

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J) 1 of 2024

(1) Sri Gan Urang@Gana
son of late Kandarurang
of- Sandibassa, P.S.-Damcherra,
Dist.- North Tripura.

(2) Sri Pintu Urang
son of late Kunu Urang
of- Nayagara Para, P.S.-Kailashahar,
Dist.- Unakoti Tripura.

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

Versus

The State of Tripura

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

For the Appellant(s)	: Ms. Rumela Guha, Advocate Mr. Arjun Acharjee, Legal Aid Counsel Mr. Subhankar Bhowmik, Advocate Mr. Mrinmoy Debnath, Advocate Ms. Debalina Chakraborty, Advocate Ms. Deepasi Shil, Advocate
For the Respondent(s)	: Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.
Date of hearing	: 02.09.2025.
Date of pronouncement of Judgment & Order	: 16.09.2025.
Whether fit for reporting	: Yes.

**HON'BLE JUSTICE DR. T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

[Dr.T. Amarnath Goud, JJ]

[1] Heard Ms. R. Guha, learned counsel as well as Mr. A. Acharjee, learned Legal Aid Counsel appearing on behalf of the appellants. Also heard Mr. R. Saha, learned Addl. P.P. representing the State.

[2] The present appeal is filed under Section 374 of Cr. P.C against the impugned judgment of conviction and sentence dated 16.09.2023 passed by the Special Judge (POCSO), North Tripura, Dharmangar, in case No. Special (POCSO) 12 of 2019 whereby and whereunder the appellants have been convicted U/S 376D of IPC and under section 6 of the POCSO Act. They have been sentenced to suffer R.I for a term of 20(twenty) years under section 6 of the POCSO Act and also sentenced to pay fine of Rs. 10,000/- (Rupees ten thousand) each under the same section and in default, to undergo further imprisonment for 6(six) months. Further, the appellants have been sentenced to suffer R.I for a term of 20 (twenty) years under section 376D of the IPC and also sentenced to pay fine of Rs 10,000/-(Rupees ten thousand) each under section 376D of the IPC and in default, to undergo further imprisonment for 6 (six) months. It has been observed by the learned Court below that both the sentences of imprisonment shall run concurrently.

[3] The prosecution story in brief as enumerated before the Court below is that on 27-08-2017 at 1600 hours the victim girl went to fetch water from the nearby ring well at Sandibassa under Damcherra PS and while she was collecting water, she could feel that someone held her from behind and also covered her mouth. The victim turned back and saw the accused persons namely, Gan Urang @ Gana, Pintu Urang and one unknown person later identified as Basia Urang and before she could cry for help the accused persons gagged her mouth with her dupatta and forcefully took her inside the jungle and confined her in a jungle hut. Thereafter, accused Gan Urang @Gana committed sexual intercourse with the victim several times and during that time the two other accused were guarding the jum hut from outside. On that night, at about 2200 hours, the accused persons released the victim and threatened to kill her if she discloses the incident to anyone. The victim on the next date of the incident, lodged an ejahar with Damcherra P.S. and a specific case was registered and the investigation commenced. The I.O. on completion of investigation, submitted charge-sheet against the three accused persons under Sections.342/376(D)/109/506 of IPC and under Section 4 of the POCSO Act before the Court of Special Judge (POCSO) North Tripura, Dharmanagar and cognizance of the offence was accordingly taken and during the proceeding prosecution papers were supplied to the accused persons.

[4] Thereafter, both sides were heard by the learned Court below and charge was framed under Section 376(D) of IPC and under Section 6 of the POCSO Act against the three accused persons and the same was read over and explained to them to which, they pleaded not guilty and claimed to be tried.

[5] The prosecution to bring home the charge against the accused persons adduced as many as 21 witnesses and after closure of the prosecution evidence, the accused persons were individually examined under Section 313 Cr.P.C wherein they stated that the prosecution case is false and they declined to adduce any witness from their side.

[6] Thereafter, learned Court below upon hearing the arguments advanced by both the sides and on perusal of material evidence on record, has decided the case by its judgment and order dated 16.09.2023 passed in Case No. Special (POCSO) 12 of 2019 and sentenced the accused persons, in the following manner:

“...ORDER

37. In the result, the prosecution has proved this case beyond all reasonable doubt against the accused persons namely Gan Urang @ Gana and Pintu Urang.

