

**HIGH COURT OF TRIPURA
AGARTALA**

Crl.A.(J) 65 of 2023

Md. Mahammad Ali
S/o- Md. Samed Ali
R/o- Chantain, PS: Kailashahar, Dist: Unakoti Tripura.

---Appellant(s)

Versus

The State of Tripura
Represented by its Secretary-Cum-Commissioner, Department of Home, Government of Tripura, PO: Kunjaban, PS: New Capital Complex, Dist: West Tripura

---Respondent(s)

For Appellant(s)	:	Mr. D. Sarkar, Advocate.
For Respondent(s)	:	Mr. Raju Datta, PP Mr. Rajib Saha, Addl. PP
Date of hearing and date of delivery of judgment	:	23.04.2025.
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 challenging the legality and validity of judgment and order of conviction & sentences dated 06.10.2023 passed by Ld. Special Judge (POCSO), Unakoti Judicial District, Kailashahar in a case no.Special (POCSO) 10 of 2021 whereby the Ld. Trial Court sentenced the convict for commission of offence punishable under Section 6 of POCSO and hereby sentenced him to suffer rigorous imprisonment for term of 20 years and to pay a fine of Rs.25,000/- only i.d, to payment of fine he shall further suffer simple imprisonment for a term of 03(three) months.

[3] In nutshell, the prosecution story that led to the setting of the criminal law in motion is that on 14.03.2021, at about 10/11 hours, when the informant returned to this dwelling house from Srirampur Ration Shop, then he came to know from his wife and his victim-daughter that when his victim-

daughter who is mentally disabled, went to the dwelling house of the accused person namely Md. Mahammed Ali for returning the empty bowl of the said accused then at that time, the accused person who was alone at home, taking advantage of the this opportunity, pulled the victim to the bed and thereafter forcefully committed rape upon her by threatening her. In fact, at that point of time, the son of the informant (i.e. the brother of the victim) namely Salim Ali appeared at the spot and witnesses the incident. The informant being aggrieved by the aforesaid incident lodged a case against the said accused person.

[4] Based, on the written complaint of the informant, a case was lodged at Kailashahar Women PS on 14-03-2021 and the same was registered as Kailashahar Women PS, Case No. 2021/WKS/015. Thereafter, the case was endorsed to the IO for investigation. Accordingly, IO took up the charge of investigation. During investigation, on 14.03.2021, she had examined the informant and the victim connected with this case. During the course of investigation, on 14.03.2021, she had seized one original birth certificate and original mental disability certificate of the victim by preparing a seizure list.

[5] On the same day, the said IO had made arrangement for medical examination of victim (name withheld) at RGM Hospital. Proceeding further, during the process of the investigation, she had also seized the wearing apparels of the victim by preparing yet another seizure list dated 15.03.2021. Again, on the same day, she had examined two available witnesses and recorded their statement under section 161 of Cr.P.C and further, on 15.03.2021 the IO had visited the PO situated at Chantail under Kaialashahar PS and prepared hand sketch map along with separate index. Again on 17.03.2021, she had produced the victim before the Magistrate whereupon, her statement was recorded under section 164 (5-A) (a) of the Cr. P.C and on 19.03.2021, she had collected the medical report of the victim

from RGM Hospital. During investigation, on the same day, the IO had arrested another co-accused person namely Rakib Ali and forwarded him before the court on the following day. Further, on 25.03.2021 she had arrested another co-accused persons connected with this case namely Asraf Ali and Safik Ali and forwarded them before the court on the next date.

[6] Moving forward, again on 27.03.2021, the IO had arrested yet another accused persons namely Billal and Chamed Ali and forwarded them before the court on the very next day. Also, on 30.03.2021, she had arrested the principal accused person namely Mohammad Ali and forwarded him before the court. Further, on the same date, she had made arrangement for medical examination of the accused person Mohammad Ali in order to determine his potency test and also seized the blood sample of the accused. On the same day, the said IO had seized the DVD containing the judicial statement of the victim recorded aforesaid by preparing a seizure list.

