

HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) 55 of 2023

Md. Rushan Ali @ Rushan Uddin @ Arian
Aged about 20 years
S/o Md. Chayed Ali
Resident of Jubarajnagar, Ward No.6
PS- Dharmanagar, District- North Tripura

----- Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. S. Lodh Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl. PP.
Date of hearing and date of judgment and order	:	25.09.2024
Whether fit for reporting	:	No

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

Judgment & Order (Oral)

T.Amarnath Goud, J

Heard Mr. S. Lodh, learned counsel appearing for the appellant also heard Mr. S. Ghosh, learned Addl. PP appearing for the state-respondent.

[2] This is a criminal appeal under section 374(2) of the Code of Criminal Procedure, 1973, against the impugned Judgment of Conviction and Sentence dated 29.08.2023, passed by the Ld. Special Judge (POCSO), North Tripura, Dharmanagar, in SPECIAL (POCSO) 14 of 2022, whereby the Ld. Special Judge (POCSO), North Tripura, Dharmanagar, convicted the appellant for committing offence, punishable under Sections 376(2)(m) of Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012, and sentenced him to suffer Imprisonment for remainder of his natural life and to pay fine of Rs. 10,000/- (Rupees Ten thousand) only in default to suffer imprisonment for 6 (six) months for committing offence, punishable

under Section 4(2) of the Protection of Children from Sexual Offences Act, 2012 and also sentenced him to suffer Imprisonment for remainder of his natural life and to pay fine of Rs. 10,000/- (Rupees Ten thousand) only in default to suffer imprisonment for 6 (six) months for committing offence, punishable under Section 376(2)(m) of the Indian Penal Code.

[3] The prosecution case in brief, is that on 29-07-2022 at about 1200 hours the victim in this case who is a 9 years old girl and a student of Class-III in Jubarajnagar Madrasha School was alone in her house at Jubarajnagar. During that time accused Md. Rushan Ali @ Rushan Uddin @ Arian who is her cousin brother came to her house and gave her a false information that her mother has asked her to bring back the goat from the nearby segun garden and on that pretext the accused accompanied the victim and on reaching near a jungle forcefully committed rape upon the victim while holding her mouth with his hand. The victim sustained severe bleeding injuries and she returned back home and told her mother about the incident. She was also taken to Dharmanagar District Hospital on that day and remained under treatment for a long time.

[4] The informant Sufiyara Begam who is mother of the victim lodged an ejahar with Dharmanagar Woman PS regarding the incident and based on the ejahar a specific case was registered and the matter was investigated and on completion of investigation the IO submitted charge-sheet against the accused under Section 376(2)(m), 376AB of IPC and under Section 4 of the POCSO Act.

[5] On receipt of the charge-sheet the court below took cognizance of offence and proceeded with the case and in course of the proceeding prosecution papers were supplied to the accused. Thereafter both sides were heard and on finding prima- facie incriminating evidence under Section 376(2)(m) of IPC and under Section 4 of the POCSO Act a formal charge was framed against the accused and the same was read over and explained to him to which he pleaded not guilty and claimed to be tried.

[6] The prosecution to bring home the charges under the aforesaid provisions of IPC and POCSO Act adduced as many as 21 witnesses. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C wherein he stated that the prosecution case is false and declined to adduce any witness from his side.

[7] After hearing both sides, the learned Court below delivered the judgment and order of conviction and sentence in the following manner:

Having considered the aforesaid act of the convict, this Court is of the opinion that the convict deserved to be sentenced to maximum punishment for the offence.

Section 4(2) of the POCSO Act says that who ever commits penetrative sexual assault on a child below 16 years of age shall be punished with imprisonment for a term which shall not be less than 20 years but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person and he is also liable to fine.

Section 376(2) of IPC prescribes punishment with rigorous imprisonment for a term which shall not be less than 10 years but which may extend to imprisonment for life which shall mean imprisonment for the remainder of natural life of that person and shall also be liable to fine.