Both the accused are accordingly convicted under section 376D of the IPC and under Section 6 of the POCSO Act.

At the same time the prosecution has failed to prove this case beyond all reasonable doubt against the third accused Basia Urang. The accused is accordingly acquitted from this case and he is set at liberty at once.

The surety of accused Basia Urang is also discharged from the liability of the bail bond.

I have heard both the convicts on the question of sentence and they claimed themselves as innocent and prayed for mercy of this Court.

As discussed in the preceding paragraphs the incident committed by the convicts was in execution of a well thought plan and the victim who is a minor girl of 16 years was subjected to penetrative sexual assault not once but twice by the convict Gan Urang @ Gana. The other convict is equally liable as he facilitated the convict Gan Urang @ Gana in commission of such offence.

Having considered the aforesaid facts this court is of the view that both the convicts deserved to be sentence to imprisonment for a minimum term as prescribed under Section 6 of the POCSO Act and under Section 376D of the IPC along with fine.

The convicts Gan Urang @ Gana and Pintu Urang are accordingly sentenced to suffer rigorous imprisonment for a term of 20 (twenty) years under Section 6 of the POCSO Act.

The convicts Gan Urang @ Gana and Pintu Urang are also sentenced to pay fine of Rs. 10,000/-(Rupees ten thousand) each under section 6 of the POCSO Act and in default they shall have to undergo further imprisonment for 6(six)months.

The convicts Gan Urang @ Gana and Pintu Urang are further sentenced to suffer rigorous imprisonment for a term of 20 (twenty) years under Section 376D of the IPC.

The convicts Gan Urang @ Gana and Pintu Urang are also sentenced to pay fine of Rs. 10,000/-(Rupees ten thousand) each under section 376D of the IPC and in default they shall have to undergo further imprisonment for 6(six)months.

Both the sentences of imprisonment shall run concurrently

The period of detention undergone in judicial custody by the convicts during the investigation and trial shall be set off from the total sentence of imprisonment.....”

[7] Aggrieved by the above-noted impugned order dated 16.09.2023 passed by the learned Court below, the appellants herein has preferred the instant appeal seeking the following reliefs:

- “i) Admit this appeal;
- ii) Call for the record;
- iii) Issue notice upon the respondent, and
- iv) After hearing the parties be pleased enough to set aside the impugned Judgment of conviction and sentence dated 16.09.2023 passed by ***** Special Judge (POCSO), North Tripura, Dharmangar, in case No. Special (POCSO) 12 of

2019 and further please to acquit the convict appellant for fair ends of justice.....”

[8] Mr. A. Acharjee, learned Legal Aid Counsel appearing for the appellants submits that the learned trial Court below ought to have held that the alleged presence of convict appellants at the alleged place of occurrence, alleged participation of the appellants in the commission of alleged offence are absolutely doubtful and on the basis of such evidence, the appellants could not be convicted for the alleged offence. He, further submits that there are inconsistencies in the statement of the victim recorded under Section 164(5) of Cr.P.C. and deposition of witness as P.W.2 i.e. the victim and the learned trial Court below arbitrarily, relied on the improved versions of the witnesses, convicted and sentenced the appellants. Mr. Acharjee, learned counsel further submits that P.W. 16, the Doctor in his examination in chief, stated that the result of examination of TSFSL of the victim was negative, but, the learned trial Court did not consider the same. To support his contention, learned Legal Aid Counsel has placed reliance on the judgment of the Hon'ble Supreme Court in ***State (GNCT of Delhi) vs. Vipin @ Lalla*** in case No. ***Criminal Appeal No.94 of 2025 (Arising out of SLP (Crl.) No.11687 of 2019)*** and urges this Court to set aside the impugned order dated 16.09.2023 acquitting the appellants herein.

