

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.49 OF 2023**

Shri Popy Debnath@Pappa,
Son of Shri Patan Debnath,
Aged about 25 years resident of East
Ratacheera, P.S.- Farikroy,
District- Unakoti Tripura.

.....**Appellant(s)**

Versus

The State of Tripura

.....**Respondent(s)**

For the Appellant(s)	: Mr. P.K. Biswas, Sr. Advocate. Mr. R. Das, Advocate. Mr. R. Nath, Advocate. Mr. P. Biswas, Advocate.
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For the Respondent(s)	: Mr. S. Ghosh, Addl. P.P.
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Date of hearing and delivery of Judgment & Order	: 10.09.2024
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Whether fit for reporting	: YES/NO.
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**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

J U D G M E N T & O R D E R(ORAL)

This present criminal appeal has been filed against the impugned Judgment of Conviction and Sentence dated 29.08.2023, passed by the learned Special Judge (POCSO), Unakoti District, Kailasahar, in case No. Special (POCSO) 12 of 2021, whereby the learned Special Judge (POCSO), Unakoti District, Kailasahar, convicted the appellant for committing

offence punishable under Sections 376(1) & 342 of IPC or alternatively under Section 6 of the POCSO, 2012, and sentenced him to suffer Rigorous Imprisonment for a term of 20 (twenty) years and to pay fine of Rs. 10,000/- (Rupees Ten thousand) only for committing offence, punishable under Section 6 of the POCSO, 2012. Further sentenced him to suffer Simple Imprisonment for a term of 1 (one) year, and to pay a fine of Rs. 500/- (Rupees five hundred) only for committing offence, punishable under Section 342 of the IPC.

2. The prosecution case in brief is that the informant of the case i.e. P.W.-1 lodged a written complaint before the Officer-in-Charge of Fatikroy police station on 24.04.2021 alleging *inter alia* that his minor daughter was missing from 08:00 p.m., of 21.04.2021. He also alleged that at that time, his wife was cooking food and his daughter was reading in the room and when his wife came to the room, she found that his daughter was missing. He alleged that thereafter they started searching for his daughter and came to know from neighbour that his daughter was kidnapped by the appellant against her will.

3. On receipt of this written complaint, police registered a case vide Fatikroy PS case No. 18 of 2021 under Section 366-A of the Indian Penal Code, and subsequently

Section 376(3)/109/212/242 of IPC and Section 6 of POCSO Act was added. After registration of the case, police started investigation and recovered the victim, and also arrested the appellant. Thereafter, police filed charge sheet against the appellant for allegedly committing offences punishable under Sections 366-A/376(3)/342 of the Indian Penal Code and Section 6 of the POCSO Act, and also filed charge sheet against his father of the appellant, Sri Patan Debnath for committing offences punishable under Sections 366-A/109/120-B/212 of the Indian Penal Code vide Fatikroy PS charge sheet No. 21 of 2021 dated 30.06.2021.

4. After receipt of the charge sheet, learned Court below took cognizance of the offences, punishable under Sections 366-A/376(3) and 342 of the IPC & Section 6 of POCSO Act against the appellant and also under Sections 366-A/109/120-B/212 of the IPC against his father. Thereafter, incriminating documents were supplied to the appellant and his father in compliance with the provisions engrafted under Section 207 of Cr.P.C. Thereafter, the learned Court below framed charge against the appellant for committing offences punishable under Sections 366-A/376/342 of the IPC and Section 6 of the POCSO

Act, and also framed charge under Section 109/376/346-A/342/120-B/212 of the IPC against his father.

5. To prove the case, the prosecution side examined as many as 28 (twenty-eight) witnesses, and on the other hand, from the side of the defense, they did not adduce any witness. After hearing both the sides, learned Special Judge (POCSO), Unakoti District, Kailasahar, vide impugned judgment dated 29.08.2023 convicted the appellant as indicted above.

6. Being aggrieved and dissatisfied with the impugned Judgment of Conviction and Sentence dated 29.08.2023, passed by the learned Special Judge, Unakoti District, Kailasahar, in SPECIAL (POCSO) 12 of 2021, the appellant has preferred this instant criminal appeal.

7. Heard Mr. P.K. Biswas, learned Sr. counsel assisted by Mr. R. Das, learned counsel, Mr. R. Nath, learned counsel, and Mr. P. Biswas, learned counsel appearing for the appellant as well as Mr. R. Datta, learned P.P., appearing for the State-respondent.