[7] On 12.04.2021, she had also sent the witness namely Salim Ali, the brother of victim before the Magistrate, whereupon, his statement was recorded under section 164 (5-A) (a) of the Cr.P.C. During the course of investigation, on the same date, the IO had also collected the SFSL report of the victim as well as the accused from SFSL, Narsingarh and thereafter, collected the medical reports reflecting final opinion of the victim and accused. Further on, 19.04.2021 the IO had seized one original primary school certificate of the victim by preparing yet another seizure list dated 19.04.2021.

[8] On completion of the investigation, a charge-sheet was submitted by the IO, after finding prima facie materials against the accused person namely Md. Mahammad Ali under sections 376(2)(j)(1)/506 of the IPC and under Section 6 of the POCSO Act and against the other co-accused persons namely Md. Rakib

Ali, Md. Ashraf Ali, Md. Safik Ali, Md. Billal Miah and Md. Chhamed Ali under sections 120(B)/212 of the IPC and accordingly, submitted the charge-sheet vide WKS PS C/S No.14/2021, dated 19.04.2021.

[9] Upon receipt of the aforesaid charge-sheet, cognizance of the offence punishable under sections 376(2)(j)(1)/506 of the IPC and under Section 6 of the POCSO Act was taken by this court against the accused person namely Md. Mohammad Ali and further, under sections 120(B)/212 of the IPC against the other co-accused persons namely Md. Rakib Ali, Md. Ashraf Ali, Md. Safik Ali, Md. Billal Miah and Md. Chhamed Ali. Thereafter, the accused copies of the incriminating documents were supplied to the accused persons, named above, through their engaged Ld. Counsels in compliance with the provisions engrafted under section 207 of the Cr.PC.

[10] During trial, upon hearing submissions of parties on the point of framing of charge and taking into consideration, the record and documents placed thereon, my predecessor-in-office framed the charges against the accused person namely Md. Mohammad Ali under sections 376/506 of the IPC and under Section 6 of the POCSO Act and against the other co-accused persons namely Md. Rakib Ali, Md. Ashraf Ali, Md. Safik Ali, Md. Billal Miah and Md. Chhamed Ali under sections 120(B)/212 of the IPC. Thereafter, the contents of the charges were read over and explained to the accused persons to which they pleaded not guilty and claimed trial.

[11] Thereafter, the learned court below by the order dated 06.10.2023 passed the impugned order which is reproduced herein under:

Order

16. In the result, the convict namely, Md. Mahammed Ali stands sentenced under Section 6 of the POCSO Act, to suffer rigorous imprisonment for a term of 20(twenty) years and to pay fine of Rupees 25,000/- (Twenty Five Thousand) only. In default of the payment of fine,

the said convict shall suffer simple imprisonment for a further term of 3(three) months.

17. The amount of fine, if realized, shall be handed over to the victim as compensation.

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

[13] It is contended by the counsel for the appellant that PW -1 (name withheld) in her cross examination stated that on earlier occasion another rape case was lodged by the father of the PW No. 1 against Najrul Hossain for committing rape upon the PW No. 1 that case was registered as ST/33(NTK)/2014 under section 376(2)(i) of IPC and section 4 of POCSO Act. The accused person Najrul Hossain subsequently acquitted from the said case. It is also suggested by the defense that during the alleged offense the victim crossed 18 years of age. It is also reveals from the cross examination it is also found that that there is old pending boundary/path way disputes and in that regard so many cases including civil case is also pending between the father of the victim and the father of the accused person before the Ld. Civil Court, Kailashahar. Some of the cases decided by the Revenue Authority.

[14] He further stated that it is seen from the deposition of PW No. 2 that that there are major omission, exaggeration and contradiction between the statement recorded by the IO under section 161 of Cr.P.C and the statement before the Ld. Trial Court. He also admitted that there are civil case pending before the Ld. Civil Judge (Junior Division) Kailashahar between the father of the accused and the PW No. 2. He further admits that earlier also a Criminal case was lodged against Najrul Hossain vide No. ST/33(NTK)/ 2014 under section 376(2)(i) of IPC and section 4 of POCSO Act said case was disposed off on 22/11/2014 an acquitted the accused Najrul Hossain from that case.

