

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 61 of 2023

**Smt. Soma Singh
On Behalf of Sri Krishna Saha @ Kishan**

-----Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant (s)	:	Mr. B. Deb, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP.
Date of hearing and date of judgment and order	:	30.07.2024.
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. B. Deb, learned counsel appearing for the appellant also heard Mr. Raju Datta, learned PP appearing for the state-respondent.

[2] This is an appeal under Section 374 of the Criminal Procedure Code 1973 against the judgment conviction and sentence passed by Ld. Special Judge (POCSO), Agartala West Tripura in Case no. Speical (POCSO) 34 of 2020 vide judgment dated 11.10.2020 in which the trial court convicted and sentenced the convict to suffer imprisonment for natural life and fine a fine of Rs.30,000/- for an offence punishable under section 376 (DB) of IPC in default of payment of fine he will suffer simple imprisonment for further 6 months and sentenced Rigorous imprisonment for 03 (three year) and a fine of Rs.2000/- for an offence punishable U/S 366 of IPC, in default of payment of fine he will suffer simple imprisonment for further 1 month and also sentenced simple imprisonment for 6 months for the offence punishable U/S 506 of IPC. All the sentences of imprisonment shall run concurrently.

[3] The factual matrix as per the version of the prosecution is that prior to the 15 days to lodging of the ejahar/FIR the informant noticed that her victim-daughter's vagina was in swelling condition and she made complaint to her mother-informant that she has been suffering. At this, the informant applied an ointment to the private part of her victim-daughter. Subsequently, prior to the 4 days of the lodging of the ejahar/FIR, the victim disclosed that accused persons namely, Sajal land Kishan along with others taking the victim-daughter of the informant in a small room inserted their male organ to her vagina. Initially, the informant did not approach police considering the social stigma. Thereafter, the informant took the victim girl to a doctor due to deterioration of her physical condition. But without examining her victim-daughter, the doctor advised informant-mother to go the police first. Accordingly, the informant approached the West Agartala Women PS and lodged the ejahar/FIR against the accused persons.

[4] Based on the written complaint of the informant (mother of the victim), a case was lodged at West Agartala Women PS and accordingly, the investigation started. During investigation the IO (PW12) examined the informant and firstly, on 26.02.2020, recorded her statement under Section 161 of the CrPC. Thereafter, on 27.02.2020, made arrangement for the medical examination of two numbers of child in conflict with law namely, Sayan Das and another Sayan Das @ Tema and thereafter forwarded them before the JJB, Agartala. Then on the same day, the IO arrested the accused person namely, Sajal Barman and made arrangement for his medical examination to determine his potency and also produced him before the Court. IO of the case also made arrangement for the medical examination of the victim at IGM Hospital, Agartala, Seized the dry and wet vaginal swab, nail sample, saliva sample and blood sample of the victim by preparing a seizure list dated 27.02.2020. During the course of investigation, the IO also seized the blood sample of accused Sajal Barman by preparing a seizure list. On the

same day, she further seized the birth certificate of the victim and Clotrimazole Cream of 30 gms by preparing a seizure list bearing her signature at the bottom. Thereafter, the IO examined the victim girl and recorded her statement under Section 161 of the CrPC and also produced the victim girl before the Magistrate whereupon her statement was recorded under Section 164(5) of the CrPC. The IO also examined some more available witnesses and recorded their statement under Section 161 of the CrPC. During the course of investigation, the IO also produced one Rahul Sutradhar before the Magistrate, whereupon, his statement was recorded under Section 164(5)(a) of the CrPC. Thereafter, on 02.03.2020, the IO received the Potency Report of the accused Sajal Barman. Subsequently, on 05.03.2020 she arrested another co-accused person namely Krishna @ Kishan Saha and made arrangement for his medical examination relating to Potency Test and thereafter produced him before the Court. On 07.03.2020, IO seized the blood on gauge piece of said accused Krishna Saha @ Kishan by preparing a seizure list. Moreover, in the course of the investigation, on 14.03.2020, she examined one doctor namely Digbijoy Datta Chowdhury along with her available witnesses and recorded their statements under Section 161 of the CrPC. On 16.03.2020, the IO received the SFSL reports with respect to the seized samples. Thereafter, on 19.06.2020, the IO stated to have received the final opinion regarding the medical examination of the victim. During the course of investigation, on 19.06.2020, 02.07.2020 and 18.07.2020, the IO received three number of complaints from the informant against the accused persons namely, Sajal Barman and Krishna @ Kishan Saha and in this regard the IO made separate GD entry vide Nos.12, 13, 19 and 6 respectively and with reference to those complaints the IO submitted separate Prosecution Reports under Section 107 of the CrPC before the SDM, Sadar, Agartala. Lastly, on completion of investigation, finding prima-facie materials, the IO filed charge sheet vide West Agartala Women PS C/S No.66/2020, dated 27.07.2020 under Sections-366/376(AB)(DA) 506 of the IPC read with section 6 of the POCSO Act

against the accused persons namely, Sajal Barman, Krishna @ Kishan Saha (along with others, who are not concerned with, in the case, in hand) for facing trial in the open Court of law, for the ends of justice.