[9] Ms. R. Guha, learned counsel appearing for the appellants has also made her submission almost in a similar fashion as made by Mr. A. Acharjee,

learned Legal Aid Counsel. Besides these, she contends that in the FIR, the victim mentioned about one of the accused as 'Sri Man Urang' while in her deposition of witness as P.W. 2, she mentioned the name of that accused as 'Gona Orang'. It is also contended that in the FIR version, there were other two accused persons and the second accused person(A-2) was the husband of first accused (A-1)'s sister (brother in-law of A-1) and his name was not known to the victim and the third accused person (A-3) was another unidentified boy. According to the FIR version, the A-1 gagged her mouth while other two held her hands and dragged her to a jum field in the jungle over the lunga. She submits that if the victim girl was gagged and dragged to the jungle, there might be injury, but, as per the medical report no such injury was found on the body of the victim. It is also submitted that no specific allegation was brought against the A-2, i.e. Pintu Urang and another accused A-3 i.e. Basia Urang but, the learned trial Court has convicted and sentenced the A-2 alongwith A-1 but, acquitted the A-3 from the case.

[10] Ms. Guha, learned counsel further contends that though it is reflected that the birth certificate of the victim was seized but the same was not examined during the trial. In the absence of proper verification of the age of the victim, provisions of POCSO Act shall not attract. She, therefore, prays for setting aside the impugned order dated 16.09.2023 acquitting the appellants herein.

[11] On the contrary, Mr. R. Saha, learned Addl. P.P. appearing for the State vehemently opposes the submissions made on behalf of the appellants. He contends that learned trial Court below on perusal of all the relevant records and examining all the relevant witnesses has decided the case by its order dated 16.09.2023 in case No. Special (POCSO) 12 of 2019 and the same should not be interfered with. He, therefore, urges this Court to dismiss the instant appeal filed by the appellants. To support his contention, learned Addl. P.P. has placed reliance on the judgment of the Hon'ble Apex Court passed in ***State of Punjab vs. Gurmit Singh and others*** reported in ***(1996) 2 SCC 384***.

[12] Heard the submissions made at the Bar. Perused the material evidence on record.

[13] It is seen from record that the birth certificate of the victim was seized but the same was not examined during the trial. It is also seen that P.W. 15 in his deposition stated before the trial Court that he went to Rowa Panchayet with his Officer Sub-Inspector who seized birth register from the office of the Rowa Gan Pancxhayet under Panisagar R.D. Block in connection with the case and the said P.W. 15 identified his signature on the seizure list. In cross-examination, he said that he could not say about the contents of the said register. The birth certificate or other age-related documents of the victim must be examined and exhibited during the trial since it is essential to prove that the victim is below 18 years of age for the applicability of the Protection of

Children from Sexual Offences Act, 2012 (POCSO Act for short). The learned trial Court below ought to have proved the age of the victim through a competent witness and also cross-examination by the defence, if necessary, but the learned trial Court did not do so. Such failure in proving the age of the victim, has weakened the prosecution's case under POCSO Act. Thus, this Court is of the view that the conviction of the accused persons by the learned trial Court under the POCSO Act is liable to be set aside.

[14] It is also observed that as per the FIR, there were other two accused persons alongwith accused No.1(A-1). The second accused person(A-2) was the husband of the first accused (A-1)'s sister and his name was not known to the victim and the third accused person (A-3) was another unidentified boy. It was contended in the FIR that the A-1 gagged her mouth while other two held her hands and dragged her to a jum field in the jungle over the lunga but, there has been no clear description as to how she was gagged and dragged and as per the medical report, no injury on the body of the victim due to dragging or gagging was reflected. In the statement of the victim dated 29th August, 2017 recorded under Section 164(5) of the Cr.P.C. also the victim could not name the accused No.2 (A-2), she said that the said accused person is identified by her as he is the husband of a lady who is known to her. In her deposition of witness as P.W. 2, the victim deposed that she could identify Gona Orang and his brother in law who is the husband of his sister but another

person could not be identified as he covered his face with a napkin. It was further deposed that Gona Orang along with others dragged her to a tilla land wherein a hut was there and Gona Orang asked her to marry otherwise he would killed her. It was also contended by the victim that she was in the said jum hut till 10 pm and it was raining havoc at the material time and in the meantime, the accused Gona Orang already forcibly had sexual intercourse with her in two times but, it has not been clearly mentioned by the victim that during the rain, where the other accused persons i.e. A-2 & A-3 were waiting, inside the hut or outside the hut. Moreso, no allegation of rape was ever brought by the victim against the A-2 i.e. Pintu Urang and another accused A-3 i.e. Basia Urang and according to the versions of the victim, they were only present during the alleged incident but, the learned trial Court has convicted and sentenced the A-2 alongwith A-1 but, acquitted the A-3 from the case.