[15] He further draws the attention of this court to the deposition of the PW No. 4 Mst. Afiya Begam who is the mother of victim. From the cross examination of Pw No. 4 it is found that on the alleged date of incident her daughter Shilpi (Victim) did not go to school but her son namely Selim Ali went to his school. She also deposed that she stated to Darogababu "that my daughter and Selim inform me that Selim found my daughter and Mahammed Ali in naked condition lying over my daughter. Attention of the witness is drawn to her statement recorded under section 161 of Cr.P.C by the defence but no such statement found therein". From the statement of the Pw No. 4 she stated that her son and daughter at the first instance informed her about the alleged incident is totally doubtful. She also stated that there are other houses beside the house of the accused as well as victim. But no independent person was cited as witness in the instant case by the investigating agency for unknown reasons.

[16] To support his case, learned counsel for the appellant has placed his reliance on a judgment of the apex court in Manoj and Others vs. State of Madhya Pradesh reported in (2023) 2 SCC 353 where the apex court has observed as follows:

151.....

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Collection and Preservation of Evidence

If DNA evidence is not properly documented, collected, packaged, and preserved, it will not meet the legal and scientific requirements for admissibility in a court of law. Because extremely small samples of DNA can be used as evidence, greater attention to contamination issues is necessary while locating, collecting, and preserving. DNA evidence can be contaminated when DNA from another source gets mixed with DNA relevant to the case. This can happen when someone sneezes or coughs over the evidence or touches his/her mouth, nose, or other part of the face and then touches area that may contain the DNA to be tested. The exhibits having biological specimen, which can establish link among victim(s), suspect(s), scene of crime for solving the case should be identified, preserved, packed and sent for DNA profiling."

152. In an earlier judgment, *R v. Dohoney & Adams*⁴⁰ the UK Court of Appeal laid down the following guidelines concerning the procedure b

for introducing DNA evidence in trials: (1) the scientist should adduce the evidence of the DNA comparisons together with his calculations of the random occurrence ratio; (2) whenever such evidence is to be adduced, the Crown (prosecution) should serve upon the defence details as to how the calculations have been carried out, which are sufficient for the defence to scrutinise the basis of the calculations; (3) the Forensic Science Service should make available to a defence expert, if requested, the databases upon which the calculations have been based.

153. The Law Commission of India in its Report⁴¹, observed as follows:

"DNA evidence involves comparison between genetic material thought to come from the person whose identity is in issue and a sample of genetic material from a known person. If the samples do not "match", then this will prove a lack of identity between the known person and the person from whom the unknown sample originated. If the samples match, that does not mean the identity is conclusively proved. Rather, an expert will be able to derive from a database of DNA samples, an approximate number reflecting how often a similar DNA "profile" or "fingerprint" is found. It may be, for example, that the relevant profile is found in 1 person in every 1,00,000: This is described as the "random occurrence ratio" (Phipson 1999, 15th Edn., Para 14.32).

Thus, DNA may be more useful for purposes of investigation but not for raising any presumption of identity in a court of law."

(emphasis in original)

[17] Reliance has also been placed on the other judgments of the apex court in **State of AP vs P. Narasimha And Another** reported in (1994) 4 SCC 453 and in **Alamelu & Anr vs. State represented by Inspector of Police** judgment passed in Criminal Appeal No.1053 of 2009. Reliance has also been placed on the judgments passed by this High Court in **Matilal Sarkar vs. The State of Tripura** (judgment passed in CrI.A.(J) 42 of 2023) and in **The Special Judge (POCSO) Khowai District, Tripura vs The State of Tripura and another** (judgment passed in Death Sentence Reference 01 of 2022).