8. Mr. P.K. Biswas, learned Sr. counsel appearing for the convict-appellant submits that the victim girl in her statement given under Section 164 of Cr.P.C., stated that she was in relation with the appellant and she called the appellant

and asked him to pick her up. Thereafter, she went out and the appellant picked her up. There is no evidence to prove that there was sexual relation between the girl and the boy. In the forensic report of the victim girl, it is stated that there is a sign of penetration but no stains were found.

9. On the other hand, Mr. R. Datta, learned P.P., appearing for the State-respondent opposed the submission of the learned Sr. counsel appearing for the convict-appellant and stated that the Judgment and Conviction as passed by the Court below is just and proper and the same needs no further interference.

10. P.W.-1, i.e. the father of the victim girl is the informant of this case. On 21.04.2021, he got the information from his son that his daughter was missing. Thereafter, he tried to search for her daughter with all his possible source but he failed. He lodged FIR after 2(two) days. One of his relatives wrote the ejahar on his behalf. He further stated that on the next day of her missing, he had been shown by one of his relatives a joint picture of his daughter wearing vermilion on her forehead and bungle(Sankha) along with the appellant which went viral on social media. He did not ask his daughter anything about the incident.

In his cross-examination, he stated that his grandson Sayan Data showed him the joint picture of her daughter along with the appellant in his phone. But he did not know his mobile phone.

11. P.W.-3, the mother of the girl deposed that on 21.04.2021, at night, her daughter sought dinner from her. After arranging the same, when she called her, she found her missing from the Court. She informed her husband as well as her son. On the next day, they lodged the case with the police. She also stated that after around three days, he got a joint photo of the accused-appellant and her daughter wearing bungle (sakha) and using vermilion on her forehead on social media. After three days, police recovered her daughter.

In her cross-examination, she stated that she did not hear any sound of scuffling or any alarming sound of her daughter in her room when she was in the kitchen. She found a joint picture of her daughter and the appellant on her son's mobile. Her son and her husband's mobile were not given to the police.

12. P.W.-4, the victim girl stated that she studied in Hajibari H.S. School at Class-X. She deposed that on 21.04.2023 at night which she was going to attend her nature's call and

going to toilet, suddenly, someone gagged her mouth. She lost her senses. On the next day, he regained her senses and found herself in the house of the appellant's sister. She found that someone put vermilion on her forehead and also bangle(sankha) into her hands. The appellant had also committed sexual intercourse with her against her will. After three days, the father of the appellant took her to her house.

In her cross-examination, she stated that her toilet is situated around 20 cubits from their kitchen. There is no fencing in her house. She did not remember whether she stated to Darogabadu that the appellant gagged her mouth and took her away. She did not inform her parents during those three days when she was with the appellant. On 23.04.2021, she was brought to her house. She also stated that on being tutored by the appellant she stated to Darogababu that on 21.04.2023 at around 8.00 A.M., the appellant requested her over the phone to meet him in front of her house otherwise, he would die.

13. P.W.-23 was posted as Senior Scientific Officer Cum Assistant Chemical Examiner, Government of Tripura. He opined that seminal stain/spermatozoa/blood stain of human origin could not be detected in the exhibits.

In her cross-examination, the witness stated that spermatozoa was absent in the Exhibit so DNA profile test was not conducted.

14. P.W.-27 who was posted as WSI of police at Kumarghat P.S. examined the victim and recorded her statement under Section 161 of Cr.P.C.

In her cross-examination, she stated that the victim did not state to her that she was kidnapped from her washroom by pressing her mouth and the victim became senseless due to this, and the subsequent day, she regained her sense. The victim did not state to her about who was present at the time of her marriage. The victim also did not state to her that after regaining her senses, someone had put vermilion on her forehead. The victim did not state that when she was going to attend her nature's call, at that time, the appellant gagged her mouth and took her away.

15. P.W.-28 is the medical officer at Kumarghat CHC. She conducted medico-legal examination of the victim. She opined in report that *"There are signs of penetration of vagina though swab analysis report is negative for seminal fluid."*

In her cross-examination, she stated that the hymen of a child can be ruptured or torn due to various reasons

cycling, swimming and jumping. SFSL report was negative in the instant case.

16. To properly adjudicate the matter let us also produce the relevant portion of the statement given by the victim girl under section 164(5) of Cr.P.C.:-

" I was in a relation with a guy named Bappa Debnath. I called Bappa our phone and asked him to pick me up. Thereafter I went out on the road and he picked me up."

17. Heard and perused the evidence on record.

18. This appeal arises from the Judgment and Order of Conviction dated 29.08.2023. The appellant has challenged the said Judgment claiming that the prosecution's case is fraught with inconsistencies, and the evidence presented does not conclusively prove the guilt beyond a reasonable doubt.