[15] In view of the above, since the case of kidnapping or rape has not been proved against him, this Court is of the opinion that conviction U/S 376D of IPC cannot be imposed upon the A-2 i.e. Pintu Urang and therefore, he is acquitted from the conviction U/S 376D of IPC and under Section 6 of the POCSO Act as sentenced by the learned trial Court below by its impugned order dated 16.09.2023 in case No. Special (POCSO) 12 of 2019.

[16] Now, to examine the case in respect of A-1 i.e. Gan Urang @ Gana this Court feels it necessary to revisit some statements recorded during the trial.

[17] In the FIR, the victim contended that on 27.08.17 AD, Sunday, at about 4 pm, she went to fetch water with a pitcher from a well located on a lunga land to the west of their house. Her parents had gone to the Damcherra hospital at the time. While she was fetching water with a bucket, someone suddenly gagged her mouth from behind using her dupatta and began pulling her forcefully. She tried to raise an alarm but was unable to do so due to her mouth being gagged. Upon turning, she could recognize one person, namely, 'Sri Mon Urang'. Another person, whose name was not known to her was his(Mon Urang) sister's husband, resident of Sandibasa, P.S. Damcherra and there was another unidentified boy. It was further contended that Mon Urang gagged her mouth, while the other two held her hands and dragged her to a jum field in the jungle over the lunga. Holding her captive there, Mon committed rape upon her twice by forcing her on the floor in the jum hut and she pleaded several times, but, they threatened her that if she raises voice then they will kill her and leave her body in the jungle. Around 10:00 PM, during rain they released her. Before leaving, they warned her not to disclose the incident to anyone, threatening to come to her home and kill her if she did so. She returned home crying and out of fear and shame, she did not tell anyone and spent the night alone in the hut on the western side of their house. Later that night, police from Damcherra Police Station arrived and found her in that room. When woman police officer questioner her, she was too fearful and ashamed to speak.

But in the cross-examination, it was stated by the victim that she disclosed to the lady police officer that she had a quarrel with her brother and went into jungle. It was also contended in the FIR that on 28.08.17 in the morning, when her father returned home from the hospital, she described him about the entire incident.

[18] In the statement of the victim recorded under Section 164(5) Cr.P.C. dated 29th August, 2017, she named the accused who committed rape upon her as 'Gon' and other two stood guard at a distance. She further contended that after committing rape upon her, Gon told her to flee with him, but she refused. Gon also threatened to kill her if she don't agree in the same manner as a Reang woman who had been hacked and murdered, warning that they would leave her body in the jungle. It may clearly be observed that in the said statement recorded under Section 164(5) Cr.P.C. the victim did not mention that she was raped twice by the accused named as Gon whereas, in the FIR it was mentioned that the accused 'Man Urang' raped her twice. It was also not mentioned in the FIR that the accused who committed rape upon the victim told her to flee with him.

[19] In the deposition of witness as P.W.2, the victim stated that Gona Orang along with others dragged her to a tilla land wherein a hut was there and Gona Orang asked her to marry otherwise he would kill her. It was also contended that at the night of the incident, she had also reported the matter

about the incident to her grand-mother and her sister. Whereas, in the FIR the victim deposed that she returned home crying and out of fear and shame, she did not tell anyone and spent the night alone in the hut on the western side of their house.

[20] On perusal of the records, more particularly, the FIR, statement of the victim recorded under Section 164(5) Cr.P.C. and deposition of witness as P.W.2 i.e. the victim, this Court finds that there are inconsistencies in the statements made by the victim during trial from time to time, which create clouds of doubts in taking any decision with regard to the case in hand. There was no eye witness of the alleged incident and nobody saw the accused persons forcibly taking the victim at 4 pm to the jum hut or nobody also saw any of the accused persons coming out of the jum hut after commission of alleged incident. These sorts of inconsistencies in the statements may weaken the prosecution's case.