[5] During trial, upon hearing submissions of parties and taking into consideration the record and documents submitted therewith, charges were framed under Sections 366/376(DA)/506 of the IPC read with Section 6 of the POCSO Act against the aforesaid accused persons namely, Sajal Barman and Krishna Saha @ Kishan. Thereafter, the contents of charge was read over and explained to the accused persons to which they pleaded not guilty and claimed trial.

[6] The prosecution in order to bring home the charge, leveled against the accused person has examined as many as 12 prosecution witnesses.

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

“In the result, the convicts namely, Krishna Saha @ Kishan and Sajal Barman stand sentenced to suffer imprisonment for life, which shall mean imprisonment for the remainder of those natural life and fine of Rs.30,000/- in default of payment of life, the convicts shall suffer simple imprisonment (SI) for further 6 months for the offence punishable under Section 376(DB) of IPC and Rigorous Imprisonment for 3 years and fine of Rs.2,000/-, in default of payment of fine, the convicts shall suffer simple imprisonment (SI) for further 1 month for the offence punishable u/s 366 of IPC and Simple Imprisonment for 6 months for the offence punishable u/s 506 of IPC.

All the sentences of imprisonment shall run concurrently.

Since the convicts are sentenced under Section 376 (DB) of IPC, no sentence has been passed under Section 6 of the POCSO Act.

[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 while dealing with the case Ld. Trial Court believed the versions of Prosecution Witnesses except Doctor who examined the victim and disbelieved all the DWs who were corroborated by PW9 i.e. mother of the victim who categorically stated in her cross examination in chief that Krishna Saha used to work in the Sonar Tori hotel but Ld. Trial Court strongly believed

the portion of evidence which this witness volunteers that “accused do not work or regular occasion. He used to work 2 days and after 2 days he used to break and stay in the flat of the aforesaid housing complex” though that portion of evidence she has admitted that she has not stated in her 161 statement to IO but Ld. Trial Court arbitrarily disbelieved the fact that the present convict appellant was a regular employee of Hotel Sonar tori and after disbelieving all the DWs as well as PW 12 i.e. IO of instant case who in her re-cross examination by the Ld. Defence Counsel on 04.09.2023 categorically stated that she has not examined any or the employees or the owner of the Hotel Sonar tori inspite of knowing the fact that accused Krishns Saha was an employee of Hotel Sonar Tori erroneously convicted the convict appellant.

[10] It is also contended by the counsel for the appellant that on the fateful day the elder brother knocked of that hut where the victim was taken by the convict appellant along with others. Where after she came out and her elder brother after observing her informed the same to the mother of Sayan. She further stated that her mother after hearing about the incident from the mother of Sayan realize about the matter and she also stated about her production before Judicial Magistrate and Hospital but the vital witness i.e the elder brother was not examined by the prosecution as to why that witness was not examined by IO but Ld. Trial Court under misconception of law convicted the convict appellant.

[11] On course of his argument, Mr. B. Deb, learned counsel placed his reliance on a judgment of the apex court in **Baldev Singh & Anr vs. State of M.P** judgment dated 06.01.2003 in Appeal (Crl.) no. 275 of 2001 wherein the apex court has observed as follows:

“Both the eye-witnesses are chance witnesses. They do not assign any convincing reason for being at the place of the incident at that abnormal hour of the day in full summer. Raghubir Singh, PW4 was suffering from pain in legs. He would not cycle to Shivpuri except for urgency or pressing need which there was none. An attempt on the part of the prosecution to rope in the father and his six sons by alleging conspiracy to commit murder of the deceased is writ large through the attempt has failed. Looking to the cumulative effect of all the above said

circumstances and having scrutinized the testimony of the two eye witnesses carefully, we are not inclined to place reliance on their testimony. Evidence has been adduced on behalf of the defence to show that information as to the death of Peshawar Singh having been caused and the dead body lying on A. B. road reached village Baskhedi whereafter some family members of the deceased and the witnesses reached the place of the incident, found the dead body of Peshawar Singh lying there and informed the police whereafter witnesses has been cursorily touched by the trial Court and also by the High Court with both of whom the testimony of two eye witnesses has been found to be more weighty than the defence evidence on weighing in the scales. Having examined the testimony of defence witness, four in number, originating from the residents of the village, we are of the opinion that the same cannot just be thrown overboard. Be that as it may, as we entertain grave doubt on the presence of the two eye witnesses at the place of the incident so as to have witnesses the incident, the conviction of the two accused appellants, which rests on the testimony of the two witnesses, cannot be sustained.”

