

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
Crl.A(J). No. 04 of 2025

1. Hemanta Debbarma

.....Appellant

-V E R S U S-

1. The State of Tripura.

..... Respondents.

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Appellant(s)	:	Mr. S. Datta, Advocate.
For Respondent(s)	:	Mr. R. Saha, Addl. P.P.
Date of hearing and delivery of judgment and order	:	07.04.2025
Whether fit for reporting	:	NO

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Datta, learned counsel appearing for the appellant also heard Mr. R. Saha, learned Addl. P.P. appearing for the respondent-State.

[2] This is an application filed under Section-374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 12.09.2024 and 13.09.2024 passed by the learned Special Judge, Dhalai Judicial District, Kamalpur in connection with case No.Special (POCSO) 02 of 2020, whereby and whereunder, the appellant was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs.1,000/- under Section-9 (m) of POCSO read with Section-10 of POCSO Act, 2012 and he was further sentenced to undergo RI for three months under Section-342 of the IPC. It was directed that both the sentences shall run concurrently.

[3] The case of the prosecution, in a nutshell, is that on 30.12.2019 an FIR was lodged against the appellant and after investigation by the investigating officer the charge sheet was submitted and charge was framed against the appellant under Sections-342/376(1) of IPC and Section-6 of the POCSO Act, 2012. After recording all the evidences by the learned Court below and heard by both sides of the parties, the learned Court below pronounced the judgment and sentence against the appellant.

[4] Thereafter, cognizance was taken under Sections-342/367-A/506 of IPC and Section-6 of the POCSO Act, 2012 against the convict appellant and the accused copies have been supplied to the accused in compliance of Section-207 of Cr. P.C. Charges were framed against the accused person for the offence punishable under Sections-342/376(1) of IPC and Section-6 of the POCSO Act, 2012 explaining the contents of charge to the accused person translating the same in Bengali to which he denied the allegations and claimed to be tried.

[5] To substantiate the charge, the prosecution has adduced as many as 20(thirteen) witnesses. On the closure of prosecution evidence, the appellant was examined under Section-313(1)(b) of Cr. P.C. for having his response in respect of the incriminating materials those surfaced in the evidence as adduced by the prosecution, to which he strongly denied the incriminating materials brought against him by the prosecution and claimed to be tried.

[6] After hearing the arguments made by both sides and on perusal of the material evidence on record, the learned Court below delivered the judgment and order conviction and sentence. For the purpose of reference, the operative portion of the impugned judgment and order of conviction may be reproduced herein-below:

“10. (a) The accused is acquitted of the charge u/s 376(1) of IPC and u/s 6 of POCSO Act. However, the accused Hemanta Debbarma is convicted for the offence punishable under Section 9(m) of POCSO read with Section 10 of POCSO Act, 2012 and sentenced to undergo R.1 (Rigorous Imprisonment) for 05 (five) years and also to pay a fine of Rs.1000/- i.d. to suffer S.I for three months. For the offence under Section 342 of IPC the convict is sentenced to undergo R.1 (Rigorous Imprisonment) for 03 (three) months. The aforesaid both the sentences shall run concurrently.

(b) The period of custody of the accused/convict with effect from 31.12.2019 to 08.08.2022 & 09.07.2024 to 13.09.2024 shall be set off as laid down under Section 428 of Cr.P.C.

(c) Bail bonds filed by the accused u/s 437A Cr.P.C to be kept on file till the expiry of the statutory appeal period.

(d) The seized original birth certificate as per the seizure list dated 31.12.2020 shall be returned to the complainant. The other seized articles are to be destroyed after the appeal period is over.

(e) Copy of this judgment is furnished to the convict free of cost. The convict is also informed that he has right to appeal against the judgment of this Court.

(f) Send a copy of this judgment to the District Magistrate in compliance of Section 365 of Cr.P.C.

(g) Award of compensation in terms of Section 9(2) of POCSO Rules, since the child has suffered trauma, loss and injury and the case of the victim minor child is hereby recommended to the District Legal Services Authority, Dhalai Tripura, Ambassa. The copy of the said judgment be sent to the District Legal Services Authority, Dhalai District, Ambassa.”

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

[8] Mr. S. Datta, learned counsel appearing for the appellant has submitted that the learned Court below has failed to appreciate the law, facts and circumstances and as such the order of conviction and sentence is liable to be set-aside. The examination of the appellant under Section-313 of Criminal Procedure Code was not done in accordance with law. The part of evidences as relied upon by the learned Court below were neither supported nor corroborated by the prosecution witnesses while giving their deposition before the learned Court below.

[9] It has been further contended that in the Ejahar P.W.1 Smt. Rita Rani Debbarma, who is also the informant of the case, while describing the incidence of the fateful day has mentioned that, while she has gone to the Salima Market at about 10:30 A.M. leaving her son namely, Sri.Sourav Debbarma (08 years old) and her minor daughter namely, Rashni Debbarma (04 years old), in her lonely house. However, in the Cross Examination during her deposition before the learned Court below has categorically stated that, on the date of the incident she has kept her children in the custody of her Nanad (Sister-in-Law) Smt. Junu Debbarma (P.W-5), whose house a situated next to 3/4 houses of the present accused person.

[10] Furthermore, in her Ejahar, the informant has stated that, when after completion of her work at about 01:30 p.m. she has returned home, she could not find her children in her house and while searching for them she could hear the voice of her minor daughter i.e., the victim of this case inside the dwelling hut of her neighbour i.e. the appellant herein. It is surprising that, since in her Cross examination she has clearly stated that she has left

her children in the custody of her nanad and after returning from the market she could not find them there and therefore she has called the local people and knocked the door of the appellant. These above two statements are contradictory and therefore are not believable.

