

**HIGH COURT OF TRIPURA
AGARTALA
CRL.A(J) NO.15 OF 2024**

**Sri Milan Choudhury@Minal Ahamed Laskar@Mrinal
Ahamed Laskar**, S/o, Lt. Tota Chowdhury@Salim Uddin Laskar,
Resident of Chandpur, P.S. Hailakandi, Assam
(Now undergoing imprisonment **at Kendriya Sansodhanagar,
Bisshalgarh, Sepahijala, Tripura**), At present in Kailashahar
Sub-Jail

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

Versus

State of Tripura,

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

For the Appellant(s) : Mr. Sankar Bhattacharjee, Advocate.

For the Respondent(s) : Mr. Raju Datta, Public Prosecutor.

Date of hearing and delivery of
Judgment & Order : 01/07/2025.

Whether fit for reporting : NO.

**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 (O R A L)**

(DR.T. AMARNATH GOUD,J)

This appeal has been filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment of conviction and order of sentence dated 04-03-2021 passed in SPL (POCSO) 27 of 2020 by the learned Special Judge (POCSO), Agartala, West Tripura, convicting and sentencing the appellant to suffer rigorous imprisonment for a term of 20 (twenty) years and also directing him to pay a fine of Rs. 50,000/- (Rupees fifty thousand only), with default stipulation for commission of the

offence punishable under Section 376AB of the IPC and, in the alternative, under Section 6 of the POCSO Act.

2. The brief fact of this case is that one Sri Ajit Debbarma lodged a complaint alleging, *inter alia*, that on 09-05-2020 at about 1:00 PM, while his daughter, aged about 8 years, was playing in their house as usual, at that time, one Milan Chowdhury, S/o. Lt. Tota Chowdhury, who is residing adjacent to his room in the same house, took the victim (daughter) behind the toilet of that rented house and inserted his finger inside her (victim's) private part with ill intention. After that, in the evening, when the victim cried out in pain while urinating, and on being asked by her mother, she narrated the incident. Thereafter, the complainant narrated the matter to local people, and the local people assured him they would look into the matter. For that reason, he did not inform the police initially. On the next day, when he took his daughter (victim) to a doctor, the doctor advised him to take shelter of law. After that, he took his daughter (victim) to East Agartala Women P.S. and narrated the incident and filed a written complaint.

3. On the basis of the said complaint, East Agartala Women P.S. Case No. 2020/WEA/027 dated 10-05-2020 under Section 376AB of IPC read with Section 6 of the POCSO Act was registered.

4. Based on the said complaint, the police started investigation and arrested the appellant. During the investigation, the investigating officer of the case recorded the statements of witnesses under Section 161 of Cr.P.C., and the victim was also forwarded to the hospital for medical examination and was also produced before the Magistrate for recording of her statement under Section 164(5) of Cr.P.C. The investigating officer also collected material evidence and filed charge sheet against the appellant under Section 376AB of IPC read with Section 6 of the POCSO Act before the Court.

5. The learned trial court, after hearing the submissions of both sides, framed charge against the appellant under Section 376AB of IPC read with Section 6 of the POCSO Act. During the trial, the prosecution, to establish the charges, examined as many as 15 witnesses and also exhibited documents as well as material objects.

6. The appellant was examined under Section 313 of Cr.P.C., to which the appellant denied all the material questions and pleaded innocence, and also denied adducing any evidence. On 18-02-2021, the learned trial court heard the final arguments from both sides, and on 04-03-2021, judgment was delivered, convicting and sentencing the appellant to suffer rigorous imprisonment for a term of 20 (twenty) years, and also directing him to pay a fine of

Rs. 50,000/- (Rupees fifty thousand only), and in default of payment of the same, he shall suffer simple imprisonment for a term of 05 (five) months for commission of the offence punishable under Section 376AB of the IPC and, in the alternative, under Section 6 of the POCSO Act.

7. Being aggrieved and dissatisfied with the judgment of conviction and order of sentence as stated above, the appellant preferred this appeal.

8. Heard Mr. Sankar Bhattacharjee, learned counsel appearing for the appellant, as well as Mr. R. Datta, learned P.P., appearing for the State-respondent.

