

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. A(J) 62 of 2024

Sri Akash Dey @ Joy

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

Versus

State of Tripura

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

For the Appellant(s)	: Mr. Ratan Datta, Adv. Ms. S. Nag, Advocate. Mr. Sourav Debnath, Advocate. Ms. H. Das, Advocate. Mr. A. Baidya, Advocate.
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For the Respondent(s)	: Mr. Raju Datta, P.P.
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Date of hearing & delivery of Judgment & order	: 15.05.2025.
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Whether fit for reporting	: No
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**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R (O R A L)**

Heard Ms. S. Nag, learned counsel appearing on behalf of Mr. Ratan Datta, learned counsel for the appellant. Also heard Mr. Raju Datta, learned P.P. appearing for the State-respondent.

[2] This present appeal is filed under Section 374 (2) of Cr.PC against the impugned Judgment and order of conviction and

sentence dated 05.08.2023 passed by the learned Special Judge (POCSO), West Tripura, Agartala in Case No. Special (POCSO) 42 of 2019 whereby and whereunder the appellant has been convicted under section 10 of POCSO Act and thereby sentenced him to suffer Rigorous imprisonment (RI) for 05 (five) years and to pay a fine of Rs.20,000/-(Rupees Twenty thousand only) and in default of payment of the same, to suffer simple imprisonment (SI) for a term of 02 (two) months.

[3] The prosecution story as per the version of the informant, i.e. the mother of the victim girl in brief is that, on 26.07.2019 at evening time her 11 year old daughter went for grazing their goat, at that time, convict appellant Joy Dey forcefully by pressing her mouth undressed her and tried to commit rape upon her. Based on such incident informant lodged a complaint at East Agartala Women PS on 29.07.2019 and accordingly, the investigation was started. Thereafter, the I.O. taking the task of investigation, examined the victim, informant and other available witnesses and recorded their statements under Section 161 of the Criminal Procedure Code (Cr.P.C. for short) and arrested the convict appellant and forwarded to the convict before the learned Court on the following day. On completion of investigation, the I.O. laid charge-sheet against the convict appellant. During trial, upon

hearing submissions made by the parties and on perusal of the record, learned Court framed charge under Section 354B of IPC and Section 10 of POCSO Act against the Convict appellant and subsequently, the trial commenced. The Prosecution adduced evidence and also exhibited certain documents. The convict appellant was examined U/S 313 of Cr. PC and thereafter, the convict appellant pleaded not guilty and claim to be tried. After hearing of both the sides learned Trial Court by its judgment and order dated 05.08.2023 passed in Case No. Special (POCSO) 42 of 2029, convicted the appellant, Akash Dey to suffer RI for 05 years and to pay a fine of Rs. 20,000/- in default of payment, to suffer simple imprisonment for further 02 (two) months for commission of offence punishable U/S 10 of POCSO Act.

[4] Aggrieved by the aforesaid impugned order dated 05.08.2023 passed by the learned Court below in case No. Special (POCSO) 42 of 2029, the appellant 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 05.08.2023 passed by the Ld. Special Judge (POCSO) *****, West Tripura, Agartala in Case No. Special (POCSO) 42 of 2019 whereby and where under the appellant has been convicted Under Section 10 of the POCSO Act and

thereby sentenced him to suffer Rigorous imprisonment for 05 years, and order to pay a fine of Rs 20,000/- (Rupees Twenty thousand only) and in default of payment of the same, he shall suffer simple imprisonment for a term of 02 (two) months.....”

[5] Ms. S. Nag, learned counsel appearing on behalf of Mr. Ratan Datta, learned counsel for the appellant submits that learned Court below held the convict appellant to be guilty of alleged offences on the basis of no evidence inasmuch as the evidence on record does not constitute the alleged offence and in no case implicated the convict appellant in the commission of alleged offence. She submits that P.W. 5, who is the eye witness of the alleged occurrence in his cross examination stated that beside their playground there is a jungle where one Guava tree is there and they often would go there to have Guavas and he knew the Convict appellant Akash Dey @ Joy, Prantosh Datta and Ankit headed towards the Guava tree when they found the victim girl was also following them. It was further stated by P.W. 5 that they asked her not to follow them or else her father would get angry, in spite of that, she came after them and reached the Guava tree and subsequently they had started collecting Guavas when joy tried to snatch two Guavas from the victim girl and in that course, there was a scuffling when the victim girl fell on the ground and cried out. Thereafter, her father came to the spot and assaulted Joy Dey hearing about the incident from her and took her away from there.