[21] As per the FIR version, the accused no.1(A-1) gagged mouth of the victim, while the other two held her hands and dragged her to a jum field in the jungle over the lungu but she did not describe clearly the way in which she was dragged and as per medical report no injury due to dragging and no evidence of committing rape has been reflected. It was also alleged that holding her captive there, A-1 committed rape upon her twice by forcing her on the floor in the jum hut. But, the forensic report marked as Exhibit.9 indicates that no seminal

stains/spermatozoa of human origin was detected and in the Exhibit.10 i.e. Final Opinion of sexual Assault Case, it has been opined that “*As per the State Forensic Science Laboratory Report, there is no suggestive outcome*”. P.W. 16, the medical officer also deposed that “*The result of the examination of the exhibits were negative.*”

[22] This Court upon discussions made above, feels it necessary to extract the relevant contents from the judgment of the Hon’ble Apex Court passed in ***State (GNCT of Delhi) vs. Vipin @ Lalla*** in case No. ***Criminal Appeal No.94 of 2025 (Arising out of SLP (Crl.) No.11687 of 2019)*** as referred by the learned Legal Aid Counsel for the appellants, which read as under:

“...9. We have gone through the order of the Trial Court as well as the High Court. The only worthwhile evidence which has been produced before the Court by the prosecution is the deposition of the prosecutrix herself. Although the age of the prosecutrix is 16 years and four months which has not been seriously disputed (accused was about 20 years of age at the time of the incident). Nevertheless the fact remains that the medical examination which was conducted on 18.09.2014 revealed that no injuries were detected on the body of the prosecutrix. Though it was stated in the medical report that her hymen was torn. Definitely the prosecutrix in her examination-in-chief as well as in cross-examination has stuck to the fact that she was raped by the accused but the fact remains that she has contradicted her statement at more than one place. Moreover she has said in her statement under Section 164 CrPC she had hit the accused on her head by Danda whereas in her examination-in-chief she stated that she hit the accused on his foot. When the accused had surrendered on 10.10.2014 none of these injuries were noticed on the body of the accused.

10. Although it is absolutely true that in the case of rape, conviction can be made on the sole testimony of the prosecutrix as her evidence is in the nature of an injured witness which is given a very high value by the Courts. But nevertheless when a person can be convicted on the testimony of a single witness the Courts are bound to be very careful in examining such a witness and thus the testimony of such a witness must inspire

confidence of the Court. The testimony of the prosecutrix in the present case thus has failed to inspire absolute confidence of the Trial Court, the High Court and this Court as well.....”

[23] In view of the inconsistencies in the statements of the victim made in the FIR, Statement recorded under Section 164(5) and the deposition of witness as P.W.2 as discussed above and keeping in view the afore-noted judgment of the Hon’ble Apex Court cited *supra*, this Court is of the opinion that the prosecution has failed to prove its case beyond reasonable doubt. Therefore, benefit of doubts is extended to the accused-appellant namely, Gan Urang @ Gana (A-1) and hereby, he is acquitted from the conviction U/S 376D of IPC and under Section 6 of the POCSO Act as sentenced by the learned trial Court below by its impugned order dated 16.09.2023 in case No. Special (POCSO) 12 of 2019.

[24] With the above observations, both the appellants are hereby acquitted from the charges brought against them in the impugned judgment of conviction and sentence dated 16.09.2023 passed by the Special Judge (POCSO), North Tripura, Dharmangar, in case No. Special (POCSO) 12 of 2019 whereby and whereunder they were convicted U/S 376D of IPC and under section 6 of the POCSO Act. We are also of the opinion that the judgment placed by the learned Addl. P.P. is not applicable to the facts and circumstances of the present case. Accordingly, the impugned order dated 16.09.2023 passed

by the learned trial Court below is hereby set aside. The appellants be released if not required in any other case(s).

[25] Resultantly, the instant appeal is hereby allowed and accordingly the same is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

B. PALIT, J

DR.T. AMARNATH GOUD, J



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