19. The case of the prosecution, as presented, revolves around the accusation that the appellant had forcefully kidnapped and confined the minor victim, and subjected her to sexual assault. It is alleged that on 21.04.2021, the appellant coerced the victim and took her against her will. The complaint was lodged by the victim's father i.e. PW-1, alleging that his minor daughter was abducted.

20. Key prosecution witnesses i.e. PW-1 and PW-2, the parents of the victim, in their deposition, have testified that they saw photographs of their daughter with the appellant on a social media platform, specifically on the phone of one of their relatives. In these photographs, their daughter and the appellant were seen together with the victim wearing vermilion (sindoor) and bangles, which traditionally signifies marriage.

21. PW-27, i.e. the witness who examined the victim after the alleged incident testified that the victim did not mention any forcible abduction or sexual assault. This key piece of testimony contradicts the victim's later deposition in court, wherein she claimed that she was forcibly taken by the appellant.

22. The forensic expert (PW-28), who examined the swabs collected during the medical examination, testified that there were no signs of vaginal penetration, and the swab analysis was negative for seminal fluid. This finding further weakens the prosecution's case of sexual assault.

23. A critical aspect of this case is the statement made by the victim under Section 164 of the CrPC before the Magistrate. In this statement, the victim admitted that she was in a relationship with the appellant and that on the day of the

incident, she had called him to pick her up. She willingly left her home and was not taken against her will. This statement directly contradicts her later deposition in Court, wherein she alleged forceful abduction by the appellant. The inconsistency between the two statements casts significant doubt on the veracity of the victim's claim of forceful abduction and sexual assault.

24. The key issue before this Court is whether the prosecution has proved beyond a reasonable doubt that the appellant committed the offenses of kidnapping and sexual assault. After a careful examination of the evidence on record, this Court finds several material contradictions that raise doubts about the prosecution's case.

25. The victim's statement under Section 164 Cr.P.C. indicates that she willingly went with the appellant, while her deposition in Court claims forceful abduction. Such contradictions go to the heart of the prosecution's case and cannot be ignored. The prosecution has failed to explain this discrepancy convincingly.

26. The evidence presented by PW-27 and PW-28 do not support the allegations of sexual assault. The lack of any

signs of penetration and the negative swab report for seminal fluid further weaken the prosecution's case.

27. The testimony of the victim's parents, PW-1 and PW-2, also raises doubts. While they claimed to have seen photographs of their daughter with the appellant, signifying a relationship between them, there is no explanation for the delay in filing the complaint or any immediate action taken after seeing those photographs. This behavior is inconsistent with their claim that their daughter was kidnapped.

28. It is a well-settled principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt. Any doubt regarding the guilt of the accused must result in acquittal. In the present case, the prosecution has failed to establish the charges against the appellant with certainty. The contradictions in the victim's statements, the lack of medical evidence, and the unexplained behavior of the victim's parents all contribute to creating reasonable doubt about the guilt of the appellant.

29. Further, to prove the age of the alleged victim, the prosecution side produced the Admission Register of Ratacherra High School(Exbt-7), the School Certificate(Exbt-9)

issued by P.W.-12 and Authentication of School Certificate(Exbt-10). On the conjoint reading of the aforesaid three documents, it is found that the School Register which was placed by the prosecution is of Ratacherra High School, and from the form of the School Certificate, it is revealed that the same was issued by the Hajibari Class XII School. On bare perusal of the letter of Authentication of the School Certificate of the victim date 01.05.2021, it is revealed that the Date of Birth was recorded as per the Certificate of Anganwadi Centre, Tilagaon, but the prosecution did not produce any evidence as to how Anganwadi center recorded the Date of Birth of the victim on 20.09.2006. Further, the parents of the victim i.e P.W.-1 and P.W.-2 did not say anything about the Date of Birth of the victim. The above facts create doubt about the documents of Birth Certificate produced by the prosecution and the age of the victim and none were examined by prosecution to prove the date of birth certificate.

30. In light of the above discussion, this Court finds that the prosecution has failed to prove the charges against the appellant beyond a reasonable doubt. Further, the documents of birth certificate i.e. Exbt-P-8, Exbt-P-9 and Exbt-10 were not properly examined as such the age of the girl is not proved. The inconsistencies in the evidence presented by the prosecution,

coupled with the lack of medical corroboration, lead this Court to conclude that the conviction of the appellant cannot be sustained.

31. Accordingly, the appeal is allowed. The Judgment and Order of conviction passed by the Learned Special Judge(POCSO), Unakoti District, Kailasahar in SPECIAL(POCSO)12 of 2021 dated 29.08.2023 is hereby set aside. The appellant is acquitted of all charges. The appellant shall be released forthwith unless required in connection with any other case.

32. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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