata Das. Then he asked her to give the phone number of her father. After that she contacted with her father over telephone who handed over the telephone to his wife i.e, the mother of the victim. When the mother of the victim told him that she has asked the victim to go to the house of Debabrata. Then they contacted the local MLA when she to look into the matter. During evening hours the local MLA was contacted when she asked to bring the victim girl at Teliamura P.S and accordingly they brought the victim girl to the Teliamura P.S and handed over her to Teliamura P.S.

25. During cross-examination, he stated that that the distance between his house and the house of the accused is about 5 mins. walking.

26. These are the sum and substance of the evidence on record of the prosecution as well as the accused appellants before the Learned Court below.

27. From the evidence on record, it appears to us that although the prosecution before the Learned Court below brought the charge against the appellant namely Biki Das under Section 366 read with Section 34 of IPC but from the entire evidence on record of the prosecution specifically the evidence of the victim and the evidence of the IO it is clear that the prosecution could not place any material evidence before the Learned Trial Court showing involvement of the appellant Biki Das under Section 366 read with Section 34 of IPC but the Learned Court below without appreciating the evidence on record properly found them guilty.

28. In course of hearing of argument, Learned P.P. representing the prosecution also could not place any material before this Court to sustain the charge against the said appellant, Biki Das. As such, in our considered view the appellant Biki Das requires to be acquitted from the charge levelled against him and he be set at liberty henceforth. Thus, the appeal filed by the appellant Biki Das is allowed and the judgment and order of conviction and sentence imposed by the Learned Trial Court against the said appellant under Section Section 366 read with Section 34 of IPC is accordingly set aside. If the said appellant convict is in custody so he be released from the custody henceforth, if he not wanted in connection with any other case.

29. Now, in respect of another appellant namely Debabrata Das we have meticulously gone through the evidence on record. Admittedly, Learned Trial Court below framed charge against the said appellant under Section 366/376(1) of IPC and also under Section 4 of the POCSO Act. But from the evidence on record of the prosecution specifically from the evidence on record of the informant, his wife and

also the victim it appears that the prosecution before the Learned Trial Court below could not place any material showing the implication of the said appellant under Section 366 of IPC that the present appellant kidnapped the victim on the alleged day and time because the victim (the name withheld) who in course of her examination specifically admitted that she did not say to IO that she was kidnapped by the said appellant. Even there is no evidence on record from which place and how the said victim was kidnapped by the said appellant, just on the basis of some omnivous statement no charge under Section 366 of IPC could sustain against the appellant. In this regard we would like to refer herein below the relevant provision of Section 366 of IPC which provides as under :

"366. Kidnapping, abducting or inducing woman to compel her marriage, etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; [and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid]."

From the aforesaid provision of law it appears to us that to sustain any conviction against any accused the prosecution should prove that the accused abduct an woman with intend that she may be compelled or knowing it to be likely or she will be compelled to marry any person against her will or in order that she may be forced or seduced to illicit intercourse or knowing it to be likely that she will be forced or seduced to illicit forceful intercourse and until and unless the prosecution proves that abduction is the purpose for the purpose as

mentioned in Section 366 there is no scope to held to the accused to be guilty for the said charge.

30. Here from the evidence on record nowhere we find that there was intention of abduction by the appellant to kidnap the victim on the alleged date and time. Furthermore as already stated prosecution in this case could not prove from where and how and when the alleged victim was kidnapped by the appellant Debabrata Das and furthermore the victim herself specifically admitted that she did not disclose anything to the IO during investigation nor to the Magistrate that the said appellant kidnapped her on the alleged day. Thus, it appears to us that the Learned Court below erroneously convicted the said appellant under Section 366 of IPC.

31. Now in respect of other charges framed against the appellant under Section 376(1) of IPC and under Section 4 of the POCSO Act it appears that from the evidence of the victim who in course of her examination-in-chief that the appellant forcefully committed rape upon her but during cross-examination she specifically stated that she did not say to the Magistrate that the said appellant kidnapped her although, she made statement before the Magistrate that she was being threatened by the appellant. But again she stated that she did not say to Magistrate that the accused threatened her. Furthermore, she stated that her mother stated her to accompany the appellant Debabrata Das. More so, she specifically stated that during investigation she stated to police that she had love affair with the accused prior to the incident. From the evidence on record of the Medical Officer we do not find any evidence of commission of rape upon the victim by the present accused. More so, the IO also in course

of her cross-examination specifically stated that in course of investigation no evidence under Section 376(1) of IPC or under Section 4 of POCSO Act revealed against the present appellant. More so from the evidence of DW-1 it is crystal clear that on the alleged day the victim herself went to the house of the witness Madhusudhan Das and enquired about the accused Debabrata Das. The prosecution in spite of cross-examination of the witness could not shatter his witness.

32. Thus, from the evidence on record as discussed above we do not find any material showing implication of the appellant Debabrata Das with the alleged occurrence punishable under Section 366/376 of IPC or under Section 4 of the POCSO Act. Furthermore, the prosecution also failed to prove the actual age of the victim girl on the alleged day to attract the provision provided under Section 4 of POCSO Act because the issuing authority could not be produced by the prosecution to substantiate the actual date of birth of the alleged victim. More so, from the evidence on record what we have discussed above no where we find any material the present appellant Debabrata Das on the alleged day of occurrence kidnapped the victim girl and thereafter forcefully committed rape upon her but the Learned Court below without proper appreciation of the evidence on record convicted the said appellant which in our considered view Learned Trial Court below wrongly decided for which the present appellant is liable to be acquitted from the charge henceforth on benefit of doubt, which we hereby do.

33. In the result, both the appeals are allowed. The judgment and order of conviction and sentence imposed by the Learned Trial Court below in connection with Case No.Special(POCSO)36 of 2021

regarding the case of Biki Das under Section 366 IPC read with Section 34 of IPC and regarding Debabrata Das under Section 366/376(1) read with Section 34 of IPC and Section 4 of POCSO Act are set aside. Both the appellants are acquitted from the charge levelled against them and be set at liberty. The appellants be released from the custody henceforth if they are in custody provided they are not connected in connection with any other case. Their surities are also discharge from the liability of the bail bond, if any.

With these observations, both the appeals are disposed of on contest.

Send down the LCR along with a copy of the judgment and also a copy of this judgment be transmitted to Superintendent, Kendriya Sansodhanagar Tripura, Bishalgarh, Sepahijala Tripura for information of the convict-appellants.

JUDGE

JUDGE

Digitally signed by SABYASACHI
BHATTACHARJEE
Date: 2024.07.31 10:45:37 +05'30'

Sabyasachi B