As stated above the offence committed by the convict was inhuman and barbaric and the convict is liable to be punished with the maximum sentence.
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Accordingly, convict Md. Rushan Ali @ Rushan Uddin @ Arian is sentenced to suffer imprisonment for the remainder of his natural life under Section 4(2) of the POCSO Act. The convict is also sentenced to pay fine of Rs.10,000/-(ten thousand) under Section 4(2) of the POCSO Act failing which he shall have to suffer imprisonment for a further period of 6(six) months.

The convict Md. Rushan Ali @ Rushan Uddin @ Arian is also sentenced to suffer imprisonment for the remainder of his natural life under Section 376(2)(m) of the IPC. The convict is also sentenced to pay fine of Rs.10,000/-(ten thousand) under Section 376(2)(m) of the IPC failing which he shall have to suffer imprisonment for a further period of 6(six) months.

The fine money if realized shall be paid to the victim as compensation for her rehabilitation.

Both the sentences of imprisonment shall run concurrently.

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

[9] It is contended by the counsel for the appellant that on a conspectus of the evidence on record, and the findings of the Ld. Court below, it transpires that the statements of the prosecution witnesses are contradictory to each other, and it is also

found that all the prosecution witnesses are tutored, and made untrue statements, and hence, convictions of thus, the impugned Judgment is liable to be set aside.

[10] It is further contended by the counsel for the appellant that Ld. Court below committed serious error in accepting the age of the victim. On bare perusal of the written complaint, it is alleged that the victim was a student of Yuvarajnagar Madrasa School. To prove the age of the alleged victim, prosecution did not produce the School Certificate of first instance. It is trite law that for proving the age of the victim, prosecution has to bring on record the School Certificate on first instance of the victim. As prosecution did not produce the School Certificate, it is submitted that prosecution has failed to prove the age of the victim. Learned Court below failed to appreciate the same and passed the impugned judgment and hence, the same is liable to be interfered with.

[11] Moreover, learned Court below convicted the appellant for committing offence punishable under Section 376(2)(m) of IPC and Section 4(2) of POCSO Act and passed sentence in both the Sections. Learned court below failed to appreciate the mandate of Section 42 of the POCSO Act and sentenced the appellant in both the Sections, and hence, the same is liable to be interfered with.

[12] On the other side, Mr. S. Ghosh, learned Addl. PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the appellant being at his tender age cannot be given any concession. He further contended that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal.

[13] Having perused the record and also having considered by the submission as advanced by the counsel for the parties, this Court is of the opinion that it cannot be denied that the crime did not happen on the fateful day. It is evidence from the record that at the time of attempting the crime, the convict appellant was 20 years of age. Since he has been convicted and he is bound to serve the punishment as imposed by the learned

court below to suffer imprisonment for the remainder of his natural life. It cannot be neglected that he was merely 20 years of age when he committed the crime. Though the magnitude of the crime cannot be seen leniently but this Court also considering the age of the convict appellant and biological aspect of the convict appellant reduces the punishment to 20 years from suffering imprisonment for the remainder of his natural life. This court also opines that no punishment is enough to remove the agony faced by the sufferer this court cannot shut its eyes to the possibilities that the perpetrator may learn to respect and dignity of others when he has completed serving his punishment for long 20 years. Therefore the convict appellant is now sentenced to suffer 20 years of imprisonment under Section 376(2) of IPC as well as under Section 4(2) of the POCSO Act. Both the punishment shall run concurrently. In so far as fine amount is concerned, he shall pay Rs.10,000/- towards fine.

[14] With the above observation and direction, the present appeal stands disposed of modifying the impugned order dated 29.08.2023, passed by the Ld. Special Judge (POCSO), North Tripura, Dharmanagar, in SPECIAL (POCSO) 14 of 2022 to the extent as indicated above.

[15] Registry is directed to mark a copy of this judgment and order to the Superintendent, Kendriya Sansodhanagar, Tripura at the earliest.

B.Palit, J

T. Amarnath Goud, J