9. Mr. Bhattacharjee, learned counsel appearing for the appellant, submits that the appellant has taken a specific plea that the father of the victim borrowed Rs. 4,000/- from the appellant and did not repay it, and due to such, the father of the victim has framed the accused. The learned trial court ought to have been more cautious while accepting the evidence of the child witness, since the child witness is very much vulnerable to tutored false statements. Section 376AB of IPC does not attract in the present case, since the age is not proved beyond reasonable doubt. P.W.-8, the doctor, in her examination-in-chief, has specifically stated that after examination, she did not find any injury in the victim's private part, nor any evidence of penetration to her vagina

by any adult penis or penis-like object. The learned court below failed to appreciate such evidence.

Learned counsel appearing for the appellant, to support his case, has relied on the following Judgments of the Hon'ble Supreme Court.

i. **Para-9** of the Hon'ble Supreme Court Judgment reported in **2012 STPL 21969 SC** titled as **K. Venkateshwarlu Vs. State of Andra Pradesh**. The same is produced here-in-under:-

"9.....it is safe and prudent to look for corroboration for the evidence of a child witness from the other evidence on record, because while giving evidence a child may give scope to his imagination and exaggerate his version or may develop cold feet and not tell the truth or may repeat what he has been asked to say not knowing the consequences of his deposition in the court. Careful evaluation of the evidence of a child witness in the background and context of other evidence on record is a must before the court decides to rely upon it."

ii. **Paras-43 and 44** of the Hon'ble Supreme Court Judgment reported in **2011 STPL 7749 SC** titled as **Alamelu and anr Vs. State represented by Inspector of Police**. The same is produced here-in-under:-

43. The same proposition of law is reiterated by this Court in the case of [Narbada Devi Gupta Vs. Birendra Kumar Jaiswal](#)(2003) 8 SCC 745, where this Court observed as follows:-

"The legal position is not in dispute that mere production and marking of a document as exhibit by the court cannot be held to be a due proof of its contents. Its execution has to be proved by admissible evidence, that is, by the "evidence of those persons who can vouchsafe for the truth of the facts in issue".

44. In our opinion, the aforesaid burden of proof has not been discharged by the prosecution. The father says nothing about the transfer certificate in his evidence. The

Headmaster has not been examined at all. Therefore, the entry in the transfer certificate can not be relied upon to definitely fix the age of the girl.

10. On the other hand, learned P.P., submits that the Judgment and Order of Conviction and Sentence as passed by the learned Trial Court is just and proper and needs no further interference.

11. Heard and perused the evidence on record.

12. It is seen from the deposing of P.W.-1, i.e. the father of the victim, the victim when went to the toilet to attend the nature's call, she cried out due to pain in her vagina, and when he along with his wife subsequently asked her as to how she got the pain injury, she revealed that the accused took her behind the toilet and inserted his fingers in her vagina. The victim-girl, i.e. the P.W.-2, also stated that the accused inserted the finger inside her, indicated her finger showing the place of her vagina. On the other hand, P.W.-8, who is the Medical Doctor who examined the victim girl, in her deposing stated that he did not find her with any injury in her private part nor any evidence of penetration to her vagina by any adult penis or penis-like object is found.

13. It is evident from the depositions of P.W.-1 and P.W.-2 that the accused committed an act with sexual intent by touching and attempting to insert his fingers into the private parts of the victim, a minor girl. However, P.W.-8, the medical expert,

categorically deposed that no injury or sign of penetration was found in the victim's private parts.

14. Considering the absence of corroborative medical evidence of penetration and applying the principle of benefit of doubt in a case of serious penal consequences, this Court is of the view that the ingredients of Section 6 of the POCSO Act are not proved beyond reasonable doubt. However, the evidence on record clearly establishes that the accused touched the private parts of the victim with sexual intent, thus fulfilling the ingredients of Section 7 of the POCSO Act.

15. Accordingly, the convict-appellant is convicted under Section 7 of the Protection of Children from Sexual Offences (POCSO) Act and is hereby sentenced under Section 8 of the said Act, which prescribes a punishment of rigorous imprisonment for a term not less than three years but which may extend to five years, and shall also be liable to fine. It is seen from the record that the accused was arrested on 10th May, 2020, and was convicted in March, 2021. He has already undergone five years of imprisonment by now. Therefore, having undergone the maximum period of sentence prescribed under Section 8 of the POCSO Act, the accused shall be released forthwith, if not wanted in any other case.

16. Accordingly, the appeal is allowed to the extend indicated above as thus disposed of. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

DR. T. AMARNATH GOUD, J

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