[6] Learned counsel contends that from the cross examination of the eye-witness i.e. Pw.5, it is clear that the victim girl sustain only bodily injury due to scuffling, while the convict appellant tried to snatch guava from the victim girl. But the learned Court below failed to appreciate the same. She, therefore, urges this Court to set aside the impugned order dated 05.08.2023 passed by the Ld. Special Judge (POCSO), West Tripura, Agartala in Case No. Special (POCSO) 42 of 2019.

[7] On the contrary, Mr. Raju Datta, learned P.P. opposes the submissions made on behalf of the appellant. He, contends that learned trial Court on perusal of all the material evidence on record, has convicted the accused-appellant by its order dated 05.08.2023 in Case No. Special (POCSO) 42 of 2019, the same should not be interfered with.

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

[9] It is seen from record that the appellant was in custody for one year and four months i.e. since the time of awarding conviction and sentence upon him and by the order of this Court dated 05.12.2024 passed in IA No. 02 of 2024 in CrI. A(JO No.62 of 2024, bail was granted to him on furnishing bond of Rs.30,000/-

with one surety of like amount to the satisfaction of the learned trial Court.

[10] On perusal of record, it appears that the FIR was lodged on 29.07.2019, though the alleged incident of sexual assault took place on 26.07.2019 and the delay of three days in lodging the FIR, was not explained by the complainant.

[11] It is also seen from record that the Medical Officer, P.W.7, deposed before the trial Court that he had medically examined the victim girl and she was having an alleged history of physical assault and while examining the victim, he did not find any external injury except some tenderness over the pelvic region.

[12] The P.W. 5 i.e. the eye witness for the prosecution, in his cross-examination, stated that beside their playground there is a jungle where one guava tree is there and they often would go there to have guavas. He further stated that he knew Akash Dey @ Joy and on 26.07.2019, at about 4:30-5:00 pm he alongwith Joy Dey, one Prantosh Datta and one Ankit headed towards the guava tree when they found the victim girl was also following them. It was also stated by P.W. 5 that they asked her not to follow them or else her father would get angry, in spite of that, she came after them and reached the guava tree and thereafter they had started collecting

guavas when joy tried to snatch two guavas from the victim girl and in that course, there was a scuffling when the victim girl fell on the ground and cried out. Subsequently, her father came to the spot and assaulted Joy Dey hearing about the incident from her and took her away from there.

[13] However, there are clear inconstancies between the statements made by the P.W.5 i.e. the eye-witness and the victim girl i.e. P.W.3 during their respective cross-examination. The P.W. 3 i.e. the victim girl in her cross-examination before the trial Court made the following statement:

".....It is not a fact that on the alleged evening Joy Dey, Ajay Rudra Paul and two / three others were on way towards the Guava tree or that I have also followed them when I went to get my goat. It is not a fact that near the Guava tree I have collected some Guavas, which accused Joy Dey was trying to snatched away. It is not a fact that in course of such scuffling I fell on the ground and sustaining injury, I cried out, where-after my father came to the spot. It is not a fact that after hearing from me about snatching of Guavas, my father assaulted Joy for his aggression, where-after he took me back home. It is not a fact that only for the injury I sustained while scuffling with Joy, my parents took me to the hospital for treatment."

[14] In view of the above discussions, this Court is of the view that since, there is inconsistencies between the statements made by the victim girl and the eye-witness in their respective cross-examination and no reason has been explained for delay of three

days in lodging the FIR, it is very difficult to convict the appellant under Section 10 of the POCSO Act. It is also observed that the appellant was in custody for more than one year.

Considering all the facts and circumstances of the case, this Court opines that ends of justice would be met if the benefit of doubt is extended to the appellant herein. Accordingly, the appellant is acquitted and the impugned judgment of conviction and sentence dated 05.08.2023 passed by the learned Special Judge (POCSO), West Tripura, Agartala in Case No. Special (POCSO) 42 of 2019 is hereby set aside. The appellant shall be released if not required in any other offence. The accused appellant is on bail, thus, the bail bond is discharged.

With the above observations and directions, the instant appeal is allowed and thereby, the same is disposed of. As a sequel, miscellaneous application(s), pending if any, shall also stand closed.

Send down the LCR.

T. AMARNATH GOUD, J

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