[12] On the other side, Mr. Raju Datta, learned Addl. PP appearing for the state-respondent has vehemently opposed such statement and contended before this court that the impugned order as passed by the learned court below is just and proper and further prayed to dismiss the appeal. To support his contention, Mr. Raju Datta, learned PP has placed his reliance on a judgment of the apex court in *Phool Singh vs. State of Madhya Pradesh* reported in (2022) 2 SCC 74, where the apex court has observed as follows:

9. In *Pankaj Chaudhary : (2019) 11 SCC 575*, it is observed and held that as a general rule, if credible, conviction of the accused can be based on sole testimony, without corroboration. It is further observed and held that sole testimony of the prosecutrix should not be doubted by the court merely on basis of assumptions and surmises. In para 29, it is observed and held as under:

“29. It is now well-settled principle of law that conviction can be sustained on the sole testimony of the prosecutrix if it inspires confidence. [Vishnu V. State of Maharashtra : (2006) 1 SCC 283. It is well settled by a catena of decisions of this Court that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration and as such it has been laid down that corroboration is not a sine qua non for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the “probabilities factor” does not render it unworthy of credence, as a general rule, there is no reason to insist on corroboration except from medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to the forthcoming [State of Rajasthan vs. N.K : (2000) 5 SCC 30.

10. In *Sham Singh v. State of Haryana : (2018) 18 SCC 34*, it is observed that testimony of the victim 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 the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. It is further observed that seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. In paras 6 and 7, it is observed and held as under:

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such

case with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, short of corroborations required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults.

7. It is also by now well settled that 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 of 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.

11. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as observed hereinabove, we see no reasons to doubt the credibility and/or trustworthiness of the prosecutrix. She is found to be reliable and trustworthy. Therefore, without any further corroboration, the conviction of the accused relying upon the sole testimony of the prosecutrix can be sustained.

[13] It is seen from the record that the counsel for the appellant has drawn attention of this Court to the deposition of PW-8, Dr. Manashree Debbarma who opined that there is no injury mark found at the time of examination and the act of rape cannot be ascertained from her clinical examination. This court is not inclined to consider this submission since mere no presence of any injury mark cannot sideline the fact the crime was committed on the minor girl. Viewed from any angle, the act of the convict-appellant cannot be seen leniently. The convict appellant has failed to produce the register of his office where he stated to have worked for during the occurrence of the crime. This clearly

shows that the convict appellant under the garb of his office schedule time want to hide the fact of his presence with the victim girl on the fateful day.

[14] There is no scintilla of doubt that the convict appellant has sexually assaulted the victim girl based on the evidence put on record. Thus, on re-appreciation of the entire material, this Court opines that the prosecution has duly proved the guilt of the convict-appellant and the trial Court has rightly recorded the finding of the guilt, and it calls for not interference.

[15] On the issue of proportionality, the trial court held the convict appellant guilty of the offence punishable under Section 376(DB), 366 and 506 of the IPC. This Court is of the view that one of the prime objectives of criminal law is the imposition of appropriate, adequate, just, and proportionate sentences commensurate with the nature of gravity of the crime and the way the crime is done.

[16] There is no denial that the convict was a 32 years old shouldering the responsibility of his mother, wife and one child. Moreover, he has no father. If he has been incarcerated for a considerable period that would serve the purpose. Therefore, this Court is of the opinion that imprisoning him for a term of simple life imprisonment under Section 6 of the POCSO Act, 2012 would be adequate to teach him a lesson and in view of reformatory principles being adopted in criminal law.

[17] This court is therefore inclined to accept the submissions of Mr. B. Deb, learned counsel for the appellant and to modify the sentence imposed for the offence under Sections 376(DB), 366, 506 of the IPC and accordingly imposes sentence directing the convict appellant to undergo simple life imprisonment for the offence punishable under Section 6 of the POCSO Act, 2012.

[18] Accordingly, the impugned Judgment of conviction and sentence dated 11.10.2020 passed by Ld. Special Judge (POCSO), Agartala West Tripura in Case no. Speical (POCSO) 34 of 2020 stands modified to the aforesaid extent.

[19] With the above observation and direction, the present appeal stands disposed of.

[20] A copy of this order be marked to the Superintendent, Kendriya Sansodhanagar Tripura, Bishalgarh at the earliest.

B.Palit, J

T. Amarnath Goud, J

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