

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) No.45 of 2023

Sri Ranjit Debroy alias Dundu

Son of Lt. Ratish Debroy,
of Rabindranagar,
P.S- Kanchanpur, District- North Tripura.

.....Appellant(s).

Versus

The State of Tripura,

Represented by the Ld. Public Prosecutor,
High Court of Tripura.

.....Respondent(s).

For Appellant(s)	:	Ms. R. Guha, Advocate.
	:	Ms. S. Nath, Advocate.
For Respondent(s)	:	Mr. R. Datta, P.P.
Date of Hearing	:	22.07.2024
Date of Judgment	:	26/09/2024
Whether fit for reporting:		No

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

The appeal arises from the judgment of conviction and sentence dated 24.05.2023 passed by Ld. Special Judge (POCSO), North Tripura District, Dharmanagar in Special (POCSO) Case No. 46 of 2019.

[2] By the impugned judgment and sentence, the appellant was convicted under Sections 448 and 354 of Indian Penal Code (for short 'IPC') and also under Section 8 of Protection of Children from Sexual Offences Act (for short *POCSO Act*). Under Section 448 of IPC, he has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/- and for both Section 354 of IPC and Section 8 of POCSO Act, he was sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.500/- each for both the offences and in default of payment of fine, he was further directed to suffer

imprisonment for one month on each count of sentences. All the sentences were directed to run concurrently.

[3] The prosecution came up with the case that on 14/09/2019 victim (aged about 15 years) was sleeping alone in her house and at that time, the appellant entered there, forcefully laid on her and sexually abused her. Hearing her outcry, one neighbouring lady namely, Smt. Kuiabati Reang [PW-6] and others came there and the appellant also attacked and threatened them.

[4] The FIR was lodged with similar allegations by the mother of the victim, Smt. Karanbati Reang [PW-4] which was registered under Section 448/354 IPC and under Section 12 of POCSO Act, and after investigation the investigating officer (PW.11) laid the charge sheet under Sections 448, 354, 506 of IPC and under Section 12 of the POCSO Act, 2012. However, the charges were framed by Ld. Trial Court under Sections 448 and 354 of IPC and also under Section 8 of the POCSO Act. The appellant denied the charges and thereafter, total of 11 witnesses were examined by the prosecution. The defence did not adduce any evidence.

[5] Ms. R. Guha, learned counsel and Ms. S. Nath, learned counsel for the appellant, argued that by seizure list dated 18.10.2019 the birth certificate and the Aadhaar card of the victim were seized but seizure list was silent about the place of the seizure and even those documents were also not proved into evidence during trial. Next points as were raised by learned counsel were that there was unexplained delay of three days in lodging the FIR which created further doubt about the veracity of the case and that the names of the victim and her mother were reflected in different styles in different places such as in the FIR, in the statement of victim recorded under Section 164 of

Cr.P.C. etc. and there were also discrepancies in the evidence of witnesses on material points, more particularly, in the evidences of Smt. Kuiabati Reang [PW-6] and Smt. Bajanbati Reang [PW-8].

[6] Learned counsel further argued that the brother of the victim who would reside in the same house was also not examined and when the prosecution came up with the story that just prior to the incident, the minor girl was sleeping in the room, the normal presumption would be that door was locked from inside, but there was no evidence as to how the appellant had entered into said room by opening the door. More so, motive or *mens rea* of the crime was also not established. Learned counsel also pointed out that no medical examination report was proved into evidence, though according to victim, her medical examination was done by a physician. The last point as was raised by learned counsel for the appellant was that the victim in her evidence named the miscreant to be 'Ranjit Debroy' whereas PW.6 stated the name of the miscreant to be 'Dundu' but there was no evidence that the appellant Ranjit Debroy was actually Dundu and, therefore, he could not be held responsible for the alleged offence.