[18] It is further contended by the counsel for the appellant that the present case in hand be dealt with as per Section 4 (1) of the POCSO Act, 2020 which reads as under.

4. Punishment for penetrative sexual assault (1)- whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.

[19] 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-13-Dr. Papiya Rudrapaul, wherein the PW-13 has stated as under:

“....On examination of the victim I found that there was no sign of any forceful vaginal and anal penetration. There was no sign of any injuries nearby genitalia, inner thigh, mons pubic and other part of body. Hymen of the victim was found and that was fresh. Thereafter, on observation of private part it was seen Clitoral hypertrophy and for which she was referred to concerned a gynecologist. Thereafter, on received report from SFSL I gave my final opinion on 12.04.2021 to the fact that there were no physical injuries but genital injury hymen was ruptured was present.....”

[20] 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.

[21] Heard and perused the record.

[22] To adjudicate the case in hand, let us examine some important witnesses and evidence.

[23] PW-1 is the victim girl. She deposed that around one year and two months ago at about 10 am, she went to the house of Mohammad Ali for returning one bowl. At that time Mohammad Ali forcefully embraced her and he suddenly pulled her on the bed and opened her brinjal coloured Salwar. He also gagged her mouth and laid her on the bed and had sexual intercourse with her against her will. He is her neighbour. At that time her younger brother namely, Salim Ali arrived there and Mohammad ran away therefrom. After that she returned to her house and informed her parents. Thereafter, her father lodged the instant case. Subsequently, police came and took her to hospital for medical check up and thereafter she was also taken to Court. She stated Magistrate about the incident who recorded her statement. She also put her signature in the statement.

In her cross-examination, she stated that she studied upto Class-IX in Chantail H.S. School, She is still pursuing her studies.

[24] PW-5 Md. Salim Ali who is the brother of the victim girl deposed that on 14.03.2021 at about 10 am, his mother told him to go to the house of Mohammad Ali since his sister Shilpi Begam was not returning from their house who went there for returning one bowl. Accordingly, he went to the house of Mohammad Ali which situates nearby our house. On going there, he found his sister and Mohammad Ali in a naked condition and his sister's mouth gagged and lying on bed. On seeing him, Mohammad left his sister and went away therefrom. Then he and his sister returned to house and informed his mother about the incident. After that he went to my school. Subsequently, police took him to Court where he stated the whole incident to one Madam. He put his signature in the statement written by one Madam.

In cross-examination nothing is found relevant except suggestions and denial made on behalf of the accused.

[25] PW13 (MO) Dr, Papiya Rudrapaul who examined the victim has categorically and specifically stated in her preliminary report that "the hymen of the victim was found torn and was fresh." Subsequently, after receiving the FSL report, the said MO (PW13) finally opined in her report (Exhibit-P12 series), consisting of five sheets that "there were no physical injuries but genital injury(hymen was ruptured) was present. Swab analysis report was positive for seminal fluid/spermatozoa and there were signs of suggestive sexual intercourse." Thus, in light of the above, the prosecution contended that there is no any variance between the versions of the vital witnesses manifested above and the version expressed by the Medical Officer (PW13) regarding the fact that the

accused person namely Md. Mahammed Ali committed rape or alternatively, aggravated penetrative sexual assault upon the minor victim girl.

[26] PW18 (SFSL expert, Biology/Serology Division) has categorically and specifically opined in his report(Exhibit 22) that "Spermatozoa of human origin were deducted in the Exhibits- F1, F2, G1, G2, H1, H2 and K." It should be noted here that the aforesaid Exhibit-F1 and F2 indicates urethral swab and smear of the victim, Exhibit-G1 and G2 indicates inner vaginal swab and smear of the victim, Exhibit-H1 and H2 further indicates outer vaginal swab and smear of the victim and Exhibit-K indicates deep purple colour Salwar of the victim." Therefore, it is very much evident that the accused Md. Mahammed Ali has committed rape or alternatively, aggravated penetrative sexual assault upon the minor victim girl and thus, it again reinforces and establishes the story of the prosecution substantially, without any iota of doubt.

