

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A(J)62 of 2023

Sri Santosh Satnami @ Hriday Santal

---Appellant(s)

Versus

The State of Tripura

---Respondent(s)

For Appellant(s)	:	Mr. S. Sarkar, Sr. Advocate. Ms. S. Banik, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP Mr. Rajib Saha, Addl. PP
Date of hearing	:	11.03.2025.
Date of pronouncement	:	19.03.2025.
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order

(T. Amarnath Goud, J)

Heard learned counsel for the parties.

[2] This is an appeal under Section 374 of the Code of Criminal Procedure, 1973 against the judgment and order of conviction and sentence dated 17.02.2022 passed by the Ld. Special Judge, (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 14 of 2019 convicting the appellant to suffer rigorous imprisonment (R.I) for a period of 20(Twenty) years and to pay a fine of Rs.2,000 (Rupees Two Thousand) only in default to suffer R.I for 1 (one) months for the commission of the offence punishable under Section 4(2) of the POCSO Act.

[3] Briefly, the factual matrix as far the version of the prosecution is that, on 19-10-2018, at about 1900 hours, the FIR named accused person Sri Santosh Satnami @ Hriday Santal called the minor victim girl (name withheld) over a phone and asked her to reach behind the Shyamali Guest House at the Durgabari Tea Garden. When the victim reached there, the said accused forcibly committed rape upon her due to which the victim got terrified and she concealed the matter of rape

on that day from her family members. On 21-10-2018, morning at about 1000 hours, the victim informed the matter to her mother, who upon hearing the same lodged a written complaint in this regard.

[4] Based, on the written complaint of the informant (mother of the victim), a case was lodged at Airport PS and accordingly, the investigation started. During investigation the IO visited the PO and prepared hand sketch map of the PO with separate index. She examined all available witnesses and recorded their statements U/S 161 of CrPC and later on she was also send the victim to the learned court for recording of her statement U/S 164(5) of CrPC. Further, in the course of investigation, the accused person was arrested on 25-10-2018 and forwarded to the learned court on 26-10-2018. Subsequently, medical examination of the victim and potency test of the accused person was conducted. Thereafter, exhibits seized from the hospital during medical examination of the victim as well as accused person was sent to SFSL for examination and thereupon collected SFSL examination report. On completion of investigation, IO filed charge sheet vide Airport PS C/S No.07/2019, dated 11-02-2019, under Sections-376(2)(i) of the IPC read with Section-4 of the POCSO Act against the accused person namely Santosh Satnami @ Hriday Santal of for facing trial in the open Court of law for the fair ends of justice.

[5] During trial, upon hearing submissions of parties and taking into consideration the record and documents submitted therewith, my predecessor-in-office framed charge under Sections-376(2)(i) of the IPC read with Section-4 of the POCSO Act against the accused person namely Santosh Satnami @ Hriday Santal, to which he pleaded not guilty and claimed trial. However, the existing charge was altered after hearing both the parties, vide order dated 19-11-2021, in light of the latest amendment brought U/S 376 of the Indian Penal Code. Accordingly, the charge was altered as Section 376(2)(j) of the IPC read with Section 4 of the

POCSO Act against the accused namely Santosh Satnami @Hriday Santal to which he further pleaded not guilty and claimed trial.

[6] Thereafter, the learned court below by the order dated 17.02.2022 passed the impugned order which is reproduced herein under:

Order

21. In the result, accused namely Sri Santosh Satnami @ Hriday Santal is convicted on the charges framed under sections 376(2)(j) of the IPC and under Section -4(2) of the POCSO Act. He is taken into custody and will be heard on question of sentence in due course of time of the day.

22. Surety of the bail bond, except the bail bond furnished under section 437A CrPC, stands discharged.

23. Accordingly, the present case stands disposed of on contest.”

[7] Aggrieved by the above sentence passed by the learned Court below, the appellant side has preferred this present appeal.

[8] It is contended by the senior counsel for the appellant that PW 4 admitted the fact that it was not mentioned in the certificate on the basis of which document, the date of birth of said student was recorded in the admission register. Also, the crime was not reported as the earliest opportunity and Ld. Trial court did not consider aspect while convicting the appellant and hence the judgment and order of conviction and sentence is liable to be set-aside/quashed.

[9] He further contended that the Ld. Trial Court below also ought to have appreciated and considered the judgment relied upon from the side of the convict appellant, which was passed by the Hon'ble Apex Court, but the Ld. Trial Court below did not take the said judgment into consideration at the time of passing the impugned judgment and order of sentence.

[10] Moreover, it is further submitted by the senior counsel for the appellant that Ld. Trial Court has not appreciated that PW 6 admitted the fact that she stated to the police as well as to the Magistrate that accused embraced her and torn her wearing apparels. Attention of the witness being drawn to the statement recorded earlier by the IO, and the statement recorded u/s 164(5) Cr.P.C, the

witness admits that statement are not there and hence the judgment and order of conviction and sentence is liable to be set-aside/quashed.

[11] He also contended that the Ld. Trial Court has not taken into consideration i.e. PW6 stated further that her wearing apparels which were allegedly torn by the accused were not seized by the police and hence the judgment and order of conviction and sentence is liable to be set-aside/quashed. In course of his submission, he also submitted that PW6 stated that she managed to escape from the place of occurrence. Attention of the witness being further drawn to the statement recorded earlier by the IO, and statement recorded under Section 164(5) Cr.PC the witness admits that such statements are not there.