[6] Learned P.P., however, argued that nowhere the appellant had challenged that his name was not Dundu and in the FIR also, it was specifically mentioned that his name was Ranjit Debroy *alias* Dundu. Learned PP further submitted that the mother of the victim in her evidence had stated that the age of the victim was 15 years at the relevant point of time which was also not denied by the appellant during cross-examination of the witness and evidence of the victim was also not confronted about her age. Therefore, the prosecution successfully proved the age of the victim. Learned PP also relying on a decision of the Apex Court in ***Rajkumar vs. State of Madhya Pradesh, (2014) 5***

SCC 353 submitted that during examination under Section 313 Cr.P.C. the accused did not furnish any explanation regarding the incriminating material brought against him and, therefore, adverse inference would be drawn against him.

[7] Learned PP further referring to the provision of Section 29 of POCSO Act submitted that the appellant failed to discharge his onus in rebutting the statutory presumption raised under Section 29 of the Act. According to him, the judgment of the Trial Court was sound and well reasoned requiring no interference.

[8] While taking into consideration the submissions of both the parties and traversing the record, it is noticed that out of total 11 witnesses examined by prosecution, the victim herself is the sole witness of the incident and hearing her outcry, Smt. Kuiabati Reang [PW-6], Smt. Bajanbati Reang [PW-8], Smti Anita Reang [PW-9] and Smt. Manjuri Chakma [PW-10] came to the spot just after the incident.

[9] The victim [PW-5] stated that leaving her alone in the house her mother went to collect vegetables in the surrounding area and at around 10/11 A.M. she was sleeping alone in her dwelling hut and at that time, the appellant, Ranjit Debroy suddenly entered there, caught hold of her and tried to do a sexual act by touching her breast after lying upon her. She also stated that the appellant had gagged her mouth but somehow she managed to shout and hearing the same, Smt. Kuiabati Reang [PW-6] with others came there and the appellant fled away and thereafter, she narrated the incident to those persons. In her cross-examination she stated that after two days of incident police recorded her statement and her mother lodged the FIR immediately after the incident. There was no further cross-examination of the victim except some denials.

[10] The PW.4 (mother of the victim) stated that at the time of the incident she was not in her house and the appellant committed such misdeeds while the victim was alone in the house and thereafter, she lodged the FIR. According to her, the birth certificate and the Aadhaar card of the victim were seized by police during investigation and later on same were released on bail in her favour.

[11] Smt. Kuiabati Reang [PW-6], another important witness in her evidence, stated that on the relevant date of incident, the mother was not in the house and the victim came to their house and after spending some time with her, she returned to her home stating that she would go for a sleep. After some while, she heard shouting of the victim and thereafter, she along with Baijayanti and Anita Reang rushed to the house of the victim and found Dundu there in the dwelling hut of the victim, and Dundu also threatened them with dire consequences on their arrival there. According to this witness, the victim at that time told them that while she was sleeping Dundu appeared there, caught hold of her on her bed, gagged her mouth and tried to do sexual act with her but somehow she managed to raise alarm. In her cross-examination, she confirmed that her house was situated adjacent to the house of the victim. She also stated that the victim had two brothers and the younger one would live with the victim and her mother in the same house. One denial was given by the defence to the witness that Ranjit Debroy @ Dundu (*underscored emphasised*) never entered into the dwelling hut of the victim and never tried to do any sexual act with her.

[12] As it appears, though Smt. Kuiabati Reang [PW-6] was not the eyewitness of the occurrence but she corroborated with the victim on material points as to what the victim had divulged to her just after the incident and she also found the appellant inside the hut of the victim. Though learned counsel of the appellant argued that the brother

of the victim was not examined but when it was established in the evidence that the victim was alone in the house, such non-examination of brother was not much significant.

[13] Smt. Bajanbati Reang [PW-8] stated that about one year and few months ago, one day, hearing the hue and cry of Smt. Kuiabati Reang, she went to her house but Kuiabati was found in the house of the victim and there she learnt that appellant had caught hold of the hand of the victim with ill motive and, therefore, she was crying and Miss Anita Reang [PW-9] and Smt. Manjuri Chakma [PW-10] also came to the spot. She further stated that the appellant threatened them with dire consequences and fled away and he was in drunken condition and was using filthy words. Except the denial there was no cross-examination of this witness.