[11] In the Ejahar the informant has said that, the door of the hut of the appellant has been locked from inside but in the next line she said that she has pushed the and has found the appellant committing rape upon the victim in a naked condition but in cross examination she accepted that the victim has not stated to her that she was being sexually assaulted by the appellant. It is also quite contradictory that, the informant has said that she heard the voices of her minor daughter and went to the house of the informant but in her deposition before the court she said that, she learnt from her son Sourav Debbarma that victim was in the house of the appellant.

[12] Moreover, during her Cross Examination the informant has admitted that, there was a pending land dispute between her and the present appellant and they did not visit each other's house for more than 5 years prior to the alleged the incident, which itself negates her story. All these vital factors were not being considered by the learned Court below.

[13] P.W.3 i.e., the victim of this case has stated in her deposition before the court that, the appellant has taken her to his house and has sexually assaulted her but in the cross examination she gave an altogether different story and has candidly stated that, the informant i.e., her mother has kept her in the custody in the house of her pishi (P.W-5) while going to the market and after returning, her mother has again taken her and her brother from the custody of her pishi. She also stated that, she was not used to go to the house of the appellant but these extremely important fact has totally been overlooked by the learned Court below and as such the impugned Judgment & order needs to be set aside and set aside.

[14] P.W. 5 (Nanad of the informant, P.W-1 and pishi of the victim i.e., P.W-3) is a vital witness to this case. She in her deposition has stated that, the mother of the victim i.e., the informant (P.W-1) has kept both her

son and daughter (the victim) in her custody while going to the market and after that she has went to the jungle and later she has learnt from the victim that, she was being sexually assaulted by the appellant and after that, she has taken the victim to the hospital. However, while facing the cross examination, it was found that, the fact that, she has learnt the incident from the victim is an improvement, which she has not stated to the I.O. and moreover, another fact that, she has accompanied the victim to the hospital was not supported either by the informant mother (P.W-1) or the victim (P.W-3). These are glaring contradictions, which are being overlooked by the learned Court below.

[15] From bare perusal of the statements made by the witnesses i.e. P.W. 8 & P.W. 16, it can be safely inferred that, there was no sign of sexual assault upon the victim either from the report of the S.F.S.L and the report produced by the Medical Officer and these are most vital factors to be considered for the proper adjudication of the case but these extremely important aspects are being completely overlooked by the learned Court below and as such the impugned Judgment & order needs to be set aside.

[16] P.W. 13 is another vital witness to the case and he was serving as the Panchayat Secretary at Salema Gram Panchayat and he has issued the birth certificate of the victim but it is extremely surprising that, while issuing such birth certificate, he has relied upon Adhar Card, Ration Card and voter ID Card of the parents of the victim and also based upon certificate issued from the concerned Chairman, which is totally illegal and unacceptable in the eyes of law. Furthermore, in the cross-examination he has fairly admitted that, the parents of the victim did not submit any document except the certificate from the Chairman. He has also admitted that, as per Birth and Death Registration Act, 1969. He also said that, the said birth certificate does not bear any verification number as to the actual date of birth.

[17] Thus, it is quite clear that, P.W. 13 was not at all competent authority to issue the aforesaid Birth Certificate of the victim and also such Birth Certificate was also not issued relying on the required documents

necessary for such issuance. Thus, there is no proof of the age of the victim at the relevant time of the incident, which is the most key ingredient for a case under POCSO Act but most unfortunately, this extremely vital fact was not at all being considered by the learned Trial Court below.

[18] On the basis of the evidence, learned Addl. P.P. canvassed his arguments, that the complainant, victim and all the witnesses have deposed in favour of the prosecution supporting the evidence collected by the IO. He also addressed that the documents marked as exhibits disclose the offence on a child who is less than 12 years of age.

[19] Before we proceed to deal with the merits of the case and decide the points taken up, it would be apposite to have a deep look at the material evidence of certain relevant prosecution witnesses for better appreciation of the rival contentions and to decide the dispute involved in the case.

[20] Learned counsel appearing for the appellant argued that there was no established evidence against the accused that he has committed the offence. It is argued by the learned counsel that the son and daughter of the complainant were in the custody of PW-5 and a false case has been furnished against the accused and hence, the accused is to be acquitted. The statements which were not made to the IO, evidence cannot be relied upon. The complainant did not give such line of statement to IO. It cannot be ascribed to the fact that victim was not present in the house of the accused. PW-5 in her statement has stated that the victim and the son of the complainant were kept in her house. It has been further confirmed that when the incident took place, the complainant kept her son and the daughter in the house of PW-5. There are some contradictions on the part of the evidence of mother of the victim girl with other witnesses.

[21] The way the prosecution has projected the case and being found serious contradictions and inconsistencies in the statements in course of trial, it would be very difficult for this Court to believe the projected case of the prosecution. It is settled proposition of law that the charge framed against the accused person has to be established and proved beyond any shadow of doubt.

Suspensions, however, grave in nature, should not amount to prove. The discrepancies which are found in this case as analyzed above, appeared to be abnormal in nature which is not expected from a normal person. After cautious scrutiny of the evidence and considering the entire chain of circumstances, this Court finds it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant.

[22] In the backdrop of above analysis, I am of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed. Accordingly, the order of conviction and sentence dated 12.09.2024 & 13.09.2024 passed by the learned Special Judge, (POCSO) Dhalai Judicial District, Kamalpur, in Special (POCSO) 02 of 2020 is set aside. The appellant shall be released forthwith, if not wanted in connection with any other case.

[23] With the above observations and direction, the instant appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed. Send down the LCRs.

T. AMARNATH GOUD, J

A.Ghash

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