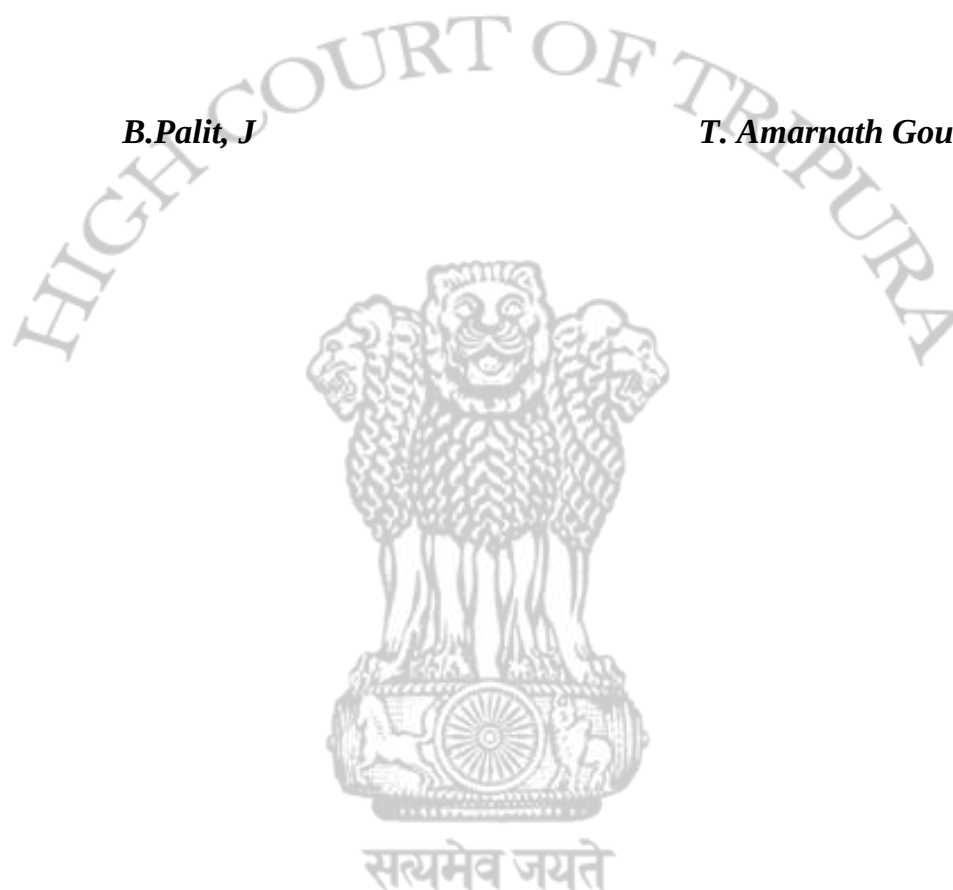
[27] Having considered the evidence on record, this Court finds that the deposition of the victim girl is consistent, credible, and trustworthy. Her testimony is duly corroborated by the statement of her brother, an eyewitness to the incident, and the medical report, which clearly establishes that the appellant was physically capable of committing the act alleged. This court also finds force in the submission as advanced by the learned Addl. PP for the state-respondent. This court also opines that the judgment as relied on by the counsel for the appellant is not relevant to the present context of the case. Hence, the appellant has failed to establish his case.

[28] The trial court has rightly appreciated the evidence and convicted the appellant under Section 6 of the Protection of Children from Sexual Offences Act. No illegality, perversity, or error in law is found in the impugned judgment warranting interference by this Court.

[29] Accordingly, the appeal is dismissed. The judgment and order of conviction & sentences dated 06.10.2023 passed by Ld. Special Judge (POCSO), Unakoti Judicial District, Kailashahar in a case no.Special (POCSO) 10 of 2021 stands affirmed. The appellant shall continue to undergo the sentence as directed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed. Send down the LCRs forthwith.

B.Palit, J

T. Amarnath Goud, J



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