[14] The appellant was absent in the court when the victim as well as Smt. Kuiabati Reang [PW-6] were examined by the prosecution and, therefore, they lost the scope to identify the appellant in the court. But both of them stated that they could identify him. Therefore, Smt. Kuiabati Reang [PW-6] though stated the name of the miscreant to be 'Dundu' could not get the scope to identify said Dundu in the Court, otherwise, it would be clear to the Court as to whether she was identifying the appellant as Dundu or not. The appellant cannot now be allowed to take benefit of his own fault.

[15] Learned counsel of the appellant tried to show a discrepancy that Smt. Kuiabati Reang [PW-6] had stated that she along with Smt. Bajanbati Reang [PW-8] went to the house of the victim hearing her cry, whereas Smt. Bajanbati Reang [PW-8] stated that she first went to the house of Smt. Kuiabati Reang [PW-6] and then to the house of victim, where she found Smt. Kuiabati Reang [PW-6] available. Such

discrepancy appears to be very minor. It is clearly established from the evidence of all these witness that the appellant was found in the house of the victim at that material time.

[16] Miss Anita Reang [PW-9] stated that the victim was her friend and on the relevant date, hearing chaos coming from the house of the victim, she went there and found the appellant was unnecessarily using slang languages to the persons present there and also threatened them with dire consequences. She also heard the appellant to give threat to the victim to cause sexual harassment and even he disrobed himself and showed his private part to the persons present there. The fact of giving threat to the victim was not available in her previous statement recorded under Section 161 Cr.P.C. and except that fact, there was no other cross examination of this witness.

[17] Manjuri Chakma [PW-10] stated that about one year and two months ago, hearing chaos, she went to the house of the victim and found the appellant Ranjit Debroy unnecessarily abusing the people gathered there. She again said that Ranjit Debroy was not known to her. Therefore, her such evidence is self-contradictory and not reliable.

[18] From the evidence of the victim, what emerges is that she is a very trustworthy and credible witness who could not be shaken during her cross-examination on material points and, therefore, there is no reason to discard her evidence. It is well settled that on the basis of sole testimony of the victim/prosecutrix, conviction can be sustained if her evidence is found to be trustworthy and credible. In this contexts, the Apex Court in the case of **State of Punjab vs. Gurmit Singh & Ors.,(1996) 2 SCC 384** at paragraph nos.8 and 21 observed as follows:

"8. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable....."

Said ratio has also been reiterated in ***Phool Singh vs. State of Madhya Pradesh, (2022) 2 SCC 74.***

[19] Here in this case, the evidence of the victim who is the sole eyewitness on the occurrence is found credible and trustworthy. Moreover, PW.6 has also corroborated her on material points. Therefore, the absence of any motive for commission of crime as alleged, in such a case is insignificant.

[20] Though learned counsel for the appellant strenuously argued that there was no evidence that Dundu was appellant Ranjit Debroy but it is noticed that the FIR itself was lodged with the name Ranjit Debroy *alias* Dundu and in the charge sheet also, the investigating officer mentioned his name as Ranjit Debroy *alias* Dundu. In examination under Section 313 Cr.P.C. also, his name was mentioned in similar manner

and in the present memo of appeal also, the appellant himself has mentioned his name as Ranjit Debroy *alias* Dundu and nowhere during trial, the appellant had challenged that his nickname was not Dundu. Therefore, such an argument is not at all convincing and does not deserve any consideration.