[12] On the other hand, Mr. R. Saha, learned Addl. PP appearing for the state-respondent has contended before this court that the impugned order is just and proper and needs no interference from this court. In course of his submission, he has also referred to the deposition of PW-17-Smt.Madhavi Das, the investigating officer wherein the PW-17 has stated as under:

*“...I have arrested the accused person namely Santosh Satnami @ Hridoy Santhal on 25.10.2018 and forwarded him before the Court on 26.10.2018.
....”*

[13] Moreover, Mr. Saha, learned Addl. PP has further prayed before this court to dismiss the appeal by confirming the impugned order of the learned court below.

[14] Heard and perused the record.

[15] Having considered the submission as advanced by the counsel for the parties and also having gone through the record, this court finds that on the day of occurrence of the crime, the girl was merely 15 years of age and the boy was only 19 years. As per the deposition of the victim girl, the boy had called her over phone and she responded to that call and she went to meet him behind the Shyamali park

where the crime has taken place. A reasonable conclusion needs to be drawn that they knew each other and they were passing through their tender age. It seems quite obvious that both of them took the advantage of the situation. Nevertheless, the case has to be tested under the requirement of the provision of POCSO Act, since the victim girl is a minor.

[16] A bare perusal the medical evidence of the victim girl as placed before this court, it appears that the medical evidence does not support the case of sexual intercourse between the victim and the convicted-appellant. On scrutiny of the medical examination of the victim girl, it is found that no injury was found to her private part. It is also indicated that the hymen that was torn was old in nature. With regard to the presence of spermatozoa, the learned counsel for the appellant has placed reliance upon Modi's Medical Jurisprudence and Toxicology and the same is extracted herein below:

“The presence of spermatozoa in the vagina after intercourse has been reported by Pollak (1943) from 30 minutes to 17 days and by Morrison (1972) upto 9 days in the vagina and 12 days in the cervix.”

[17] This court has also observed that there was serious inconsistency with the statement of mother who is the complainant of the case in hand and the father of the victim girl. The names of the accused mentioned by them during their deposition do not match with each other. The mother PW-5 said it was Hriday Santal who raped her daughter and the father PW-13 said it was Santoh Satnmai who committed rape on her daughter. It appears to this court that even the complainant and the father of the victim had failed to recognize the actual name of the accused-appellant.

[18] Moreover, the investigating officer has not placed any authenticated material to prove that Santosh Satnami and Hriday Santal are the same person. It is

also seen from the record that no step was taken even before the learned court below to deal with this particular aspect with regard to ascertaining the names whether it belongs to one person. There could be mistake of identity. But even during the deposition of the appellant under Section 313 of the CrPC, no question was post by the learned court below to find if the accused was known by two different names.

[19] Moreover, the age of the victim was not proved and no material evidence was placed supporting her age. The document which is exhibited shows the date of admission in a school of the victim. But no school register or original record was produced before the court below for determining the age of the victim girl. In the absence of the preliminary document i.e. primary evidence, the secondary evidence cannot be believed in the present facts and circumstances of the case.

[20] Moreover, the wearing apparels, according to the victim girl, were torn by the victim but her mother, (the complainant) has not indicated the same in the complaint nor the statement recorded under Section 164 of the CrPC. For the purpose ready reference, the same is extracted herein below:

“During Durga Puja on the day of Dashami of the year before last year accused Hriday Santal took my daughter Jhuma Kanda behind the Shyamali Park and committed sexual intercourse forcefully with her. She informed the matter to me after two days of the occurrence. I, therefore, lodged a complaint in writing with the OC, Airport PS. The written complaint was prepared by my brother-in-law Jiten Kanda as per my dictation. I did put my signature in the written complaint. Signature of witness marked as Exhibit-5/1., on identification. During investigation police officials of Airport PS seized original School Certificate and the mobile phone of my daughter. I did not put my signature in the seizure list as one of the witnesses. Signature of witnesses on the seizure list dated 22.10.2018 stands marked as Exhibit-6/1, on identification. The witness has also identified the school certificate (Exhibit-4). My daughter was also taken to GB Hospital for medical examination. I escorted her to the hospital.

Accused Hriday Santal is kept behind the curtain and witness has identified the accused while taken out of the curtain.”

[21] There is a contradiction on the part of the evidence of the mother and the father of the victim girl. At one point, in their evidence, with regard to the name of the accused person, both of them mentioned different names of the accused person and that cannot be accepted by this court.

[22] Moreover, from the deposition of the mother (PW-5) of the victim, it transpires she lodged the complaint after 2-3 days of the occurrence of the crime. But the father of the victim (PW13) deposed that immediately after the crime, her wife filed the complaint. Such depositions, if believed by this court, also do not support the case of the prosecution since these discrepancies in their statement is causing serious ambiguity and the prosecution tends to lose the grip over the case in hand.

[23] 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. Suspicious, 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, we find it difficult to arrive at a finding to draw the hypothesis of guilt against the accused-appellant. Moreover, in criminal law, the principle that an accused is presumed innocent until proven guilty beyond reasonable doubt is well established. Any uncertainty in evidence must be resolved in favor of the accused. In the present case, given the inconsistencies and lack of corroborative evidence, the appellant is entitled to the benefit of doubt.

[24] In the backdrop of above analysis, we are of the view that the prosecution has failed to establish their projected case and consequently the instant appeal is allowed. Accordingly, the judgment and order of conviction and sentence dated 17.02.2022 passed by the Ld. Special Judge, (POCSO), West Tripura, Agartala, in connection with Case No. Special (POCSO) 14 of 2019 is set aside. The appellant shall be released forthwith, if not warranted in connection with any other case.

[25] With the above observation 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 forthwith.

[26] A copy of this order be sent to the Superintendent of Kendriya Sansodhanagar, Bishalgarh at the earliest.

B.Palit, J

T. Amarnath Goud, J



Dipak

**DIPAK
DAS**

Digitally signed by
DIPAK DAS
Date: 2025.03.24
16:44:23 +05'30'