[21] The mother of the victim Smt. Karanbati Reang [PW-4] deposed that the police authority seized the birth certificate and the Aadhar Card of her daughter which were later on released to her on bail but during trial, the prosecution did not prove said birth certificate into evidence which is a serious lapse. In a case under POCSO Act, it is incumbent upon the prosecution to prove the age of the victim satisfactorily. Nowhere in the evidence, the mother of the victim or the victim has stated the date of birth of the victim. A bald statement by the mother that the victim was aged about 15 years is not sufficient to prove her age. Therefore, in absence of satisfactory proof of age of the victim, the conviction under Section 8 of POCSO Act cannot sustain.

[22] The FIR was registered on 17/09/2019 as revealed from the endorsement given by the Officer-in-Charge of the Police Station in the FIR. The said Officer-in-Charge was examined as PW-2 who deposed that he received the FIR on 17/09/2019 but the scribe of the FIR namely Sri Shyamalendu Bhattacharjee [PW-1] stated in his evidence that he had written down the Ejahar on 14/09/2019 as per request of the informant and said date was also mentioned in the FIR itself after the signature of the scribe in the FIR. The informant herself in her cross-examination also confirmed that she had lodged the Ejahar on the date of incident itself and, therefore, it is doubtful as to whether the informant had actually caused any delay in lodging the Ejahar or the police authority had belatedly registered it. When, the defence got it confirmed from the mouth of both the informant and the victim that the

informant had lodged the FIR on the date of the incident, it is doubly confirmed by defence themselves.

[23] The appellant except giving some denials during his examination under Section 313 Cr.P.C. did not try to furnish any explanation regarding the incriminating materials brought against him in the evidence. Therefore, adverse inference is also required to be drawn against him. In **Rajkumar (supra)** at para 22 it was held thus:-

"22. The accused has a duty to furnish an explanation in his statement under Section 313 CrPC regarding any incriminating material that has been produced against him. If the accused has been given the freedom to remain silent during the investigation as well as before the court, then the accused may choose to maintain silence or even remain in complete denial when his statement under Section 313 CrPC is being recorded. However, in such an event, the court would be entitled to draw an inference, including such adverse inference against the accused as may be permissible in accordance with law. (Vide Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257, Munish Mubar v. State of Haryana, (2012) 10 SCC 464 and Raj Kumar Singh v. State of Rajasthan (2013) 5 SCC 722.)"

[24] In view of above discussion, it is held that the prosecution has been able to prove successfully the charges under Section 448 and Section 354 IPC which requires no interference. However, he is entitled to be acquitted from the charge framed under Section 8 of POCSO Act.

[25] It was submitted by learned counsel Ms. Guha that the appellant was a day labourer, aged about 40 years having responsibilities to maintain his wife and two kids of 5 years and 7 years, respectively and he is a first time offender.

[26] Under Section 354 of IPC, Ld. Trial Court imposed a sentence of rigorous imprisonment for 5 years which is the maximum punishment prescribed under Section 354 of IPC. But no reason has been assigned by the Ld. Trial Court for inflicting such a highest form of punishment as prescribed under the said provision. Considering the

above factors as indicated, the sentence passed under Section 354 of IPC is, therefore, required to be modified.

[27] As a result, the appeal is partly allowed. The appellant is acquitted from the charge framed under Section 8 of POCSO Act, but his conviction under Sections 448 and 354 of IPC are maintained. The appellant is now directed to suffer rigorous imprisonment for 2(two) years and to pay a fine of Rs.1,000/- under Section 354 of IPC and in default to pay the fine, he shall suffer further simple imprisonment for 10(ten) days. The sentence passed under Section 448 of IPC by Ld. Trial Court shall remain unaltered. Both the sentences under Sections 448 of IPC and 354 of IPC shall run concurrently. Needless to say, the period of detention already suffered by the appellant during the course of investigation and trial, if any, shall be set off.

Communicate the copy of this Judgment and Order to Ld. Trial Court and also to the Superintendent of concerned Sansodhanagar/Jail immediately for necessary steps to be taken by them in this regard.

Return the LCRs.

Interim application(s), if any, stands disposed of.

JUDGE

SUJAY GHOSH

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